

SENATE THIRD READING
SB 6 (Caballero, et al.)
As Amended August 15, 2022
Majority vote

SUMMARY

Established the Neighborhood Homes Act, which enables housing development on parcels within a zone where office, retail, or parking are a principally permitted use.

Major Provisions

- 1) Authorizes a development project that is at least 50% residential to be an allowable use within a zone where office, retail, or parking are a principally permitted use if it complies with all of the following:
 - a) The residential density will meet or exceed the applicable density deemed appropriate to accommodate housing for lower income households in that jurisdiction as specified in Housing Element Law. Generally, that density is 30 units per acre in urban areas, 20 units per acre in suburban areas, and 10 units per acre in rural areas;
 - b) The development complies with local requirements and procedures, including zoning, parking, design standards, and demolition controls, that are applicable to development projects in the closest zoning district that allow for the densities required pursuant to (a), except that if the existing zoning designation for the parcel allows a greater density, that existing density must apply;
 - c) The development is subject to a recorded deed restriction requiring that at least 15% of the units have an affordable housing cost or affordable rent for lower income households, defined as those households making under 80% of the area median income (AMI);
 - d) The development complies with all other local requirements for the parcel, other than those that prohibit residential use, or allow residential use at a lower density than specified in a);
 - e) The developer must certify that the project either is a public work or will pay prevailing wage and use a skilled and trained workforce for all levels of contractors, as specified;
 - f) Units must be rented for longer than 30 days; and
 - g) The applicant for a housing development under this section has provided written notice of the pending application to each commercial tenant on the neighborhood lot when the application is submitted.
- 2) Permits a local agency to exempt a parcel from the provisions of this bill if:
 - a) The local agency makes written findings supported by substantial evidence of either of the following:
 - i) The local agency concurrently reallocated the lost residential density to other lots so that there is no net loss in residential density in the jurisdiction; or

- ii) The lost residential density from each exempted parcel can be accommodated on a site or sites allowing residential densities at or above those specified in (1)(a) and in excess of the acreage required to accommodate the local agency's share of housing for lower income households.
 - b) The parcels to which the density is reallocated are suitable for residential development; and
 - c) The local agency allows development by right on the parcels to which the density is reallocated.
- 3) Amends SB 35 (Weiner) Chapter 366, Statutes of 2017 as follows:
- a) Authorizes a development to be eligible for SB 35 (Weiner) streamlined approval if :
 - i) The site is zoned for office or retail commercial use; and
 - ii) The site has had no commercial tenants on 50% or more of its total usable net interior square footage for a period of at least three years prior to the submission of the application.
 - b) Provides that a project on a parcel that meets the criteria of 1) above must be deemed by the local agency consistent with objective zoning standards, objective design standards, and objective subdivision standards if the project is consistent with the provisions of this bill and if none of the square footage in the project is designated for hotel, motel, bed and breakfast inn, or other transient lodging use, except for a residential hotel.
- 4) Requires the Department of Housing and Community Development (HCD) to undertake at least two studies of the outcomes of this section, one on or before January 1, 2026, and one on or before January 1, 2028. These studies must include, but not be limited to, the number of projects built, the number of units built, the jurisdictional and regional location of the housing, the relative wealth and access to resources of the communities in which they are built, the level of affordability, the effect on greenhouse gas emissions, and the creation of construction jobs.
- 5) Sunsets the provisions of this bill on January 1, 2029.

COMMENTS

Local Restrictions on Housing Development and their Implications: Planning for 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. Cities and counties enforce this land use authority through zoning regulations that restrict and shape development, such as where housing can occur, maximum densities of housing units, maximum heights, minimum numbers of required parking spaces, and required setbacks. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

While local governments do not build housing, the restrictions they place on new housing production contribute to a lack of housing in the state. Historically, the provision of housing was highly correlated to market demand. However, that shifted with the rise of local zoning, which came to prominence just over 100 years ago. Zoning laws that limit housing to single-family homes on larger lots are the most prominent form of zoning in California. By contrast, there are relatively few locations to build multifamily housing: according to a 2019 Turner Center survey of California cities and counties, only seven percent zoned over half their land for multi-family housing, and only 35% zoned even 25% of their land for multi-family housing. The result of this zoning is that it locks in allowable density, independent of demand for new housing, even as the demand for new housing in California exceeds millions of units (as discussed above). This excessive demand drives up home prices and rents.

