

Date of Hearing: June 15, 2022

**ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT**

Buffy Wicks, Chair

SB 1336 (Wiener) – As Amended June 9, 2022

**SENATE VOTE:** 26-3

**SUBJECT:** Planning and zoning: housing development: higher education institutions and religious institutions

**SUMMARY:** Provides that housing is a “use by right” on land owned by a religious institution or nonprofit college, as follows:

- 1) The applicant for the housing project must be a religious institution or nonprofit college, as specified, that partners with a qualified developer;
- 2) The religious institution or nonprofit college must own the land on or before January 1, 2023;
- 3) The project meets the following locational criteria:
  - a) The site is one-quarter acre or greater;
  - b) The site is located either:
    - i. Within a city and the city boundaries include some portion of either an urbanized area or urban cluster; or
    - ii. In an unincorporated area, and the site itself is wholly within the boundaries of an urbanized area or urban cluster.
  - c) At least 75 percent of the perimeter of the site adjoins parcels developed for urban uses;
  - d) The site would meet one of the following zoning requirements:
    - i. General Plan designation or the zoning for the site allow residential use;
    - ii. The development project is proposed on a parcel that is zoned for educational or religious use to conform to the existing use; or
    - iii. The development project is proposed for a parcel that is adjacent to a parcel located in a residential, mixed-use, or commercial zone.
  - e) The site is not on environmentally unsafe or sensitive areas, as specified, such as wetlands, a high or very high fire severity zone unless the site has adopted fire hazard mitigation measures required by existing building standards, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement;
  - f) The development would not require the demolition of:

- i. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;
  - ii. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;
  - iii. Housing that has been occupied by tenants within the past 10 years, excluding any manager's units. This provision includes sites previously used for housing that were occupied by tenants, excluding any manager's units, that was demolished within 10 years before the development proponent submits an application pursuant to this bill;
  - iv. Housing such that the new development had less units overall and less protected units, as specified and generally for lower income households, as currently exists on the site; and
  - v. A historic structure that was placed on a national, state, or local historic register.
- 4) The project meets the following affordability criteria:
- a) All residential units in the development project, exclusive of a manager's unit or units, are restricted to lower income households (generally, households making less than 80 percent of the area median income (AMI)), except that up to 20 percent may be designated for moderate-income households (generally, households making up to 120 percent AMI);
  - b) Any units designated for moderate-income households are rented or sold at a price that is at least 20 percent below market rate for a unit of similar size and bedroom count in the same neighborhood;
  - c) The affordability level of the units are restricted for 55 years for rental units and 45 years for owner-occupied units. However, the local government may require that owner-occupied units in the housing development project be restricted to lower income and moderate income households for a longer period of time if that restriction is consistent with all applicable regulatory requirements for state assistance; and
  - d) A religious institution or independent institution of higher education may restrict all of the units to be for lower income households.
- 5) The project meets the following labor standards:
- a) The applicant either certifies that the project is a public work; or
  - b) If the project contains more than 10 units, then all the workers must be paid at least the general prevailing wage, as specified.
- 6) The development project complies with all objective development standards of the city or county that are not in conflict with this bill;
- 7) A project that meets all of the criteria specified in 1) - 6) above is allowed the following residential density:

- a) If the development project is located in a residential or mixed-use zone:
  - i. The allowed residential density is that 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.
  - ii. If the local government allows for greater residential density on that parcel, or greater residential density or building heights on an adjacent parcel, the greater density or building height will apply; and
  - iii. The project is eligible for a density bonus or other incentives or concessions.
- b) If the development project is located in a commercial zone:
  - i. The project must be allowed a density of 40 units per acre and a height of one story above the maximum height applicable to the parcel;
  - ii. If the local government allows for greater residential density or building heights on the parcel, or on an adjacent parcel, the greater density or building height will apply. A project cannot use an incentive, waiver, or concession to increase the height of the development to exceed this authorization; and,
  - iii. A project is eligible for a density bonus or other incentives or concessions, except that it cannot use an incentive, waiver, or concession to increase the height of the development to exceed the height provisions in ii).
- 8) The development project must provide off-street parking of up to one space per unit, unless a local ordinance provides for a lower standard of parking, in which case the ordinance will apply. However, a local government is prohibited from imposing a parking requirement if either of the following is true:
  - a) The parcel is located within one-half mile walking distance of public transit, either a high-quality transit corridor or a major transit stop, as specified; or
  - b) There is a car share vehicle located within one block of the parcel.
- 9) Provides that a housing development project that is eligible as a use by right under this bill may include the following ancillary uses, provided those uses are limited to the ground floor of the development:
  - a) In a single-family residential zone, ancillary uses are limited to uses that provide direct services to the residents of the development and have a community benefit, including child care centers and community centers; and
  - b) In a multifamily residential, commercial, or mixed-use zone, the development may include commercial uses that are permitted by the zoning without a conditional use permit or planned unit development permit.
- 10) Defines “use by right” to mean that the local government’s review of the development project under the provisions of this bill may not require a conditional use permit, planned unit

