
SENATE COMMITTEE ON HOUSING
Senator Nancy Skinner, Chair
2023 - 2024 Regular

Bill No:	AB 3068	Hearing Date:	7/2/2024
Author:	Haney		
Version:	6/12/2024		
Urgency:	No	Fiscal:	Yes
Consultant:	Hank Brady		

SUBJECT: Adaptive reuse: streamlining: incentives.

DIGEST: This bill enacts the Office to Housing Conversion Act, which creates a streamlined, ministerial approval process for adaptive reuse projects and provides certain financial incentives for the adaptive reuse of existing buildings.

ANALYSIS:

Existing law:

- 1) Establishes the California Environmental Quality Act (CEQA), which requires public agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or an environmental impact report (EIR) for this action, unless the project is exempt from CEQA.
- 2) Establishes, pursuant to AB 1490 (Lee, Chapter 764, Statutes of 2023), a ministerial, streamlined approval process for the adaptive reuse of buildings into 100 percent affordable housing.
- 3) Establishes, pursuant to SB 423 (Wiener, Chapter 778, Statutes of 2023), a streamlined, ministerial approval process for certain infill multifamily affordable housing projects that are compliant with local zoning and objective standards and that are proposed in local jurisdictions that have not met their regional housing needs allocation.
- 4) Establishes, pursuant to AB 2011 (Wicks, Chapter 647, Statutes of 2022), a streamlined, ministerial approval process for certain infill multifamily affordable housing projects that are located on land that is zoned for retail, office, or parking.

- 5) Allows, pursuant to SB 6 (Caballero Chapter 659, Statutes of 2022), the Middle Class Housing Act of 2022, residential uses on commercially zoned property without requiring a rezoning.
- 6) Authorizes the California Department of Housing and Community Development (HCD) to enforce state housing laws.

This bill:

- 1) Deems an adaptive reuse project that meets the requirements of the bill a use by right in all zones and establishes a streamlined, ministerial review process for these projects, as specified below:

Site Requirements.

- 2) An adaptive reuse project must be located on an infill site, as specified, and be for an existing building that is one of the following:
 - a) Less than 50 years old.
 - b) Listed on a local, state, or federal register of historic resources and the adaptive reuse project proponent complies with specified historic resource protection requirements described below.
 - c) The project is proposed for an existing building and the local government has evaluated the site as specified and determined that the building or site is either: (1) a historic resource and the adaptive reuse project proponent complies with the historic resource protection requirements; or (2) not a historic resource.
- 3) The proponent must complete specified environmental assessments and avoid or mitigate specified environmental harms.
- 4) If the adaptive reuse project includes mixed uses, at least one-half of the square footage of the adaptive reuse project must be dedicated to residential uses.

Historic resource protection requirements.

- 5) Prior to submitting an application for an adaptive reuse project for a structure that is more than 50 years old and not listed on a local, state, or federal register of historic resources, the development proponent must submit to the local government a notice of its intent to submit an application, as specified.

- 6) If the adaptive reuse project is proposed for an existing building that is listed on a local, state, or federal register of historic resources, or if the local government has determined that the project site is a significant historic resource, the adaptive reuse project proponent must declare that the project will only move forward if it complies with specified federal standards for rehabilitation of a historic structure.

Affordability requirements.

- 7) An adaptive reuse project must meet specified affordability requirements, generally that the project provide:
 - a) At least 8 percent of the units for very low income households and 5 percent of the units for extremely low income households, or 15 percent for lower income households, for rental projects.
 - b) 30 percent for moderate income households, or 15 percent for lower income households, for ownership projects.

Labor standards.

- 8) An adaptive reuse project proponent must require in contracts with construction contractors, and must certify to the local government, that all the following standards will be met in project construction:
 - a) A development that is not in its entirety a public work must meet the following wage provisions:
 - i) All construction workers employed in the execution of the development must be paid prevailing wage.
 - ii) The development proponent must ensure the prevailing wage requirement is included in all contracts for the performance of the work for those portions of the development that are not a public work.
 - iii) All contractors and subcontractors for those portions of the development that are not a public work must maintain and verify payroll records, and make those records available for inspection and copying.
 - b) For projects of 50 or more housing units, the project proponent must use contractors that:

- i) Participated in an apprenticeship program.
 - ii) Meet minimum health care expenditure requirements.
- 9) Development proponents are subject to monthly compliance reporting regarding the labor standards noted above.
- 10) Aspects of the requirements noted above do not apply to portions of the project that are subject to a bona fide collective bargaining agreement or project labor agreement that meets specified requirements.

Additional structures.

- 11) An adaptive reuse project can include the development of new residential or mixed-use structures on undeveloped areas and parking areas on the parcels adjacent to the proposed adaptive reuse project site if project is on an infill site, meets specified objective standards and environmental criteria, is not a historic resource, and the applicant and local agency follow procedures for identifying impacts to tribal cultural resources.

