
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No: SB 478 **Hearing Date:** 4/29/2021
Author: Wiener
Version: 4/12/2021
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Planning and Zoning Law: housing development projects

DIGEST: This bill prohibits a local government from imposing specified floor area ratios (FARs) on housing development projects between three and 10 units.

ANALYSIS:

Existing law:

- 1) Allows cities and counties, pursuant to the California Constitution, to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.”
- 2) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.
- 3) Requires the housing element to identify adequate sites for housing and to make adequate provision for the existing and projected needs of all economic segments of the community.
- 4) Requires the Department of Housing and Community Development (HCD) to notify a local government and may notify the state Attorney General (AG) if the local government is in violation of provisions of housing element law, the Housing Accountability Act, and Density Bonus Law.

This bill:

- 1) Prohibits a local government from doing the following:

- a) For a housing development project consisting of three to seven units, impose a FAR standard that is less than 1.0.
 - b) For a housing development project consisting of eight to 10 units, impose a FAR standard that is less than 1.25.
 - c) Deny a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency's requirements for minimum lot size.
- 2) To be eligible for the minimum FAR standards above, the housing development project shall meet all of the following conditions:
- a) Contain at least three but no more than 10 units.
 - b) The project is located in a multifamily residential zone or a mixed-use zone, and is not located in either of the following:
 - i) Within a single-family zone.
 - ii) Within a historic district or property included in the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
 - iii) The project is located on a legal parcel or parcels in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster.
- 3) Provides that this bill shall not be construed to prohibit a local agency from imposing any zoning or design standards other than zoning or design standards that conflict with those in (1) above.
- 4) Prohibits a local government from imposing a lot coverage requirement that would preclude a housing development that meets the requirements established in (2) from achieving FAR ratios allowed in (1).
- 5) Requires the HCD to notify a local government and may notify the state AG if the local government is in violation of the requirements in this bill.

COMMENTS

- 1) *Author's statement.* “SB 478 ensures that local and state housing laws are not undermined by hyper-restrictive zoning requirements that make it practically impossible to build multi-family buildings in areas zoned to allow them. Specifically, SB 478 sets minimum standards on floor area ratios (FAR) for land *already zoned* for 3-10 buildings, commonly known as missing middle housing. Excessively low FAR and lot coverage requirements, coupled with large minimum lot sizes, are tools that numerous cities use to undermine their own zoned density — in other words, a city can zone for multi-family, but extreme FAR or lot size requirements make it effectively impossible, both financially and design-wise, to actually build. In fact, with these abusive requirements on the books, multi-family buildings are so infeasible, the end result is the development of a large single family home instead. As a result, cities are able to use this loophole to prohibit multi-family housing otherwise authorized by local or state zoning law, and only build single family homes. SB 478 will be an effective tool to combat our housing shortage by ensuring there is truth in zoning, by allowing the development of 3-10 unit buildings in places already approved for them.”

- 2) *Zoning generally.* The California Constitution 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.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public— including land use authority.

Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

- 3) *Restrictive zoning limits housing development.* California’s high — and rising — land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density. In a 2016 analysis, the Legislative Analyst’s Office (LAO) found that the housing density of a typical neighborhood in California’s coastal metropolitan areas increased only by 4% during the 2000s. The LAO also compared California’s coastal areas to similar

metropolitan areas across the country and found that new housing constructed during the 2000s in California's coastal cities was nearly 30% less dense on average than new housing in other comparable cities—10 units/acre in California compared to 14 units/acre in the other metropolitan areas. In addition, the pattern of development in California has changed in ways that limit new housing opportunities. A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores surrounded by vast swaths of low-density single-family housing. Specifically, construction of moderately-dense housing (2-49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades.

Zoning ordinances add additional constraints that can reduce density: setbacks, FARs, lot coverage ratios, design requirements, dedications of land for parks or other public purposes, and other regulations can reduce the space on a lot that a building can occupy in ways that lower the number of units it is feasible to construct on a lot. Local governments also sometimes establish stringent zoning restrictions specifically to maintain discretion over development. This practice allows them to bargain more effectively with developers for contributions to services in order to overcome the fiscal effects of residential development or to simply provide more opportunities to deny projects.