development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of the California Environmental Quality Act (CEQA). The development project may be subject to design review from the local government.

11) Defines a “qualified developer” as any of the following:

- a) A local public entity;
- b) A developer that meets both of the following:
  - i. The developer is a nonprofit corporation, a limited partnership in which the managing general partner is a nonprofit corporation, or a limited liability company in which the managing member is a nonprofit corporation; and
  - ii. The developer, at the time of application, owns or manages housing units located on property that is subject to the welfare property tax exemption; or
- c) A developer that contracts with a nonprofit corporation that has received the welfare property tax exemption for properties intended to be sold to low-income families with financing in the form of zero interest rate loans.

12) Provides that the Legislature finds and declares that ensuring residential development at greater density on land owned by independent institutions of higher education and religious institutions is a matter of statewide concern and is not a municipal affair, and therefore, the provisions of this bill would apply to all cities, including charter cities.

13) Provides that no reimbursement is required by this bill because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.

#### **EXISTING LAW:**

- 1) 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” (California Constitution, Article XI, Section 7).
- 2) Establishes Planning and Zoning Law, which requires every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element, and requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans (Government Code Section 65000 through 66301).
- 3) Establishes, pursuant to SB 35 (Wiener, Chapter 366, Statutes of 2017), a streamlined, ministerial approval process, not subject to CEQA, for certain infill multifamily affordable housing projects proposed in local jurisdictions that have not met their regional housing needs allocation (RHNA), as follows:
  - a) Requires developments of 11 units or more to meet affordability requirements, as follows:

- i. In jurisdictions that have not met their targets for lower income or above moderate-income housing, 10 percent of the units must be affordable to lower income households; and
  - ii. In jurisdictions that have met their targets for above moderate-income housing but not lower income housing, 50 percent of the units must be affordable to lower income households.
- b) Requires developments of 11 units or more to meet labor requirements, including payment of the prevailing wage for all projects that are 100 percent affordable;
  - c) Prohibits utilization of the streamlined, ministerial approval process in environmentally unsafe or sensitive areas, such as a coastal zone, wetlands, a high or very high fire severity zone unless the site has adopted fire hazard mitigation measures required by existing building standards, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement;
  - d) Prohibits demolition of existing housing as specified, including housing that is subject to a deed restriction or that is currently rented by a tenant, or has been rented by a tenant within the past 10 years;
  - e) Enables local governments to apply objective design standards to the project, as long as such standards do not in any way inhibit, chill, or preclude the ministerial approval of the project;
  - f) Establishes specified timelines for the local government to act to determine that the project conforms with the requirements of this bill and to apply design review; and
  - g) Requires the local government to comply with requirements regarding proposed modifications to the project, subsequent applications affiliated with the project, and implementation of public improvements necessitated by the project (Government Code Section 65913.4).
- 4) Provides that supportive housing, in which 100 percent of units are dedicated to low-income households (up to 80 percent AMI) and are receiving public funding to ensure affordability, are a use by right in all zones where multifamily and mixed uses are allowed, as specified (Government Code Section 65650-65656).

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

**Author's Statement:** According to the author, "SB 899 would make building affordable housing easier, faster, and cheaper for faith-based institutions and nonprofit colleges that want to build affordable housing. Many of these are already community anchors, and this would help them build stable, safe, affordable housing for local residents and families and open doors to high-resource neighborhoods. Unfortunately, many of these institutions are located in areas that are not zoned to permit multifamily housing. This means the religious institution and affordable housing developer partner have to rezone the land, which is a tricky process that costs money

and can cause long delays in building the affordable housing units Californians need. These religious institutions and nonprofit colleges would partner with affordable housing developers and agree to maintain the affordability of these homes for at least 55 years for rental housing and 45 years for homeownership opportunities. Depending on the location of the property and proximity to commercial areas and different types of residential neighborhoods, these institutions would be able to build new affordable homes without undergoing costly and time intensive rezonings.”