Approval process

- 12) Requires a city or county to approve an adaptive reuse project if the local planning director or equivalent position determines that the project is consistent with the objective planning standards in the bill, and specifies timelines for the planning director to conduct design review and make the determination based on project size.
- 13) Specifies that if the planning director fails to make a determination as specified, the project shall be deemed to comply with the objective standards. Additionally the bill provides that a project shall be considered consistent with the applicable objective planning standards if there is substantial evidence that would allow a reasonable person to conclude the project is consistent with the standards, as specified.
- 14) Specifies that if a project involves subdividing the property into smaller parcels, the application for a subdivision is not subject to CEQA if the adaptive reuse project is consistent with specified requirements and all objective subdivision standards in the local subdivision ordinance, and establishes review timelines.

- 15) Prohibits a city or county from requiring additional studies that aren't directly related to evaluating compliance with the objective standards.
- 16) Prohibits a city or county from requiring compliance with specified postentitlement permits at the planning stage, but provides that those requirements can be imposed later in the approval process.

Impact fees.

- 17) Exempts an adaptive reuse project from all impact fees that are not reasonably related to the impacts resulting from the change of use of the site from nonresidential to residential or mixed use, and any fees charged must be roughly proportional to the difference in impacts caused by the change of use.

Adaptive reuse investment incentive program (ARIIP).

- 18) Allows a city or county to offer financial incentives for up to 15 years to subsidize affordable units that are part of an adaptive reuse project under the bill.
- 19) A project proponent applies to the city or county by filing a request, which must be approved by a majority vote of the city or county's governing body for payments to commence. If approved, a proponent receives a payment equal to the amount of property taxes paid and received by that city or county that is in excess of the adaptive reuse project property's valuation at the time of the proponent's initial request for funding.

Other provisions and enforcement.

- 20) A city or county can adopt an ordinance that is consistent with the requirements of the bill, as specified. A local agency cannot impose any requirements on the basis that the project is eligible for approval under the bill.
- 21) Specifies that a project can use other applicable ministerial streamlining laws, and can benefit from the protections of the Housing Accountability Act.
- 22) Adds the "Office to Housing Conversion Act" to the list in existing law that grants the Department of Housing and Community Development enforcement authority over housing statutes.

COMMENTS:

- 1) *Author's Statement.* “Office vacancies across the state have hit record highs with Los Angeles and San Francisco both reaching over 30% vacancy rates. Many economists are theorizing that unless local and state governments act quickly, downtowns may be facing a doom-loop scenario with empty, devalued buildings leading to a severe decrease in local government tax bases, leading to decreased services and blight...Office to housing conversion is a win-win scenario that builds housing, preserves historic buildings, and creates new thriving communities in transit rich areas. California needs to get out of its own way and make office to housing conversions as easy as humanly possible. This bill does exactly that.”
- 2) *Zoning Ordinances and CEQA.* CEQA establishes a process for evaluating the environmental effects of a project. Under CEQA, a local agency carrying out a discretionary project must first determine if the project may have a significant effect on the environment. Projects can include jurisdiction-wide efforts such as the update of a general plan, approval of jurisdiction-wide contracts (*e.g.*, waste hauling contracts or water service), and zoning ordinance amendments. A project can also include individual development actions such as the approval of housing developments, stadiums, gas storage facilities, and other types of developments. In the case of any discretionary project, if a local agency finds that the potential for significant environmental impacts exists, CEQA requires the agency to prepare and certify the completion of an EIR. While CEQA includes certain statutory and categorical exemptions, the provisions of CEQA explicitly apply to “discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.” (Emphasis added).
- 3) *Housing Development Projects and CEQA.* In light of the state’s ongoing housing crisis, the Legislature created several statutory exemptions from CEQA for specific types of housing development projects in order to increase the production of housing. The Legislature also created several statutory schemes that require local governments to approve specified housing development projects ministerially. Ministerial approvals remove a project from all discretionary decisions of a public agency, and thus are not subject to CEQA which only applies to discretionary approvals.

Bypassing CEQA can provide a tremendous benefit to property owners, developers, local governments and other parties involved in the approval of a project as it allows for the project to be completed in an expedited fashion. The Legislature balances the risk of allowing projects to proceed without a full environmental review by ensuring that these projects comply with scores of objective standards and criteria and that they are not located on environmentally sensitive sites. These standards and criteria are an expression of the state's values and ensure that exempt projects do not result in harm to public health and safety and the environment.