- 4) *What are floor area ratios?* Local agencies use various standards to control the “bulk” of new structures. Requirements for building height, setbacks, lot coverage, and minimum or maximum lot sizes work together to establish the size of buildings that are allowed on each lot. Some local agencies apply FAR standards in addition to, or instead of, these requirements. FAR requirements limit the floor area (in square feet) of the building in relation to the overall size of the lot. For example, if a local agency imposes a FAR standard of 1.5 on a 5,000 square foot lot, a developer can build $1.5 \times 5,000 = 7,500$ square feet of floor space on that lot. Since this number exceeds the total area of the lot, the building would have to contain multiple stories to achieve the maximum allowable amount of floor area and thus would facilitate multifamily housing development. On the other hand, a much lower FAR can limit housing. For example, an FAR as low as .3, which the author identified in several zoning codes in the Bay Area, means a home can only be built on 30% of the lot. In other words, FAR can be a means to limit multifamily housing of any type.

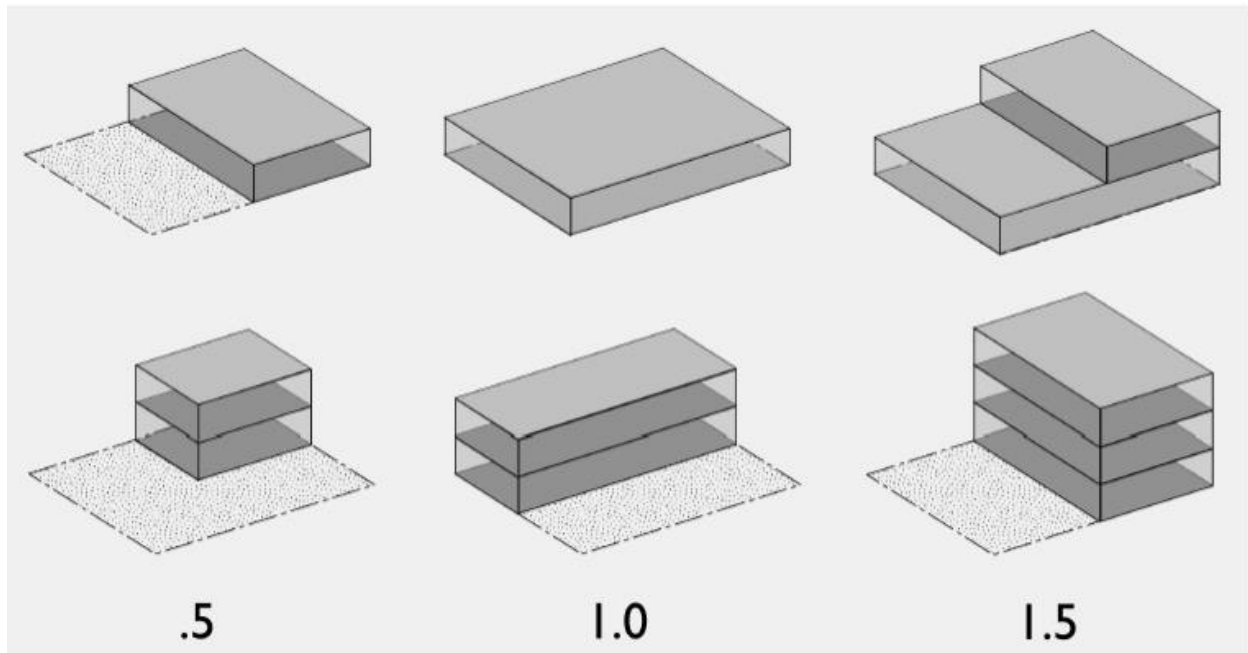


FIGURE 1: This image demonstrates how differing FARs can impact housing development.

This bill would prohibit a local government from imposing FARs lower than a certain ratio for projects with between three and ten units. This limitation would not apply to projects in a single-family zone (*i.e.* only multifamily or mixed use) or in a historic district or property included on a historic registry, and would be limited to more urbanized areas.

- 5) *Minimum lot sizes.* Cities and counties typically specify the minimum size that a parcel, or “lot”, can be within a certain zone. Lot size minimums play different roles in different communities. They are a key design feature that shapes a community: large lot sizes promote a more open feel that can be appropriate for more rural settings, while smaller lot sizes encourage denser, often more affordable, development patterns for urban and suburban areas. Furthermore, larger lot sizes increase costs for land acquisition, and therefore make smaller multi-unit developments financially infeasible.

This bill would preclude a local government from denying a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency’s requirements for minimum lot size. This issue may arise when a local government initially enacts a zoning ordinance with one parcel size when initially subdivided, then subsequently changes the lot size in the zoning. This bill would authorize a project to move forward that would otherwise be infeasible through the subsequent zoning change.

