

CONCURRENCE IN SENATE AMENDMENTS

AB 1050 (Schultz)

As Amended September 5, 2025

Majority vote

SUMMARY

Expands the existing process whereby a purchaser of a property can remove a covenant, condition, or restriction limiting the property's use for affordable housing to include properties subject to limitations requiring that the property remain exclusively used for commercial purposes.

Major Provisions

- 1) Authorizes properties that are owned or controlled by an entity or individual that has submitted a development project application to redevelop an existing commercial property that includes residential uses permitted by state housing laws or local land use and zoning regulations to utilize the existing law's provisions for the streamlined removal of a covenant, condition, or restriction limiting the property's use for affordable housing.
- 2) Clarifies that the definition of a "restrictive covenant" includes any recorded covenant, condition, restriction, or limit on the use of private or publicly owned land contained in any deed, contract, security instrument, reciprocal easement agreement or other instrument affecting the transfer or sale of any interest *in real property that restricts or prohibits the residential use of the property, or that restricts the number, size, or location of the residences that may be built on the property or that restricts the number of persons or families who may reside on the property.*
- 3) Provides that a "restrictive covenant" does not include an easement set forth in a reciprocal easement agreement or other recorded instrument.

Senate Amendments

- 1) *Clarify that both a property and a proposed "development project" include residential uses permitted by state housing laws or local land use and zoning regulations.*
- 2) *Make technical changes.*
- 3) *Add a co-author.*

COMMENTS

According to experts and advocates, California needs to build approximately 10,000 affordable housing units annually to meet demand. (<https://www.housingca.org/news-media/statements/jan25-budget-response/>.) Unfortunately, because of land availability and construction costs, the state is woefully behind on its efforts to achieve this goal. Recognizing that antiquated property title restrictions were preventing some parcels within the state from being utilized for affordable housing, in 2021, the Legislature enacted AB 721 (Bloom) Chapter 349, Statutes of 2021, in order to formalize a process for eliminating covenants, conditions, restrictions, or private limits on the use of private or publicly owned land for affordable housing developments. The streamlined process created by AB 721 was further refined in 2023 with the

passage of AB 911 (Schiavo) Chapter 750, Statutes of 2023. This measure seeks to further expand AB 721 by permitting the owners of property containing restrictions designed to keep property in commercial use to utilize the expedited procedure for removing covenant, condition, or restriction limiting the property's use for affordable housing.

Local government's authority over land use and zoning. California law provides local jurisdictions with significant authority to regulate land use and zoning. (Government Code Section 65000 *et seq.*) Although state law prescribes what must be contained within local General Plans (and relevant to this measure, a General Plan must identify areas suitable for commercial development, as well as housing, and provide targets for housing units within the jurisdiction), and how those plans must be adopted. The state generally permits local jurisdictions to adopt an extensive array of zoning ordinances to provide for parcel-level guidance as to how property can be utilized and developed. (See Government Code Section 65850.) Of note to this bill, one of the zoning powers of local government is the ability to determine the intensity of development on a given property. In the residential context, local governments have long been able to zone parcels as they see fit for single or multi-family development and to specify the number of housing units that may be built on a given property.

In recent years, as California's lack of affordable housing is generating significant issues in the state, many local jurisdictions are moving to "up zone" neighborhoods (a process whereby neighborhoods that were previously zoned for single-family homes are being reclassified to permit multi-family property development or accessory dwelling units. Recognizing that simply up zoning residential areas is not producing sufficient units of affordable housing, localities are looking to find new areas in which to build residential property. After the COVID-19 pandemic decimated many commercial corridors throughout the state, some local governments are seeking to rezone and redevelop former commercial areas for affordable housing. However, covenants and other land title restrictions for keeping property in perpetual commercial use are now frustrating the redevelopment of many commercial areas.

Although commercial covenants do not have the same troubling historic connotations as residential covenants, they are still frustrating affordable housing development. Like much of America, California has a long and troubling history of utilizing real estate covenants (restrictions on how a property can be utilized or transferred in the future) to discriminate against minorities. In fact, racially restrictive covenants were tacitly endorsed by the federal government as the Federal Housing Administration gave higher loan scores to homes with racially restrictive covenants. (Rothstein, *The Color of Law* (2017) pp. 78-81.) The United States Supreme Court eventually ruled such covenants were unenforceable as they violated the Equal Protection Clause of the Fourteenth Amendments. (*Shelley v. Kramer* (1948) 334 U.S. 1.) However, such covenants remain in housing deeds across California.