***California’s Housing Crisis:*** California is in the midst of a housing crisis. Only 24 percent of households can afford to purchase the median priced single-family home – 50 percent less than the national average, and 33 percent less than at the start of the pandemic.<sup>1</sup> Over half of renters – and 80 percent of low-income renters – are “rent burdened,” in households paying more than 30 percent of their income toward housing, which means they have less to pay for other essentials such as food, transportation, and health care.<sup>2</sup> In 2020, over 160,000 Californians experienced homelessness on a given night.<sup>3</sup> Californians rank housing affordability and homelessness as the two most important issues for the state to address.<sup>4</sup>

A major cause of our housing crisis is the mismatch between the supply of housing and the need for housing. While there are various estimates of the size of this mismatch, they all concur that the deficit is in the millions of units. The Statewide Housing Plan, adopted by HCD earlier this year, determined that, to address this mismatch, in the next eight years, California needs approximately 2.5 million units of housing, including one million units affordable to lower income households.<sup>5</sup> That would require production of over 300,000 units a year. According to HCD, the state needs 180,000 units of housing built a year to keep up with demand – including about 80,000 units 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.<sup>6</sup> This underproduction has further exacerbated our longstanding housing crisis.

***Searching for Sites for Affordable Housing:*** There are myriad reasons that supply has not kept pace with demand. First, the demand for housing has been strong for decades, as California has been an attractive place to move because of its economic opportunities, social opportunities, and high quality natural amenities. The result is that the population growth in California in the past 50 years has been 20 million people – a figure that on its own would exceed the total population of all but two other states.

Second, there are limited places to build. California’s topography – particularly the coastal mountain ranges – limit the places that are feasible to build. This means that newly developed areas have to be further from existing cities, unlike in places with less topographical constraints, like Texas.

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<sup>1</sup> [California Association of Realtors Housing Affordability Index](#). Data for the 3<sup>rd</sup> quarter of 2021.

<sup>2</sup> HCD, [California Statewide Housing Plan](#), February 2018, Table 1.2

<sup>3</sup> [The 2020 Annual Homeless Assessment Report \(AHAR\) to Congress \(huduser.gov\)](#)

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

<sup>5</sup> Data from [Roadmap Home 2030](#), California Housing Partnership Corporation and Housing California, 2021.

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

Third, local governments have made it difficult to build housing – particularly dense, multi-family housing. This is due to a combination of general resistance to new housing from existing residents and a post-Prop 13 landscape where municipal finances are better served through commercial development than residential. The result is that multifamily housing is illegal to build in most of the state – in two-thirds of jurisdictions, multifamily housing is allowed on less than 25 percent of land.<sup>7</sup>

Fourth, in most jurisdictions, the process to approve new housing is arduous, unpredictable, and expensive. It often requires multiple levels of approval from local governments, and navigation of an environmental review process that greatly empowers opponents of new housing.

Finally, housing is very expensive to build, requiring access to substantial financing to cover the costs of materials and labor. At certain moments – particularly during the 2008-2010 Great Recession – the lack of access to private financing killed or delayed many potential housing projects. Public financing for affordable housing is also insufficient to meet the demand – despite substantial increases in the past three years. Material costs have also risen, particularly given the global supply chain uncertainties exacerbated by the COVID-19 pandemic. Finally, the deficit of skilled construction workers and supervision has resulted in lengthened construction schedules and increased costs.<sup>8</sup>

***Unlocking the Potential for Affordable Housing on Land Owned by Religious Institutions and Non-Profit Colleges:*** Religious institutions and places of higher education, including non-profit colleges, often contain ample developable land – particularly on surface parking lots that are often underutilized. This is particularly true for religious institutions, where high parking demand might last only a couple of hours a week.