An Increase in Developable Land: This bill would help facilitate the production of housing by increasing the number of sites available to be developed for residential uses beyond what is currently zoned or planned for through local housing elements. This bill would expand the available sites to those where retail, office, or parking are a principally permitted use. Such sites are strong candidates for multifamily housing, for multiple reasons. They are typically located along high-capacity roadway arterials, which are the most likely locations for transit. They are also typically not located within existing residential neighborhoods, where larger developments often face significant pushback from existing residents. Finally, the rise of e-commerce and the current global pandemic have both greatly increased the vacancy rates in office and retail locations, making the sites more attractive to be redeveloped for housing. Recognizing this opportunity, this bill also allows retail and office sites that have at least 50% vacant for at least three years to benefit from the streamlined, ministerial development process provided by SB 35 (Wiener), Chapter 366, Statutes of 2017.

According to the Author

SB 6 will allow cities to approve, through an expedited process, the reuse of infill property zoned for retail and office space for residential construction. The adaptive reuse of shopping malls, strip malls, or office complexes will reduce greenhouse gas emissions and urban sprawl while spurring economic vitality by promoting housing development where people work and shop.

While commercial vacancies are growing, California's housing crisis continues to worsen. According to the California Budget and Policy Center, over 50% of renters and nearly 40% of homeowners pay more than 30% of their income on rent or a mortgage. To make matters worse, the Public Policy Institute of California recently reported that California's housing shortage continues to grow as the number of residential building permits issued for 2018 and 2019 were far below the recommended annual average of new homes needed. This bill allows for the transformation of underperforming commercial sites into affordable and market-rate mixed-use centers significantly expanding the opportunity for new housing development throughout California.

Arguments in Support

Supporters of this bill tend to be those who support the production of more housing as part of the solution to the state's housing crisis. These groups argue that enabling housing on more locations would facilitate the production of housing, thereby reducing its price and making it more affordable, particularly to communities of color who are the most burdened by housing costs. According to the California Association of Realtors, "for decades, developers have been prevented from constructing enough units to keep up with job and population growth in

California. The result – rents and home prices continue to skyrocket. Policies seeking to speed up the development process, stimulate housing construction, and limit unnecessary regulatory costs will benefit both the state's working families and economy."

Arguments in Opposition

Opponents of this bill include cities and counties that argue that the bill removes local control over zoning. According to the City of Huntington Beach, "while in some instances it may make sense to repurpose underutilized retail or commercial areas for housing, this should not be a decision that is made on a streamlined, ministerial basis. Locally elected officials, and members of the community, should have the opportunity to weigh in on such decisions, so that the full extent of the local impacts of the proposed project can be considered."

Other opponents of the bill include environmental groups who are concerned about the ability to build housing on environmentally hazardous or sensitive sites. According to the Planning and Conservation League, "we are concerned that the bill, as currently written, would undercut jurisdictions' ability to meet California greenhouse gas (GHG) and vehicle miles travelled (VMT) reduction mandates and could still place residences on or near toxic sites."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) HCD estimates ongoing General Fund (GF) costs of \$204,000 annually, for one staff position to provide ongoing technical assistance to local jurisdictions for rezoning required by the bill, and to undertake necessary enforcement activities.
- 2) HCD estimates \$102,000 (GF), in contract costs for each of fiscal years 2023-24 and 2024-25, to develop and revise guidelines for developers and local jurisdictions. HCD indicates the guidelines will need to be revised in the second year of implementation.
- 3) Estimated costs of an unknown amount, likely ranging from the low-hundreds of thousands of dollars to the low millions of dollars ongoing, to the Department of Industrial Relations (DIR) for increased oversight of new public works activities, for which prevailing wage must be paid to workers (Labor Enforcement and Compliance Fund). The Division of Labor Standards Enforcement investigates complaints and imposes penalties, while DIR's Office of the Director's Legal Unit hears appeals. Actual costs will depend on the number of qualifying projects under this bill and the corresponding increase in the number of workers paid prevailing wage. Although the number of qualifying projects under this bill is unknown, it is reasonable to anticipate additional complaints and resulting enforcement activities.
- 4) One-time and ongoing costs to local governments of an unknown amount, but potentially significant in the short term, to meet the new requirements in the bill. These costs are potentially reimbursable by the state, subject to a determination by the Commission on State Mandates.

VOTES

SENATE FLOOR: 32-2-6

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Gonzalez, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Melendez

ABS, ABST OR NV: Borgeas, Dahle, Glazer, Grove, Nielsen, Wilk

ASM HOUSING AND COMMUNITY DEVELOPMENT: 6-1-1

YES: Wicks, Carrillo, Gabriel, Kalra, Quirk-Silva, Ward

NO: Seyarto

ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 12-2-2

YES: Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

NO: Bigelow, Megan Dahle

ABS, ABST OR NV: Davies, Fong

UPDATED

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