

SENATE THIRD READING  
SB 6 (Caballero, et al.)  
As Amended August 25, 2022  
Majority vote

## SUMMARY

Established the Middle Class Housing Act of 2022, 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 percent 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, demolition controls, impact fees, and inclusionary housing requirements 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 site meets the following locational criteria:
    - i) It is 20 acres or less;
    - ii) It is a legal parcel or parcels that meet either of the following:
      - (1) It is within a city where the city boundaries include some portion of an urban area, as designated by the United States Census Bureau.
      - (2) It is in an unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urban area.
    - iii) It is not on or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use, as specified.
  - d) The following labor standards:
    - i) 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, except as described in ii and iii below;
    - ii) If the developer has entered into a project labor agreement with a local building and construction trades council, then the development would not be subject to the bill's apprenticeship graduation requirements; and

- iii) A development need not abide by the skilled and trained workforce requirements of the bill if it meets specified requirements, including that it did not receive at least two bids from prequalified prime contractors. Such projects would:
  - (1) Still be required to pay workers the prevailing wage; and
  - (2) Be subject to specified enforcement provisions regarding the bidding process, including injunctive relief to halt work on a site that has proven to be in violation of the bidding process.
- e) That the applicant has done the following regarding business located on site:
  - i) Provided written notice of the pending application to each commercial tenant on the neighborhood lot when the application is submitted;
  - ii) Provided relocation assistance to small retail businesses, as specified, whose lease expired on the site after a developer has applied to develop a housing project pursuant to this bill. The amount of the assistance would increase depending on how long the business was located on the site.
- 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) Provides that, if a local agency adopts an ordinance to implement the provisions of this bill, such an ordinance would not be subject to the California Environmental Quality Act.
- 4) Amends SB 35 (Wiener), Chapter 366, Statutes of 2017 to allow projects that meet the criteria of this bill to utilize the provisions of SB 35.
- 5) 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, 2027, and one on or before January 1, 2031, as specified.
- 6) Establishes the effective date of this bill as July 1, 2023.

- 7) Sunsets the provisions of this bill on January 1, 2033.
- 8) Makes chaptering amendments to align with AB 2668 (Grayson), which also proposes to amend Government Code Section 65913.4.

## 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 percent zoned even 25 percent 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 in locations near or adjacent to existing developed areas. 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 met the provisions of this bill to benefit from the streamlined, ministerial development process provided by SB 35 (Wiener), Chapter 366, Statutes of 2017.

Projects that utilize the provisions of this bill would be required to pay prevailing wages and, unless certain conditions are met, to use a "skilled and trained" workforce, which is often synonymous for a unionized workforce. The intent of this provision is to ensure that the workers are well compensated for their work, and to attract more workers into the construction workforce, which will facilitate the development of more of the housing that the state needs.

### **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."

### **Arguments in Support**

Supporters of the 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 the 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 Committee on Appropriations:

- 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

VERSION: August 25, 2022

CONSULTANT: Steve Wertheim / H. & C.D. / (916) 319-2085

FN: 0004312