In 2020, the UC Berkeley Turner Center conducted a study of the potential for new housing on sites owned by religious institutions (the study did not examine land owned by non-profit colleges).<sup>9</sup> The study identified over 38,000 acres of land owned by religious institutions statewide that were large enough to facilitate development. The study did not examine the amount of potentially developable land on each site. But presuming only 25 percent of this land is developable, at a typical density of 30 units per acre, these sites could yield nearly 300,000 units of affordable housing.

SB 1336 provides a pathway for the development of affordable housing on land owned by religious institutions and non-profit colleges. It does so by making affordable housing a use “by right,” as long as the site is already owned by a religious institution or non-profit college, and meets specified criteria regarding location, affordability, and labor. Such projects would be required to meet objective standards specified in the bill. By right exempts the project from a local government’s discretionary approval process and from the California Environmental Quality Act. Local governments could apply objective standards and design review processes as

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<sup>7</sup> UC Berkeley Turner Center, *Land Use in California*, 2019: <https://californialanduse.org>

<sup>8</sup> UC Berkeley Turner Center, *Perspectives: Practitioners Weigh in on Drivers of Rising Housing Construction Costs in San Francisco*, 2018: [https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/San\\_Francisco\\_Construction\\_Cost\\_Brief\\_-\\_Turner\\_Center\\_January\\_2018.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/San_Francisco_Construction_Cost_Brief_-_Turner_Center_January_2018.pdf)

<sup>9</sup> [Mapping the Potential and Identifying the Barriers to Faith-Based Housing Development - Turner Center \(berkeley.edu\)](https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/Mapping_the_Potential_and_Identifying_the_Barriers_to_Faith-Based_Housing_Development_-_Turner_Center_January_2018.pdf)

long as they do not conflict with the provisions in the bill and do not preclude development of the housing.

In terms of affordability, this bill requires that the units would be restricted to lower-income households (those generally making less than 80 percent of the median income (AMI)), except up to 20 percent of the households could be for moderate-income households (those generally making 80 to 120 percent AMI) as long as they are rented or sold at 20 percent below the fair market rent.

In terms of location, this bill includes provisions that would preclude development on environmentally unsafe or sensitive area, per previously established objective standards. It would also require development to occur on sites within infill areas, which would help reduce commutes and, commensurately, greenhouse gas emissions. New development could not result in the demolition of existing housing. The site could be located on a parcel that allows the religious institution or non-profit college and is adjacent to a parcel that allows residential, mixed-use, or commercial uses.

In terms of labor standards, this bill would require the workers on all projects greater than 10 units to pay the prevailing wage. Prevailing wages are the compensation standards applied to public works projects. They are the most common wage found in a region for a construction craft, and are usually based on rates specified in collective bargaining agreements between employers and unions. Prevailing wages are established by the Director of the Department of Industrial Relations (DIR), according to the type of work and location of the project, and published on DIR's website.<sup>10</sup> The prevailing wage encompasses an hourly pay, as well as compensation for other benefits should the employer not provide them, including health care, vacation, and pension.

In terms of objective standards, the projects meeting all the criteria above would be allowed to meet a baseline density. For sites located in residential or mixed-use zones, the residential density would need to meet or exceed the density considered geographically appropriate for affordable housing projects 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.<sup>11</sup> Sites located in commercial zones would be allowed a density of 40 units per acre and a height of one story above the maximum height applicable to the parcel. In both instances, if the local government allows for greater residential density or building heights on the parcel, or on an adjacent parcel, the greater density or building height will apply. Local governments would be prohibited from imposing a parking requirement if either the parcel is within a half-mile of public transit or there is a car share vehicle located within one block of the parcel. The site must otherwise meet the local government's height limits, objective zoning standards, and objective design review standards.

**Arguments in Support:** Supporters of the bill argue that it would allow faith-based organizations to further their mission by providing affordable housing on their land. According to the Southern

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<sup>10</sup> <https://www.dir.ca.gov/public-works/prevailing-wage.html>

<sup>11</sup> To understand how these requirements apply by jurisdiction, see HCD's *Analysis of Sites and Zoning* webpage, in the table entitled "Default Densities Appropriate to Accommodate Housing for Lower-Income Households by Region": <https://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml>



California Association of NonProfit Housing (a co-sponsor of this bill), “we know that our California families and workers need more safe, stable, affordable homes. With SB 1336, places of worship and colleges that want to provide more affordable homes will be able to do so.”

