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

Bill No: AB 491 **Hearing Date:** 7/1/2021
Author: Ward
Version: 6/21/2021 Amended
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Housing: affordable and market rate units

DIGEST: This bill requires that low-income occupants of a mixed income development have the same access to common entrances and to common areas and amenities as the occupants of market rate housing units.

ANALYSIS:

Existing law:

- 1) Requires the building department of every city or county to enforce within its jurisdiction all the provisions published in the State Building Standards Code and the provisions of the State Housing Law pertaining to the construction, alteration, repair, demolition, or arrangement of apartment houses, hotels, or dwellings.
- 2) Provides that any officer, employee, or agent of an enforcement agency may enter and inspect any building or premises whenever necessary to secure compliance with, or prevent a violation of, any provision of the State Housing Law, the building standards as specified.
- 3) Establishes that any tenant who is displaced or subject to displacement from a residential rental unit as a result of a specified violation where the immediate health and safety of the residents is endangered, is entitled to receive relocation benefits from the owner.
- 4) Provides that any person who is responsible for a violation under the State Housing Law may be guilty of a misdemeanor, punishable by fine or imprisonment, or both.
- 5) Makes any action by any city, county, city and county, or other local governmental agency null and void if it denies to any individual or group of

individuals the enjoyment of residence, landownership, tenancy, or any other land use including the intended occupancy of any residential development by persons or families of very low, low, moderate, or middle income. (Government Code Section 65008)

- 6) Prohibits a city, county, city or county, or other local government agency from enacting or administering ordinances, pursuant to any law, that prohibit or discriminate against any residential development or denying or conditioning a residential development, because the development is intended for occupancy by persons and families of very low, low, or moderate income. (Government Code Section 65008)
- 7) Provides that the opportunity to seek, obtain, and hold housing without discrimination because of a protected class, including source of income. (Government Code Section 12921 (b).)
- 8) Prohibits various discriminatory housing accommodation practices based on any of the following: source of income, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, or genetic information. (Government Code Section 12955)
- 9) Prohibits an owner of housing from making a housing accommodation unavailable or denying access to a dwelling because of a protected class, including source of income. (Government Code Section 12955)
- 10) Prohibits discrimination through public or private land use practices, decisions, and authorizations because of a protected class, including source of income. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law that make housing opportunities unavailable. (Government Code Section 12955)
- 11) Pursuant to Department of Fair Employment and Housing (DFEH) Regulations 2 that it shall be unlawful for:
 - a) Any person to engage in any public or private land use practice that intentionally discriminates, or has a discriminatory effect based on membership in a protected class.
 - b) Including a practice that does any of the following in connection with housing opportunities or existing or proposed dwellings, if the practice intentionally discriminates or has a discriminatory effect on members of a protected class, as specified.

This bill:

- 1) Requires that, for mixed income multifamily structures, the occupants of the affordable housing units within the mixed-income multifamily structure shall have the same access to the common entrances, areas and amenities as the occupants of the market-rate housing units.
- 2) Prohibits a mixed-income multifamily structure from isolating the affordable housing units within that structure to a specific floor or an area on a specific floor.
- 3) Defines “affordable housing unit” as any residential dwelling unit that is restricted by deed or other recorded document as affordable housing for persons and families of low or moderate income.
- 4) Defines “common entrance” as any area used by the occupants of a mixed-income multifamily structure for ingress to or egress from that structure.
- 5) Provides that this bill is declaratory of existing law.

COMMENTS:

- 1) *Author’s statement.* “Under current law, a developer seeking to build a housing structure containing both market-rate and affordable housing units can construct that structure with separate common entrances, common areas, and common amenities for each set of occupants. In recent years, this type of development planning has come under increased scrutiny as a discriminatory housing practice. In 2019, the Pinnacle Pacific Heights project in Downtown San Diego received community opposition due to its dubious approach to satisfying its affordable housing requirement under the city’s density bonus program. The development proposed to erect two adjacent towers – one comprised entirely of affordable housing units and the other entirely of market-rate housing units – that had a separate common entrance for affordable housing tenants. Additionally, residents of the affordable housing tower would not have had access to the pool and roof deck amenities located in the market-rate tower. If the proposed project were approved, it would have marked the first time a development in San Diego would have put affordable units in a different building, as opposed to incorporating them into the same complex. AB 491 will the discriminatory housing practice of income segregation by creating a consistent statewide standard of equal access.”

