
SENATE COMMITTEE ON HOUSING
Senator Aisha Wahab, Chair
2025 - 2026 Regular

Bill No:	AB 1385	Hearing Date:	7/15/25
Author:	Petrie-Norris		
Version:	7/3/2025 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Erin Riches		

SUBJECT: Unlawfully restrictive covenants: housing developments: Palisades Fire

DIGEST: This bill authorizes an individual or entity that wants to develop housing on a property located in a county impacted by the January 2025 wildfires, to apply to remove any covenants that restrict the density of the housing that may be built on that property.

ANALYSIS:

Existing law:

- 1) Provides that recorded covenants, restrictions, or private limits on the use of private or publicly owned land, that restrict the number, size, or location of the residences that may be built on the property, or that restrict the number of persons or families who may reside on the property (henceforth referred to “density restrictive covenants”), shall not be enforceable against the owner of an affordable housing development if an approved covenant modification document has been recorded in the public record.
- 2) Defines an “affordable housing development” as a development located on property that is the subject of the density restrictive covenant and that meets one of the following requirements:
 - a) The property is subject to a recorded affordability restriction requiring 100% of the units to be made available at affordable rent to, and to be occupied by, lower income households for 55 years for rental housing, as specified.
 - b) The property is owned or controlled by an individual or entity that has submitted a permit application to the relevant jurisdiction to develop a project that complies with a) above.

- 3) Excludes specified settlements, conservation agreements, and conservation easements, along with specified deed restrictions, public access easements, or similar covenants required by a state agency for purposes of compliance with a state or federal law, as specified.
- 4) Authorizes the owner of an affordable housing development to submit a covenant modification document that modifies or removes any existing density restrictive covenant language, to the extent necessary to allow the affordable housing development to proceed, pursuant to a specified process.
- 5) Provides that this authorization shall not be interpreted to allow any development that is not otherwise consistent with the local general plan, zoning ordinances, and any applicable specific plan that apply to the development, including any requirements regarding the number of residential units, the size of residential units, and any other zoning restrictions relevant to the development.

This bill:

- 1) Authorizes a property owner to submit a covenant modification document to remove language restricting the number, size, or location of the residences that may be built on the property, or that restricts the number of persons or families that may reside on the property, if the property is located in a county subject to the state of emergency declared by the Governor on January 7, 2025, related to the Palisades Fire and windstorm conditions.

Background

January 2025 Wildfires. Los Angeles County was hit by multiple catastrophic wildfires starting on January 7, 2025, of which the Palisades and Eaton Fires were the most destructive. The Palisades Fire started in the Santa Monica Mountains and caused major destruction in Pacific Palisades (a neighborhood of the City of Los Angeles), Topanga (an unincorporated area of Los Angeles County), and the City of Malibu. This fire burned 23,448 acres, destroying nearly 7,000 structures and damaging an additional 973 structures. The Eaton Fire started in the Eaton Canyon area of the San Gabriel Mountains and was driven by Santa Ana winds into several foothill communities, particularly Altadena (an unincorporated area of Los Angeles County). This fire burned 14,000 acres, destroying more than 9,000 structures and damaging an additional 1,074 structures. Both fires were brought to full containment by January 31st.¹ In addition to the Palisades and Eaton fires,

¹ CalFire website at [Palisades Fire | CAL FIRE](#) and [Eaton Fire | CAL FIRE](#).

multiple smaller fires occurred in Ventura County in January, driven by the same windstorms.

State response to the fires. On January 7th, Governor Newsom immediately declared a state of emergency covering Los Angeles and Ventura Counties. The Governor subsequently issued several Executive Orders, including: suspending CEQA review and California Coastal Act permitting for reconstruction of properties substantially damaged or destroyed in the fires; directing state agencies to identify additional permitting requirements that could be suspended or streamlined to accelerate rebuilding; and extending protections against price gouging on building materials and construction.² On January 16th, the Governor issued another Executive Order directing state departments to help local governments develop temporary housing for fire victims; streamlining construction and occupancy of accessory dwelling units; facilitating placement of temporary trailers and other housing on burned properties; suspending fees for mobile home parks; directing Cal-OES to make fairgrounds available to help fire victims; and extending price gouging prohibitions on hotel, motels, and rental housing.³

Comments

- 1) *Author's statement.* “California, like most of the nation, is facing an unprecedented housing crisis, the result of decades of underproduction, exclusionary zoning, density restrictions, and the like. In March of 2022, the state Department of Housing and Community Development (HCD) estimated that, to keep up with demand, California must plan for the development of more than 2.5 million homes over the next eight years. The recent Palisades and Eaton Fires have only exacerbated an already-strained housing crisis, burning an estimated 16,000 homes across 60 square miles, making the fires the costliest disasters in US history, and displacing tens of thousands of residents. The pace of rebuild efforts and housing recovery following a wildfire is impacted by several factors, including the debris-removal process, ability to expedite, local permits, local zoning laws, and land-use covenants. This measure builds upon the successful process established by AB 721 (Bloom, 2021) to eliminate covenants that stand in the way of developing and rebuilding in wildfire-impacted regions. AB 1385 provides a mechanism to modify the effect of the covenants to allow the parcel otherwise constrained by the covenant to be used for using, while maintaining local control and input.”

