Senate Bill 592 - A Dangerous Shift Toward Development Interests, and No Guarantee that Affordable Units Get Built

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Senate Bill 592 “The Housing Accountability Act” is a statewide bill intended to incentivize the development of affordable and moderate-income housing in California by limiting the powers of local governments to disapprove most housing developments. Under state law, “housing developments” include residential units, mixed-use developments with a primary residential component, transitional or supportive housing, and accessory dwelling units.

As with similar statewide housing bills that have been proposed, including Senate Bills 330 and 50, this bill is complex and is bound to existing laws including the Housing Density Bonus Law. Overall, SB 592 significantly weakens the authority of cities and counties. It reduces a municipality’s review and approval powers over affordable housing developments, a designation that includes mixed-use developments. It represents a dangerous shift in power away from local cities and their electorates towards development interests **without any guarantee that affordable housing will be built**.

SB 592 Implications

SB 592 would affect all cities in California, potentially exposing some municipalities to a barrage of appeals and lawsuits. Yet the bill provides cities no additional support. Smaller cities with limited resources may struggle to expedite the approval processes as required by the bill. They may also struggle to defend themselves against litigation. Under SB 592, municipalities **may not** disapprove housing developments for very low-, low-, or moderate-income households unless at least one of the following is true:

1. The local agency has already fulfilled its share of the regional housing need allocation for locally specified household incomes.
2. The housing development would have “objective” adverse impact on public health or safety, and there is no feasible way to mitigate these impacts.
3. Other applicable state or federal laws prohibit the development and cannot be avoided.
4. The housing development is on land zoned for agriculture or resource preservation or does not have adequate water or wastewater facilities.
5. The housing development is inconsistent with *both the site’s existing zoning and the general plan land use designation*. This condition may only be used as grounds for denial if the site *has not* been identified as a suitable/available site for very low-, low-, or moderate-income households even if the existing zoning is inconsistent. Local agencies that have not identified suitable sites for this type of housing may not use inconsistency with existing zoning or the general plan as a basis of denial.

These conditions create several issues that preempt local zoning and land use authority and give incredible weight to the housing sites identified in the housing element of general plans.

In practice, these conditions could lead to the following issues:

- **Development of housing projects that do not conform to existing zoning or general plan standards.** This could happen if the proposed development is in an identified affordable housing site OR if the municipality has not yet identified such locations. Not only does this create an issue over what development standards to apply (e.g., density, design controls, etc.), but it requires cities to approve what is in effect a non-conforming use that is inconsistent with local zoning. This erodes the ability of local governments to implement and enforce zoning in these areas and may require cities to apply arbitrary density and design standards in order to comply with SB 592. This is contrary to SB 592's own **requirement** that housing developments be evaluated using only objective and reasonable development standards.

- **In addition, cities would be unable to request lower densities or a fewer number of bedrooms, if the housing development complies with applicable zoning and/or general plan standards (such as maximum densities).** Once again, as the bill is written, the standards in the general plan take precedence over zoning standards if the two are in conflict (i.e. identified densities in the general plan override densities established in zoning).

- **The bill also conflates housing density with the number of bedrooms in a housing development, potentially creating a loophole that allows large single-family homes with multiple bedrooms to request approval even when in conflict with other design and development requirements of the municipality.** Housing density is tied to the number of units per area, not the number of bedrooms in an individual unit. Cities face potential lawsuits if they reject mansionization or dormitories built within the footprint of a large home.

- **Developers, as well as potential future residents and "housing organizations" can appeal or bring a lawsuit if a municipality does not approve a project.** Giving legal standing to parties with no established property interest, and who may have competing interests, can open local governments to lawsuits and appeals by multiple parties, creating further ambiguity and legal challenges. Legal challenges to enforce the bill may also be brought at any point in the application process (including during review), instead of at standard appeal periods (for example, after disapproval by a legislative body).

- **Reduces the ability of community members to review and discuss proposed projects.** Given that many housing developments could now be approved without

community input (through “streamlined” provisions), residents who lobby for affordable units and community benefits will have significantly less input, which counterintuitively could result in fewer affordable units. Silencing communities could potentially reduce residents’ sense of community. Robust community processes are an essential component for the long-term health of cities and neighborhoods of all sizes.

Recommendations

As written, SB 592 represents a dangerous shift in power away from local cities and their electorates towards development interests without any guarantee that affordable housing will be built. It creates several new problems: Its inconsistent language creates confusion around the precedence of local zoning, exposing cities to possible new legal challenges. It further complicates matters by giving legal standing to parties with no established property interest, amplifying both the ambiguity in the process and the legal exposure for small cities.

There are three factors that influence the amount of affordable housing development – local zoning, the approval process, and direct funding and subsidy. Of these, the most important roadblock for affordable housing, by a significant margin, is the lack of funding and subsidy. SB592, however, is focused on zoning and approval processes. In an attempt to create efficiency it looks to a mandated statewide land use policy and development review, but it is a blunt instrument that creates more problems than it solves. A few solutions that would better help fulfill the goal of encouraging affordable housing development include:

- **Support for two proposed senate bills and a proposed state constitutional amendment that seek to address important aspects of the affordability crisis that should be applied well in advance of any proposed process changes raised by SB 592**. These include:

    - **SCA1** *(introduced by Allen and Wiener)* **:** SCA1 recommends an initiative for the November 2020 ballot that repeals Article 34 of the Constitution. Article 34 bars local governments from expending funds to develop or subsidize the development of low income affordable housing. Striking this article will restore the ability of local governments to raise funds to build shelters, supportive communities and affordable housing.

    - **SB 6** *(introduced by Beal and McGuire)***:** SB 6 seeks to create a registry and database to identify all publicly owned land available and suitable for residential development, to be updated annually. SB 6 also expressly provides for public access and transparency, creating the capability to perform online searches for sites suitable for affordable housing projects.

- **SB 5** *(introduced by Beall, McGuire and Portantino)***:** SB 5 seeks to create a new financing tool for housing, addressing the funding void left after the dismantling of the state redevelopment agencies. The bill recognizes one of the fundamental challenges faced by cities and counties - a lack of funds. Local governments are charged with building affordable housing, yet they cannot afford it. Only a small percentage of property taxes are retained by local government, while the bulk of the property tax flows to schools. This bill would enable local governments to retain more of their property taxes if they use those taxes to issue debt for the financing of more affordable housing. Meanwhile the state government would backfill any shortfall in education spending. SB 5 is an innovative approach to a challenging problem and while the details of such a structure need to be clarified, the bill seeks to address the central issue of affordable housing - financing.

- **Emphasize the identification and selection of public lands that can be developed for affordable housing.** This includes encouraging affordable housing developers to develop these sites for affordable housing using public-private partnerships and direct land transfers.

- **Expand direct state funding to affordable housing projects.** Statewide funds for qualified affordable housing projects help provide the “gap financing” needed to make affordable housing projects a feasible investment for developers who may currently only pursue market rate housing. In recent years state funding for affordable housing has significantly declined.

- **Encourage the adoption of inclusionary zoning where appropriate.** This could involve a change in the payment-in-lieu components of inclusionary zoning ordinances to ensure these fees are only used to create affordable housing or provide further “gap financing.”