- 4) *Authorizing Residential Development in Commercial Zones.* In addition to streamlining CEQA review at the project level for specific types of housing developments, the Legislature recently enacted several bills to facilitate the production of more housing by increasing the sites available for residential development. Notably, AB 2011 (Wicks, Chapter 647, Statutes of 2022) and (SB 6, Caballero, Chapter 659, Statutes of 2022) both made certain types of housing developments an allowable use on land zoned for commercial uses; these bills effectively rezoned eligible parcels statutorily and increased the stock of land that could be developed into housing in California. These bills obviated the need for a local government to conduct a CEQA review in order to rezone certain commercial parcels to allow housing development on these parcels.
- 5) *Adaptive Reuse.* The state under-produced housing prior to the onset of COVID-19, and the economic stagnation resulting from the outbreak may further erode housing production. Meanwhile, according to an April 24, 2020, brief published by McKinsey and Company, the onset of COVID-19 has aggravated the existing challenges that the retail sector faces. Several large retailers such as Nieman Marcus, J.C. Penney, J. Crew, and Pier 1 are filing for bankruptcy, and store closings have already been announced or are expected in the future. The investment firm UBS estimates that by 2025, 100,000 stores in the United States will close as online sales grow from 15% to 25% of total retail sales. This bill seeks to capitalize on a potential opportunity for redeveloping vacant or abandoned commercial properties into housing.
- 6) *Amendments.* The author proposes a number of amendments to this bill to but was unable to finalize them prior to the committee deadline. Therefore, the committee will consider them as committee amendments. **The author will accept the following amendments:**

- a) **Increase the amount of time a local government may pay incentive funds to an adaptive reuse project from 15 years to 30 years.**
 - b) **Allow adaptive reuse projects to occur on sites that were industrial uses provided that the building is no longer economically viable for an industrial use, as specified.**
 - c) **Specify that the bill's provisions apply to a "city and county."**
 - d) **Specify that "adjacent portion of the project" includes buildings on the same parcel as the proposed adaptive reuse project.**
 - e) **Provide that a local ordinance adopted to implement this bill is not a project for the purposes of CEQA.**
 - f) **Specify that if a local agency must approve projects ministerially whether or not it has adopted an implementation ordinance.**
 - g) **Specify that the environmental assessment required in the bill is a condition of final approval rather than an assessment the developer must conduct prior to gaining eligibility for streamlining.**
 - h) **Provide that an adaptive reuse project that does not currently include on-site automobile parking is not required to add new on-site parking.**
 - i) **Provide that an adaptive reuse project that currently includes on-site parking is not required to meet local minimum parking requirements except for requirements for parking spaces for persons with disabilities and parking spaces equipped with electric vehicle charging infrastructure.**
 - j) **Specify that adaptive reuse projects shall not violate conservation easements.**
 - k) **Provide that adaptive reuse projects are eligible for a density bonus, as specified.**
 - l) **Adds specificity to obligations for a project applicant and local government related to noticing and preserving historical resources such as building facades and interior character defining spaces in a manner consistent with federal standards.**
 - m) **Define "urban uses" to have the same meaning as it does in AB 2011 (Wicks, Chapter 647, Statutes of 2022).**
 - n) **Make the environmental sensitive site criteria consistent with the criteria the Committee approved in AB 2243 (Wicks) with respect to applicability in the Coastal Zone.**
 - o) **Adds findings and declarations.**
 - p) **Makes other technical changes.**
- 7) *Opposition.* Several local agency associations and other groups are opposed to the bill. The League of California Cities is concerned that deeming adaptive reuse projects by-right undermines cities' ability to make decisions locally.

They also raise concerns that the bills limitations on impact fees will make it difficult for cities to fund essential services and infrastructure improvements.

8) *Incoming!* This bill passed out of the Local Government Committee on June 11, 2024 on a 4-3 vote.

RELATED LEGISLATION:

AB 930 (Friedman, 2023) — allows local agencies to create Reinvestment in Infrastructure for a Sustainable and Equitable California (RISE) districts and provides these new districts various financing powers to finance sustainable infrastructure projects. *The measure is being heard at this same hearing.*

AB 2488 (Ting, 2024) — allows the City and County of San Francisco to establish a downtown revitalization and economic recovery financing district to finance office-to-residential conversion projects with incremental tax revenues generated by conversion projects within the district. *This measure is currently pending in this committee.*

SB 1227 (Wiener, 2024) — would have created an alternate welfare exemption from property tax for housing available to those of moderate income in downtown San Francisco, and enacts a CEQA exemption and allows CEQA streamlining for specific projects in the area. *The measure was held on the Senate Appropriations suspense file.*

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

POSITIONS: (Communicated to the committee before noon on Wednesday, June 26, 2024.)

SUPPORT:

California Preservation Foundation (Co-Sponsor)
YIMBY Action (Co-Sponsor)
Abundant Housing LA
Advance SF
AIDS Healthcare Foundation
Bay Area Council
California Apartment Association
California Community Builders
California YIMBY
Circulate San Diego
Civicwell

East Bay YIMBY
Fieldstead and Company
Grow the Richmond
Housing Trust Silicon Valley
International Interior Design Association Northern California Chapter
International Interior Design Association Southern California Chapter
LeadingAge California
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
Progress Noe Valley
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
SPUR
Streets for All
Streets for People
The Greenlining Institute
Urban Environmentalists
Ventura County YIMBY

OPPOSITION:

California Contract Cities Association
City of Santa Clarita
League of California Cities
Western Electrical Contractors Association

-- END --