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## SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair

2021 - 2022 Regular

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**Bill No:** AB 500  
**Author:** Ward  
**Version:** 8/31/21  
**Consultant:** Favorini-Csorba

**Hearing Date:** 9/7/21  
**Tax Levy:** No  
**Fiscal:** Yes

### ***LOCAL PLANNING: PERMITTING: COASTAL DEVELOPMENT: HOUSING***

*Requires local governments in the Coastal Zone to amend their local coastal programs to provide streamlined procedures for certain housing projects.*

### **Background**

**Local land use planning.** Planning and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory “elements,” including a housing element that establishes the locations and densities of housing, among other requirements. Cities’ and counties’ major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans.

Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

**Streamlining for certain housing projects.** State law establishes streamlined permitting processes for several types of housing projects, including accessory dwelling units (ADUs) and junior ADUs (JADUs), permanent supportive housing, and Low Barrier Navigation Centers. Specifically:

- Local governments must permit ADUs and JADUs ministerially, meaning without discretionary review, within residential or mixed use zones, and allow ADUs under 800 square feet, regardless of local zoning requirements.
- In 2018, the Legislature created a streamlined approval process for supportive housing projects (AB 2162, Chiu). That bill prohibited local governments from applying a conditional use permit or other discretionary review to the approval of 100% affordable

developments that include a percentage of supportive housing units, either 25% or 12 units whichever is greater, on sites zoned for residential use. Developers must include facilities and onsite services for residents of the supportive housing units. In addition, developers must provide the local government the name of the service provider, staffing levels, and funding sources for the services. Local governments can apply objective and quantifiable design standards to a development.

- State law designates “Low Barrier Navigation Centers” as a use by right in areas zoned for mixed use and nonresidential zones permitting multifamily uses if they meet specified requirements (AB 101, Committee on Budget, 2019). These centers must be Housing First, low-barrier, service-enriched shelters focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. They must also employ best practices to reduce barriers to their utilization by individuals experiencing homelessness.

**Coastal Act of 1972.** The California Coastal Commission (Coastal Commission) was established by voter initiative in 1972 (Proposition 20). The Legislature later made the Coastal Commission permanent through the adoption of the California Coastal Act of 1976 (Coastal Act). The Commission plans for and regulates the use of land and water in the Coastal Zone. The Coastal Zone encompasses the land and water area along the entire California coast extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In areas with significant coastal resources, the Coastal Zone extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less. However, the Coastal Zone excludes the San Francisco Bay and certain related bodies of water. In developed urban areas, the Zone generally extends inland less than 1,000 yards.

The Coastal Commission is an independent, quasi-judicial state agency, and is composed of 12 voting members appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly (four each). Six members are public members, and six are locally elected officials from specified coastal areas. There are also three ex officio, non-voting members of the Coastal Commission.

The Coastal Act gives the state a unique role in planning and regulating the use of land and water along the coast. Specifically, within the coastal zone—unlike most other areas of California—the state possesses the authority to regulate development, which is broadly defined to include the construction of structures, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, among other projects.

The basic goals of the Coastal Act are to balance development along the coast with protecting the environment and public access. The Act includes specific policies that address issues such as shoreline public access and recreation, habitat protection, landform alteration, industrial uses, water quality, transportation, development design, ports, and public works. The Coastal Act tasks the California Coastal Commission with implementing these laws and protecting coastal resources. As such, entities seeking to undertake development activities within the coastal zone must first attain a coastal development permit (CDP) from the Coastal Commission.

The Coastal Commission may delegate some permitting authority to the 76 cities and counties along the coast if they develop plans—known as Local Coastal Programs (LCPs)—to guide development in the coastal zone. The LCPs specify the appropriate location, type, and scale of

new or changed uses of land and water, as well as measures to implement land use policies (such as zoning ordinances). The Coastal Commission reviews and approves (“certifies”) these plans to ensure they protect coastal resources in ways that are consistent with the goals and policies of the Coastal Act. Local governments have incentives to complete certified LCPs, as they can then handle development decisions themselves, although stakeholders can appeal such decisions to the Coastal Commission. In contrast, any project undertaken in the coastal zone in communities without certified LCPs must obtain a permit from the Coastal Commission.