6) *More accountability.* Until very recently, communities without an approved housing element and communities that flouted state housing law faced limited ramifications. In 2017, the Legislature passed a comprehensive package of housing bills that included a number of bills aimed at strengthening housing element and other state housing laws, including AB 72 (Santiago, Chapter 370, Statutes of 2017). AB 72 authorizes HCD to find a locality's housing element out of substantial compliance if it finds the locality has acted, or failed to act, in compliance with its housing element and HCD had previously found it in substantial compliance. AB 72 also authorizes HCD to refer violations of housing element and other state housing law, such as the Housing Accountability Act and Density Bonus law, to the state AG. The primary mechanism to enforce state housing law is through the judicial system. It takes significant resources and time to pursue judicial remedies; moreover, developers are hesitant to antagonize localities where they intend to have future development. AB 72 instead places this judicial enforcement burden on the state.

This bill adds to the accountability provided for in AB 72 by also requiring HCD to notify a local government if they are in violation of the provisions of this bill; further, HCD may refer the matter to the AG.

7) *Opposition.* Several neighborhood organizations are opposed to the lack of affordable housing requirements and loss of local control. They are concerned over the limitations on lot sizes. Cities, as well as a coalition of labor units, are opposed to the loss of local control.

8) *Double-referral.* This bill passed the Senate Governance and Finance Committee with a 4-1 vote on April 8, 2021.

RELATED LEGISLATION:

SB 10 (Wiener, 2021) — allows local agencies to zone certain parcels for up to 10 units per parcel, regardless of local initiatives and without having to comply with the California Environmental Quality Act. *This bill is pending in the Senate Appropriations Committee.*

AB 101 (Budget and Fiscal Review, Chapter 159, Statutes of 2019) — among other things, provided that, following an opportunity for a local government to discuss housing element violations with HCD, the AG may seek certain remedies if a court finds that a local government is not substantially compliant with housing element law.

AB 72 (Santiago, Chapter 370, Statutes 2017) — authorized HCD to find a locality’s housing element out of substantial compliance if it finds the locality has acted, or failed to act, in compliance with its housing element and HCD had previously found it in substantial compliance.

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

POSITIONS: (Communicated to the committee before noon on Friday, April 23, 2021.)

SUPPORT:

Abundant Housing LA
Bay Area Council
California Apartment Association
California Building Industry Association
California YIMBY
Chan Zuckerberg Initiative
Circulate San Diego
East Bay for Everyone
Fieldstead and Company, INC.
Greenbelt Alliance
Greenlining Institute
Habitat for Humanity California
Housing Action Coalition
LISC San Diego
Long Beach YIMBY
Mountain View YIMBY
Non-profit Housing Association of Northern California
North Bay Leadership Council
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
San Fernando Valley YIMBY
San Francisco Bay Area Planning and Research Association (SPUR)
San Francisco YIMBY
Santa Cruz YIMBY
South Bay YIMBY
Streets for People Bay Area
Turner Center for Housing Innovation At the University of California, Berkeley
Urban Environmentalists
YIMBY Action

OPPOSITION:

Alameda Citizens Task Force
California Cities for Local Control
California State Council of Laborers
California Teamsters Public Affairs Council
Catalysts
Citizens Preserving Venice
City of Pleasanton
City of Torrance
Councilmember Dawn Murdock, City of Palos Verdes Estates
Crescenta Highlands Neighborhood Association
Franklin Corridor Coalition
Hollywoodland Homeowners Association
Homeowners of Encino
International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers
International Association of Heat and Frost Insulators and Allied Workers
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Union of Bricklayers and Allied Craftworkers
International Union of Elevator Constructors
International Union of Operating Engineers
International Union of Painter and Allied Trades AFL-CIO
Latino Alliance for Community Engagement
Livable California
Miracle Mile Residential Association
Mission Street Neighbors
Northwest Glendale Homeowners Association
Operative Plasterers & Cement Masons
Riviera Homeowners Association
Sheet Metal Workers' International Association
Sherman Oaks Homeowners Association
State Building and Construction Trades Council of Ca
Sustainable Tamalmonite
United Association
United Brotherhood of Carpenters and Joiners of America
United Union of Roofers, Waterproofers & Allied Workers
Verdugo Woodlands West Homeowners Association
4 Individuals

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