**Arguments in Opposition:** The opponent of the bill, the California Association of Realtors, seeks to remove the by right component of the bill for development within single-family neighborhoods. Additionally, they state that “the bill should be amended to require any property to be constructed primarily for, and occupied by, the organizations’ faculty, employees, and students.”

**Committee Amendments:**

**The committee may wish to require the following technical amendments designed to improve the legibility of the legislation and its implementation:**

- Include specifications on the review, approval, and implementation process for local governments, based on the language in SB 35, that will provide more certainty for both parties. These changes include providing:
  - A process for determining if a housing project conforms with the requirements of this bill;
  - A process for design review of the proposed project;
  - Timeframes for how long the project’s approval lasts;
  - A process for reviewing proposed modifications and subsequent phases of the project; and
  - Expectations for the local government in implementing improvements associated with the project.
- Simplify the definition of an applicant to mean a qualified developer who submits an application for streamlined approval pursuant to this section;
- Replace the provision that the project must be an adjacent site is a residential, mixed-use, or commercial zone with a provision that the project cannot be located adjoining a site that is predominantly industrial. This amendment will better separate residential and industrial uses;
- Eliminate references to “mixed-use zones” and “commercial zones” and replace them with references to zoning that allows residential use and zoning that does not allow residential use. This amendment reflect that zoning definitions and districts differ widely between the state’s 539 jurisdictions, and broad terms like “mixed-use” and “commercial” have very different meanings across the state, which would result in very different application of this bill across the state;
- Revise the definition of “affordable rent” for rental projects so that it is based on the rent limits established by the California Tax Credit Allocation Committee, rather than those in the Health and Safety Code. This amendment will make affordable housing projects more feasible;
- Remove the provision that allows a religious institution or non-profit college to require a project to only be for lower income households. This provision is unnecessary, as the religious institution and non-profit college are the owners of the site, and thus can already apply this limitation; and
- Other minor technical amendments to improve clarity.

***Related Legislation:***

SB 899 (Wiener, 2020): This bill is substantially similar to SB 1336. It died in the Assembly Committee on Appropriations

AB 1851 (Wicks), Chapter 196, Statutes of 2020: This bill allows a religious institution to develop an affordable housing project at a place of worship owned by the religious institution even if the development requires the religious institution to reduce the number of religious-use parking spaces available at the place of worship.

SB 35 (Wiener), Chapter 366, Statutes of 2017: This bill requires in jurisdictions that have not met their Regional Housing Needs Assessment to allow for a ministerial, streamlined process for housing approvals as long as the project meets specified affordability and labor provisions, meets specified environment criteria, and does not require the demolition of rental or deed restricted housing.

AB 2162 (Chiu), Chapter 753, Statutes of 2018: This bill streamlines 100 percent affordable housing developments that include a percentage of supportive housing units and onsite services.

AB 2011 (Wicks, 2022): This bill would allow 100 percent affordable housing to be by right on parcels that are zoned for retail, office, and parking uses, and mixed-income houses to be by right along commercial corridors, if they meet specified labor standards. This bill is pending hearing in the Senate Committee on Housing.

***Double referred:*** This bill was also referred to the Assembly Committee on Natural Resources, where it will be heard should it pass out of this committee.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Non Profit Housing Association of Northern California (Co-Sponsor)  
 Southern California Association of Non-profit Housing (SCANPH) (Co-Sponsor)  
 Cabrillo Economic Development Corporation  
 California Apartment Association  
 California Association of Local Housing Finance Agencies  
 California Housing Partnership Corporation  
 California-Pacific Annual Conference the United Methodist Church  
 Christian Church Homes (CCH)  
 Community Corporation of Santa Monica  
 East Bay Housing Organizations  
 East LA Community Corporation  
 Generation Housing  
 Hollywood Community Housing Corporation  
 Housing Action Coalition  
 Housing Trust Fund Ventura County  
 Inland SoCal Housing Collective  
 LA Voice

Local Initiatives Support Corporation (LISC) Bay Area  
Making Housing and Community Happen  
Many Mansions  
North District in the Cal-Pac Conference of the United Methodist  
Church  
Placer People of Faith Together  
Thousand Oaks Livability Action Network  
United Lutheran Church of Oakland Congregation Council  
Venice Community Housing Corporation  
Ventura County Clergy and Laity United for Economic Justice  
Individuals - 9

**Opposition**

California Association of Realtors

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