**Housing laws and the Coastal Zone.** Several of the state’s housing laws include provisions to ensure that coastal resources are protected:

- ADU law provides that it cannot be construed to supersede or in any way alter or lessen the effect or application of the Coastal Act, except that the local government shall not be required to hold public hearings for CDP applications for ADUs.
- State law, known as density bonus law (DBL) requires local governments to ministerially grant increases in density to projects that include affordable housing. DBL includes a similar provision to ADU law regarding the Coastal Act and also says that any benefits provided under DBL must be permitted in a manner that is consistent with the Coastal Act.
- The Housing Crisis Act of 2019 limits the ability of local governments to impose new permitting requirements on projects that have submitted a “preliminary application” and caps the number of hearings that a local government may hold before deciding to approve or deny a project. The Housing Crisis Act also includes the same provision regarding the Coastal Act, but adds that cities and counties can enact development policies, standards, or conditions necessary to implement or amend a certified local coastal program consistent with the Coastal Act.

**Coastal Commission housing policies.** In 1977, the Coastal Act’s policy provisions included the protection of affordable housing. Specifically, the Coastal Act provided that housing opportunities for persons and families of low and moderate income must be protected, encouraged, and where feasible, provided. In implementing this policy, the Coastal Commission prohibited the demolition of low- and moderate-income housing for reasons other than health and safety. The Coastal Commission also included density bonuses and reduced parking requirements in their development guidelines to prioritize new affordable housing opportunities. In addition, the Coastal Commission required that specified percentages of proposed housing units be set aside for low- and moderate-income households, specifically:

- A 25% inclusionary requirement on new construction of non-rental residential projects of 15 or more units and an in-lieu fee for projects of five to 14 units; and
- A 33% inclusionary requirement on condominium conversions of two units or more.

**The Mello Act.** Responding to concerns that the Commission’s policies inhibited housing development in the Coastal Zone, in 1981, SB 626 (Mello) repealed the Coastal Commission’s authority to protect, encourage, and provide affordable housing, and expressly prohibited the Commission from requiring LCPs to include housing policies and programs. At the same time, the Mello Act also prohibited conversion or demolition of housing occupied by low- and moderate-income individuals in the Coastal Zone, unless replacement housing is built in the same jurisdiction within three miles of the Coastal Zone. However, the Mello Act exempted demolitions or conversions in several cases, generally for smaller existing residential uses or

where the proposed use is related to the coast. The Mello Act also required local governments and the Commission to modify any inclusionary requirement by the local government or Commission that was imposed prior to 1982 upon request of the permittee.

Seeking to enhance the provision of affordable housing in the Coastal Zone, the Legislature subsequently adopted SB 619 (Ducheny, 2003), which directs the Commission to encourage housing opportunities for persons of low and moderate income, and specifically forbids local governments or the Commission from reducing the density of affordable housing projects unless there is no other way to ensure that coastal resources are protected.

The author wants to further encourage housing development in the Coastal Zone.

### **Proposed Law**

Assembly Bill 500 requires a local government with a certified land use plan or fully certified LCP to amend their land use plan or LCP no later than January 1, 2024, to specify streamlining procedures within non-hazardous areas for:

- ADUs and JADUs;
- Developments in which 100% of the units are affordable to lower income households, as defined in existing law;
- Developments in which at least 25% of the units are designated for supportive housing, as defined in existing law; and
- Low Barrier Navigation Centers, as defined in existing law.

The amendment must include provisions for the issuance of administrative permits, coastal development permit waivers, or other streamlined permitting procedures in nonhazardous areas where coastal resources and public access will not be negatively impacted. AB 500 requires the amendment to be submitted, processed, and approved consistent with the Commission's existing process for reviewing LCP amendments, including the time limits under existing law. The bill also provides that the Commission retains the authority to deny a permit waiver or exemption, process an appeal, or impose conditions necessary for a project to achieve consistency with the Coastal Act.

AB 500 modifies the existing prohibition against requiring housing programs and policies in LCPs to establish an exception for the streamlining requirements added by the bill. The bill also defines non-hazardous areas to specifically exclude areas vulnerable to sea level rise or areas within a very high fire hazard severity zone and includes findings and declarations to support its purposes.

### **State Revenue Impact**

No estimate.

### **Comments**

1. Purpose of the bill. According to the author, "California continues to experience a severe affordable housing crisis, with a deficiency of three million homes and growing. This issue is exacerbated in residential areas of the coastal zone, where developments face various challenges.