- 2) *“Poor Door.”* Recent news stories covered cases in which developers, in New York City, San Diego, and West Hollywood, proposed housing developments with features that would discriminate against lower income residents. Developers proposed creating a separate entrance to housing for lower income residents nicknamed a “poor door” and limiting lower income residents’ access to amenities like a pool or rooftop deck. In the San Diego case, the development was market rate and subject to the local inclusionary housing ordinance, which restricted 10% of the units to affordable housing. The developer proposed constructing three towers, two that would be entirely market rate and one that would be affordable to lower income households and would include a roof-top deck and pool that the residents of the affordable structure would be unable to access. The development was ultimately denied at the planning stage and was modified to create a common entrance for all residents regardless of income.

The author points to a similar case in West Hollywood from 2014, in which a market rate developer subject to an inclusionary ordinance wanted to deny lower-income renters access to a pool that many of their units would look out on. The developer had also proposed a separate entrance for the affordable apartment area. That development failed to get approval from the Planning Commission.

- 3) *Existing prohibition on discrimination.* State law includes numerous prohibitions against discrimination in housing. The two most relevant to this bill are Government Code §65008 and the California Fair Employment and Housing Act (FEHA, Government Code §12955 et seq.) and its implementing regulations (2 CCR §12005 et seq.). Government Code Section 65008 prohibits a local government from using public or private land use practices, decisions, or authorizations to discriminate against low or moderate-income families or individuals. This prohibition applies to publicly subsidized projects, those that receive density bonus, or are subject to an inclusionary zoning ordinance. This bill applies to mixed-income developments in which the lower-income units are restricted by deed or other recorded document and would therefore be subject to existing law.

California's FEHA prohibits housing discrimination based on the protected classes of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information. Source of income is defined as Section 8 Housing Choice Vouchers and Department of Housing and Urban Development Veteran Affairs Supportive Housing Voucher. Discrimination includes restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law that

make housing opportunities unavailable. Although FEHA doesn't explicitly apply to lower income people, some lower income people fall into other categories of protected class and so receive the protection from discrimination provided by the FEHA.

The FEHA statute prohibits housing discrimination against any member of a protected class under FEHA, as well as discrimination based on the income of the intended occupants of the housing. This statute is designed to ensure that people are not denied "the enjoyment of residence, landownership, tenancy, or any other land use in this state" because they are low-income.

The Department of Fair Employment and Housing (DFEH) is the state agency tasked with receiving, investigating, and responding to complaints relating to housing discrimination. DFEH promulgates regulations to implement the FEHA, which prohibit a practice that intentionally discriminates or has a discriminatory effect on members of a protected class including, among other provisions, denies, restricts, conditions, adversely impacts, or renders infeasible the use of privileges, services, or facilities associated with housing opportunities or existing or proposed dwellings, or otherwise makes unavailable such privileges, services or facilities.

- 4) *State Housing Law.* The State Housing Law governs building standards for all new construction in California and was established to assure the availability of affordable housing and uniform statewide code enforcement to protect the health, safety, and general welfare of the public and occupants of housing and accessory buildings. It authorizes local governments to perform inspections and identify any building code or health and safety violations, which may result in a fine or imprisonment.

This bill would add to the State Housing Law that low-income occupants of a mixed income development have the same access to common entrances and to common areas and amenities as the occupants of market rate housing units. Given the existence of expansive existing law prohibiting discrimination in local land use decisions, the bill explicitly states that it is declaratory of existing law and should not be interpreted to limit the application of those laws or regulations.

- 5) *Opposition.* The Hollywood Chamber of Commerce is opposed to this bill because it "adds further regulations on how a developer must build their housing projects."

RELATED LEGISLATION:

AB 2344 (Gonzalez, 2020) — would have required an owner of a mixed-income multifamily residential structure to ensure that occupants of the affordable housing units within that structure are able to access the residential structure by the same entrances to that structure as occupants of the market rate units and have access to any common areas in the structure. *This bill was held in the Assembly Housing Committee at the request of the author.*

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

POSITIONS: (Communicated to the committee before noon on Friday, June 25, 2021.)

SUPPORT:

California Association of Realtors (Sponsor)
AIDS Healthcare Foundation
California Apartment Association

OPPOSITION:

Hollywood Chamber of Commerce

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