² [Governor Newsom signs executive order to help Los Angeles rebuild faster and stronger | Governor of California](#)

³ [Governor Newsom Issues Executive Order To Fast-Track Temporary Housing For Los Angeles Firestorm Area | California Department of Housing and Community Development](#)

- 2) *California's history of restrictive covenants.* California property law enables a property owner to, upon subdivision of the land, place covenants, conditions, restrictions, or other limitations (commonly known as "CC&Rs") on how the subdivided land may be used. These restrictions can then be enforced, through legal action if necessary, by any of the other owners of the subdivided property. The primary purpose of such restrictions is to provide assurance to those purchasing the property that the surrounding area will not develop in ways that they do not expect and do not want. Restrictive covenants can be used, for example, to ensure that all homes in a neighborhood conform to a certain architectural style.

However, restrictive covenants have historically been used to exclude and discriminate against minorities. These covenants were used to prohibit the sale of a property to a person of color, thereby ensuring that a particular neighborhood or area of a city remained inhabited by white residents. The federal government promoted and encouraged racially restrictive covenants, and – accompanied with the practice of red-lining, in which entire sections of a city were designated as too risky for underwriting mortgage guarantees – confined minorities to poorer neighborhoods and denied them the ability to purchase property and accrue wealth. Such covenants were also similarly used to exclude religious minorities.

The United States Supreme Court eventually ruled that such covenants were unenforceable, as they violated the Equal Protection Clause of the Fourteenth Amendment (*Shelley v. Kramer* (1948) 334 U.S. 1.). Yet these covenants still exist in many housing deeds, despite being unenforceable. To address concerns regarding the existence of this discriminatory language, AB 1466 (McCarty, Chapter 359, Statutes of 2021) requires any racially restrictive language to be removed from housing documents when a property changes hands, as well as making it easier for homeowners who purchase their homes under such restrictive covenants to file a covenant modification document.

- 3) *Density restrictive covenants.* 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 density restrictive covenants had the practical effect of maintaining white, single-family neighborhoods in California's affluent suburban communities. Because density restrictive covenants were enforceable, they were used to block affordable housing developments that had otherwise been approved by a city or county.

To address the negative effects of density restrictive covenants, the Legislature passed AB 721 (Bloom, Chapter 349, Statutes of 2021). Under AB 721, any CC&Rs on private or publicly owned land that restrict the number or size of the residences that may be built on the property, or that restrict the number of persons who may reside on the property, are unenforceable if the property will be developed into affordable housing. Specifically, the developer must enter into an agreement with the local government to deed-restrict 100% affordable housing projects for 55 years, and must file a covenant modification document (see Comment #4 below). AB 721 applies to affordable housing being developed on any property, though a narrow band of conservation easements are exempt to ensure preservation of natural, scenic, historic, agricultural, forested, or open space conditions.

- 4) *The AB 721 covenant modification process.* AB 721 created a process for an affordable housing developer to request that the county recorder remove a density restrictive covenant from the property deed, using much the same process that property owners can currently use to remove discriminatory restrictive covenants. This process was clarified and strengthened in AB 911 (Schiavo, Chapter 750, Statutes of 2023).

First, an affordable housing project developer must submit a covenant modification document to the county recorder. The county recorder then has five business days to submit the covenant modification document to the county counsel for review. The county counsel then has 15 business days to determine whether the modification meets the requirements of AB 721. Once the county counsel authorizes the county recorder to record the modification document, the county recorder must immediately notify the developer. At this point, the developer may notify interested parties of the modification; parties have 35 days from the receipt of this notice, to file any lawsuit to contest the modification.

The AB 721 process allows a developer to file for a covenant modification as soon as they have submitted a permit application for the project; then, as soon as the modification is approved, the developer may provide notice of the approval to any interested parties. The developer has a strong incentive to do this, because any interested party that receives the notice has only 35 days to file a lawsuit contesting the covenant modification. This helps ensure against lawsuits being filed well into the development process, causing costly delays. It also discourages these lawsuits from being filed at all, because the notice informs the parties that the county counsel has already approved the covenant modification.

- 5) *Expanding AB 721 to facilitate development in wildfire areas.* As noted above in 4), the AB 721 process currently applies only when a developer plans to build a 100% affordable housing development. This bill aims to expand AB 721 to include any housing built on a property that is located within a county subject to the Governor's emergency declaration related to the January 2025 wildfires – specifically, Los Angeles and Ventura Counties. Specifically, this bill authorizes a developer to file a request to remove language from a deed or other related document that restricts the density of housing that may be developed on the property, if the property is located in the area of the emergency declaration.

This bill is not limited to properties damaged by the wildfires, as it is aimed at helping to spur development throughout these two counties to help replace the thousands of housing units that were lost. Numerous wildfires in California in recent years have resulted in many residents choosing to sell their property to a developer, rather than take on the years-long struggle of battling red tape in order to rebuild. Because both Altadena and Pacific Palisades were developed during a period when density restrictive covenants were being widely adopted, it is likely that many of the properties in these areas are subject to them. The covenant runs with the land, not the structure, thereby posing a legal barrier to a developer who may wish to replace a destroyed single-family home with multiple units of housing.

By enabling a developer to file a covenant modification to remove any density restrictions on a property, the AB 721 process helps remove a hurdle to the development of 100% affordable housing. In turn, by making housing developments on properties in the January 2025 wildfire areas eligible for the AB 721 process, this bill aims to help further encourage construction of needed housing units on these properties.

- 6) *Incoming!* This bill passed out of the Senate Judiciary Committee on July 1, 2025, on an 11-1 vote.

Related/Prior Legislation

AB 1050 (Schultz, 2025) – Authorizes an individual or entity that wants to develop housing on an existing commercial property, to apply to remove any covenants that restrict the density of the housing that may be built on that property. *This bill will also be heard in this committee on July 15, 2025.*

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, July 9, 2025.)

SUPPORT:

None received

OPPOSITION:

None received

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