The Legislature has passed laws to streamline the development processes for ADUs, affordable housing, and supportive housing – however while those helped cities, they did not extend to Coastal Development Permits (CDP), which are a state process. AB 500 will require local jurisdictions to update and streamline the regulatory CDP process for ADUs, junior ADUs, low barrier navigation centers, supportive housing projects, and 100% affordable housing within the coastal zone. This will give developers a clear understanding of the regulations and timeline for projects in the Coastal Zone.”

2. Two masters. While planning and zoning largely remains a local matter, state law imposes comprehensive standards on local governments to ensure that they are zoning densely enough to accommodate their share of regional housing needs at very low, low, moderate, and above moderate income levels. The Department of Housing and Community Development (HCD) reviews local housing elements for compliance with state housing laws and certifies them—or doesn’t, if they haven’t identified enough developable sites or are not affirmatively furthering fair housing, among other requirements. Local governments that have certified housing elements are considered under state law to have zoned adequately to meet the projected need for housing in their jurisdiction. Since the passage of the Mello Act, local governments haven’t had to worry about the Coastal Commission second-guessing their housing decisions because the Commission was prohibited from requiring housing policies in LCPs. AB 500 (Ward) tells local governments that they must streamline certain housing developments in the Coastal Zone and gives the Coastal Commission the opportunity to influence those policies. By doing so, it further removes from local officials’ hands the ability to plan development in their communities. It also potentially sets up local governments up to be caught in the middle of a conflict between HCD and the Coastal Commission if a local government adopts a housing element approved by HCD, but then must revise its housing policies and programs to the satisfaction of the Coastal Commission.

3. Goose and gander. Anecdotal reports from affordable housing developers indicate that they do not often pursue projects in the Coastal Zone, citing difficulties with the Commission as one of the reasons. The Commission responds that because of the Mello Act, they believe they are prohibited from considering housing in their decisions, and if the Commission had the ability to consider housing in their decisions, they could more effectively make tradeoffs between the need for affordable housing and coastal resources. Additional strides could be made to specifically direct the Commission to smooth the path for affordable housing projects. For example, AB 500 requires local governments to put forth LCP amendments to streamline certain housing projects, but does not impose requirements on the Commission to adopt similar streamlining efforts. In fact, the bill specifically reserves the right for the Commission to deny permit waivers or exemptions for streamlined projects. Should the Commission also be required to adopt streamlining procedures for housing projects?

4. Mandate. The California Constitution requires the state to reimburse local agencies for the costs of new or expanded state mandated local programs. Because AB 500 adds to the duties of local officials with respect to development within the Coastal Zone, Legislative Counsel says that it imposes a new state mandate. The measure states that if the Commission on State Mandates determines that the bill imposes a reimbursable mandate, then reimbursement must be made pursuant to existing statutory provisions.

5. Committee referral pursuant to Senate Rule 29.10(b). The Senate Governance and Finance Committee approved AB 500 on July 8<sup>th</sup> by a 4-1 vote. At that time, the bill that the Committee heard contained provisions similar to AB 500’s current contents, but also would have granted the

Commission much more expansive powers related to housing in the Coastal Zone. Specifically, it would have reinstated the requirement that housing opportunities for persons and families of low and moderate income be protected, encouraged, and where feasible provided. It also would have provided that in non-hazardous areas, including areas that are not at significant risk of wildland fire, new development in areas with adequate public transit must preserve and enhance the supply of higher density residential, multifamily residential, or mixed-use development. Finally, it would have fully repealed the prohibition on requiring housing policies and programs in LCPs.

When the Committee approved AB 500, it amended the bill to strip its contents and instead require the Commission to conduct a study of policy changes to advance affordable housing in the coastal zone, with an agreement that some provisions would be added back in on the Senate Floor upon agreement of all relevant policy committees and the author. On August 31<sup>st</sup>, AB 500 was amended to contain its current provisions, triggering Senate Rule 29.10(b) and a referral back to this Committee. The Rule provides that the Committee has three options: (1) hold the bill, (2) return the bill to the Floor for consideration, or (3) rerefer the bill to fiscal committee pursuant to Senate Rule 10.5.

#### **Assembly Actions**

Assembly Natural Resources Committee:	7-3
Assembly Housing and Community Development Committee:	6-2
Assembly Appropriations Committee:	11-5
Assembly Floor:	53-20

#### **Support and Opposition** (9/3/21)

Support: Housing CA

Opposition: City of Carlsbad

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