

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Buffy Wicks, Chair

AB 812 (Boerner Horvath) – As Amended April 10, 2023

SUBJECT: Housing development approvals: reserving affordable units in a cultural district for artists

SUMMARY: Allows a city or county to set aside 10 percent of any locally-required affordable housing units in cultural districts for artists. Specifically, **this bill**:

- 1) Defines “artist” to mean the creator of any work of visual, graphic, or performing art of any media, including, but not limited to, painting, printing, drawing, sculpture, craft, photography, film, or performance.
- 2) Defines “affordable housing” to mean units dedicated to moderate-income, lower income, very low-income, or extremely low-income households, as specified.
- 3) Allows a city or county to reserve for artists 10 percent of any affordable housing units that the city or county requires as a condition of approval of residential development in a cultural district, if all of the following conditions are satisfied:
 - a) The reserved units are located within a state-designated or locally-designated cultural district;
 - b) The city or county adopts an ordinance for reserving affordable units for artists that does all of the following:
 - i) Is consistent with the Local Tenant Preferences to Prevent Displacement Act;
 - ii) Prohibits an existing tenant from being evicted in favor of an artist; and
 - iii) Contains a fair and comprehensive vetting process that includes status verification of the artist.
- 4) Provides that the Legislature finds and declares that this act addresses a matter of statewide concern rather than a municipal affair. Therefore, this act applies to all cities, including charter cities.

EXISTING LAW:

- 1) Permits the legislative body of any county or city to adopt ordinances that require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low-income, or extremely low-income households. (Government Code (GC) Section 65850)
- 2) Allows the California Arts Council to certify state-designated cultural districts that are areas with a concentration of cultural facilities, creative enterprises, or arts venues, as specified. (GC Sections 8758-8758.1)

- 3) Provides that it is unlawful for the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of that person. (GC Section 12955)
- 4) Allows affordable housing units created with low-income housing tax credits to be dedicated to tenants who are involved in artistic or literary activities. (US Internal Revenue Code Section 42(g)(9))

FISCAL EFFECT: None.

COMMENTS:

Author’s Statement: According to the author, “Artists are the lifeblood of our cultural communities and help preserve the cultural footprint of the region. AB 812 would authorize a city and/or county to set aside up to 10 percent of deed-restricted housing units within a state or locally-designated cultural district for eligible artists and cultural workers. This prevents artists from having to move away from the neighborhoods they contribute so much to, simply because they can no longer afford to live there.”

California’s Housing Crisis: California is in the midst of a housing crisis. Only 17 percent of households can afford to purchase the median priced single-family home – less than half of the national average, and also less than half of the rate at the start of the pandemic.¹ Over two-thirds of low-income renters are paying more than 30 percent of their income toward housing, a “rent burden” that means they have to sacrifice other essentials such as food, transportation, and health care.² In 2022, over 170,000 Californians experienced homelessness on a given night.³ Californians rank housing affordability and homelessness as the two most important issues for the state to address.⁴

A major cause of our housing crisis is the mismatch between the supply of housing and the need for housing. The Statewide Housing Plan adopted by the Department of Housing and Community Development (HCD) in 2022 found that California needs approximately 2.5 million units of housing, including one million units affordable to lower income households, in order to address this mismatch over the next eight years.⁵ That would require production of over 300,000 units a year, including over 120,000 units a year of housing affordable to lower income households. By contrast, production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.⁶

¹ California Association of Realtors Housing Affordability Index. Data for the 4th quarter of 2022.

<https://www.car.org/marketdata/data/haitraditional>

² Per the California Housing Partnership’s *Housing Needs Dashboard*, updated May 2022:

<https://chpc.net/housingneeds/>

³ US Department of Housing and Urban Development, “The 2022 Annual Homelessness Assessment Report (AHAR) to Congress”: <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>

⁴ UC Berkeley’s Institute of Governmental Studies, April 2022: <https://escholarship.org/uc/item/7sn293xs>

⁵ HCD, March 2022, “California Statewide Housing Plan: A Home for Every Californian”:

<https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136>

⁶ <https://www.hcd.ca.gov/policy-research/housing-challenges.shtml>

The housing crisis affects people of all occupations, including artists. There are approximately 93,000 professional artists in California.⁷ Their mean hourly income of \$41.26 exceeds the statewide mean wage of \$34.27.⁸ However, there is substantial variance in the incomes of artists, and a significant number of artists would qualify for affordable housing, which is typically available to households making less than 80 percent of the area median income.

Affordable Housing for Artists: Many local governments have policies to support the arts and artists. However, besides being broadly supportive of housing production at all income levels, local governments have limited tools for supporting affordable housing for artists.

One potential tool for creating artist-specific housing is through publicly-financed, 100-percent affordable housing projects dedicated to artists. Pursuant to the federal Internal Revenue Code, artist-only housing is an allowable use for projects that receive federal tax credits, and not a violation of fair housing standards.⁹ Most affordable housing projects in California receive state or federal tax credits. There are several notable 100 percent artist projects in the state, including the 116-unit WAL project on R Street in Sacramento. However, because public funding for affordable housing is limited, local governments have limited ability to create 100 percent affordable housing dedicated to artists.

Local government have other tools to increase the supply of affordable housing. Inclusionary housing ordinances require developers to include a percentage of affordable housing in a development or pay an in lieu fee. Developers also can use density bonus law to request increased density and waivers of concession and incentives in return for including affordable housing in a development.

This bill would allow cities and counties to reserve 10 percent of their locally-required affordable housing units for artists in mixed-income housing projects built in cultural districts. Local governments may already reserve units for artists in mixed-income housing projects. However, no such program exists in the state. This may be because local governments believe reserving units for artists would run afoul of the state's Fair Employment and Housing Law (FEHA). FEHA makes it illegal for the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of that person. The provision against discrimination based on source of income might be interpreted to mean that a unit reserved for an artist would be discriminatory against non-artists. By affirming in state law that it is legal for local governments to reserve units for artists, this bill would clarify that such an action would not interfere with FEHA.

Arguments in Support: None on file.

⁷ Based on data from the Economic Development Department for the following professions: actors, art directors, craft artists, dancers, fine artists, music directors and composers, musicians and singers, photographers, writers and authors, and "artists and related workers: all other." Data from the 1st quarter of 2022.

<https://labormarketinfo.edd.ca.gov/data/oes-employment-and-wages.html>

⁸ Ibid.

⁹ US Internal Revenue Code Section 42(g)(9)

Arguments in Opposition: None on file.

Related Legislation:

SB 649 (Cortese), Chapter 649, Statutes of 2022: Establishes a state policy supporting local tenant preferences in affordable housing developments to prevent displacement.

AB 1505 (Bloom), Chapter 376, Statutes of 2017: Authorizes the legislative body of a city or county to establish inclusionary housing requirements as a condition of the development of residential rental units.

AB 189 (Bloom), Chapter 396, Statutes of 2015: Requires the California Arts Council to establish criteria and guidelines for state-designated cultural districts, as defined, and establishes a competitive application system by which a community may apply for certification as a state-designated cultural district.

Double Referred: This bill was also referred to the Assembly Committee on Arts, Entertainment, Sports, and Tourism, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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