As racially restrictive covenants were banned, developers and neighborhood associations found new ways to subvert the *Shelley* ruling. Many developers and homeowners associations began adopting covenants that restricted the number or size of the residences that may be built on a property, or that restricted the number of persons who may reside on the property. Although race-neutral on their face, these covenants had the practical effect of maintaining white, single-family hegemony in California's burgeoning post-war suburbs. Because these covenants remained valid without modification, in 2021, the Legislature enacted the aforementioned AB 721 to adopt a formal process for removing those covenants.

Although not developed to advance a discriminatory purpose, covenants restricting property to commercial uses are now frustrating attempts to redevelop derelict commercial corridors into affordable housing. Given the existing procedure for removing affordability covenants has been largely successful, the proponents of this bill seek to utilize the same procedure for removing commercial use restrictions.

This bill builds on the successful AB 721 process. The AB 721 procedures have been utilized to eliminate affordability restrictions for almost five years. That process requires county counsel to review requests to modify restrictive covenants, and if approved, transmit the modified document to county recorders who will rerecord the property documents. This measure applies that process to commercial covenants. The bill, building upon its successors, also applies to covenants contained within easements. This bill would permit those restrictive covenants to be removed without invalidating the easement itself.

According to the Author

The COVID-19 pandemic, along with inflation, have hastened changes in the economy and consumer preferences, prompting the closure of commercial spaces in recent years, all while Californians struggle to find housing. With a shortfall of available homes, we must take necessary measures to remove roadblocks to promote the development of mixed-use and mixed-income housing.

The redevelopment and revitalization of existing shopping centers is a key priority for local governments and helps facilitate their economic development programs. AB 1050 will allow proposed mixed-use developments to provide notice to interested parties of the intent to remove a reciprocal easement agreement and proceed to redevelop the property without exposure to litigation at a later date. Importantly, this bill does not alter state housing laws related to project approvals, nor does it change local zoning ordinances or the entitlement process.

Arguments in Support

This measure is jointly supported by a coalition of affordable housing advocates including Circulate San Diego, Abundant Housing LA, and the San Francisco Bay Area Planning and Urban Research Association. The supporters of this bill jointly write:

The COVID-19 pandemic, along with inflation, have largely altered the economy and consumer preferences, leading to the closure of many commercial spaces, all while Californians are struggling to find housing. Yet, efforts to repurpose these vacant spaces into housing are often halted by older, burdensome restrictions like REAs.

Recognizing the severity of California's housing crisis, the Legislature passed AB 721 (Bloom, 2021) and AB 911 (Schiavo, 2023) to institute a process for removing restrictive covenants from properties proposed for affordable housing developments. The Legislature also passed AB 2011 (Wicks, 2022) to support the redevelopment of vacant shopping centers by allowing mixed income housing on properties zoned for commercial use. In addition, some jurisdictions allow residential development in commercial zones in their zoning code.

However, since these private agreements run with the land, they are still attached to the title deed, even after previous owners who originally entered into them no longer hold an ownership interest in the property. Thus, even though state housing laws and local zoning

codes may allow housing development on commercial property, an existing REA can stop the redevelopment due to the potential threat of litigation.

Often, commercial properties are too large for affordable housing developers to purchase and develop solely with deed-restricted units. Therefore, legislation is necessary to get rid of these roadblocks to expand housing projects, such as mixed-use and mixed-income developments, across the state.

Arguments in Opposition

None on file

FISCAL COMMENTS

According to the Senate Appropriations Committee:

Costs (local funds, General Fund) to the counties of an unknown but potentially significant amount. This bill would require county counsel to review and evaluate specified restrictive covenant modification documents, and requires a county recorder to record covenant modification documents upon approval by county counsel. Costs for additional workload imposed on county counsel may be reimbursable by the General Fund if the Commission on State Mandates determines these duties constitute a reimbursable state mandate. Actual costs will depend on the number of requests for modification submitted and the amount of time it takes to evaluate each request. Costs for additional workload to county recorders are likely non-reimbursable because county recorders are authorized to charge fees to offset costs.

VOTES:

ASM JUDICIARY: 9-1-2

YES: Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur

NO: Essayli

ABS, ABST OR NV: Dixon, Sanchez

ASM APPROPRIATIONS: 11-2-2

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache

NO: Dixon, Tangipa

ABS, ABST OR NV: Sanchez, Ta

ASSEMBLY FLOOR: 60-12-7

YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NO: Davies, DeMaio, Dixon, Ellis, Gallagher, Jeff Gonzalez, Hadwick, Lackey, Macedo, Sanchez, Tangipa, Wallis

ABS, ABST OR NV: Boerner, Castillo, Chen, Flora, Hoover, Patterson, Ta

SENATE FLOOR: 31-9-0

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Dahle, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Reyes, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

NO: Alvarado-Gil, Choi, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

UPDATED

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CONSULTANT: Nicholas Liedtke / JUD. / (916) 319-2334

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