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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2023 - 2024 Regular**

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**Bill No:** AB 812 **Hearing Date:** 6/6/2023  
**Author:** Boerner  
**Version:** 5/30/2023  
**Urgency:** No **Fiscal:** No  
**Consultant:** Alison Hughes

**SUBJECT:** Housing development approvals: reserving affordable units in a cultural district for artists

**DIGEST:** This bill authorizes local governments to set aside 10% of any locally-required affordable housing units for artists within one mile of a state or locally designated cultural districts.

**ANALYSIS:**

*Existing law:*

- 1) Permits the legislative body of any county or city to adopt ordinances that require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low-income, or extremely low-income households.
- 2) Allows the California Arts Council to certify state-designated cultural districts that are areas with a concentration of cultural facilities, creative enterprises, or arts venues, as specified.
- 3) Provides that it is unlawful for the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of that person.
- 4) Allows affordable housing units created with low-income housing tax credits to be dedicated to tenants who are involved in artistic or literary activities.

**This bill:**

- 1) Defines “artist” as the creator of any work of visual, graphic, or performing art of any media, including but not limited to pain, drawing, sculpture, craft, photograph, film, or performance.
- 2) Provides that if a local government has an inclusionary housing ordinance, the local government may reserve up to 10% of those required affordable housing units for occupancy by artist if all of the following conditions are satisfied:
  - a) The units reserved are located within, or within one mile from, a state-designated cultural district, as specified, or any similar locally designated cultural district.
  - b) The local government adopts an ordinance for this purpose that does all the following:
    - i) It is consistent with the Local Tenant Preferences to Prevent Displacement Act, as specified.
    - ii) It prohibits an existing tenant from being evicted in favor of an artist.
    - iii) It contains a fair and comprehensive vetting process that includes, but is not limited to, initial and annual income verification consistent with applicable affordable housing laws and artists status verification.

**COMMENTS:**

- 1) *Author’s statement.* “Artists are the lifeblood of our cultural communities and help preserve the cultural footprint of the region. AB 812 would authorize a city and/or county to set aside up to 10 percent of deed-restricted housing units within a state or locally-designated cultural district for eligible artists and cultural workers. This prevents artists from having to move away from the neighborhoods they contribute so much to, simply because they can no longer afford to live there.”
- 2) *California’s Housing Crisis.* California has the largest concentration of severely unaffordable housing markets in the nation and the statewide average home value reached a new record in June 2022 at \$793,300. To keep up with demand, the state Department of Housing and Community Development (HCD) estimates that California must plan for the development of more than 2.5 million homes over the next eight years, and no less than one million of those homes must meet the needs of lower-income households (more than 640,000 very low-income and 385,000 low-income units are needed). For decades, not

enough housing was constructed to meet need, resulting in a severe undersupply of housing.

As a result of the severe housing shortage, millions of Californians, who are disproportionately lower-income and people of color, must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation—one in three households in the state don't earn enough money to meet their basic needs. A lack of affordable housing is the biggest contributor to homelessness. As housing costs continue to rise, rent becomes less affordable for lower-income households, who are forced to live beyond their means (paying more than 30% of income on housing costs) or are pushed out of their homes, leading to rapid increases in homelessness. Variation in rates of homelessness cannot be explained by variation in rates of individual factors such as poverty or mental illness, however, cities with higher rents and lower rental vacancy rates (i.e., tighter housing markets) are directly linked to higher per capita rates of homelessness.

- 3) *Local tenant preference policies.* Generally, anyone who qualifies for an affordable housing program based on income guidelines has an equal chance of receiving assistance. In order to reduce the displacement of local residents, however, local governments across the country have adopted preference policies that increase the likelihood that certain applicants that meet specified criteria obtain that housing. “Tenant preference” or “community preference” policies refer to policies that prioritize affordable housing applicants with some connection to an affordable housing unit’s location, and these policies have the potential to stabilize gentrifying areas and help residents vulnerable to displacement to remain in their neighborhoods. For example, these policies might give preference to a resident of the city where the housing is located, someone employed in the city, someone who has been displaced from the city under certain circumstances, or residents living in close proximity to the unit for which they are applying. This committee is aware of such policies adopted in California by the cities of San Francisco, Santa Monica, and Oakland.
- 4) *Artist housing needs and artist housing incentives.* There are approximately 93,000 professional artists in California,<sup>1</sup> and their mean hourly income of \$41.26 exceeds the statewide mean wage of \$34.27.<sup>2</sup> There is substantial variance in the incomes of artists, however, and a significant number of artists

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<sup>1</sup> Based on data from the Economic Development Department for the following professions: actors, art directors, craft artists, dancers, fine artists, music directors and composers, musicians and singers, photographers, writers and authors, and “artists and related workers: all other.” Data from the 1<sup>st</sup> quarter of 2022.

<https://labormarketinfo.edd.ca.gov/data/oes-employment-and-wages.html>

<sup>2</sup> Ibid.

qualify for affordable housing, which is typically available to households making less than 80% of the area median income.

One potential tool for creating artist-specific housing is through publicly-financed, 100% affordable housing projects dedicated to artists. Pursuant to the federal law governing federal low income housing tax credits, artist-only housing is an allowable use for tax credit projects and not a violation of fair housing standards.<sup>3</sup> There are several notable 100% artist projects in the state, including the 116-unit WAL project on R Street in Sacramento. Because public funding for affordable housing is limited, local governments have limited ability to create 100% affordable housing dedicated to artists.

Local governments have other tools to increase the supply of affordable housing generally for lower-income populations. Inclusionary housing ordinances require developers to include a percentage of affordable housing in a development, pay an in lieu fee, or dedicate land for affordable housing developments. Developers also can use density bonus law to request increased density and waivers of concession and incentives in return for including affordable housing in a development. Lastly, local governments can enact local tenant preference policies to prevent displacement of and provide affordable housing opportunities to local residents.

This bill would allow cities and counties to reserve 10% of their locally-required affordable housing units for artists in mixed-income housing projects built in cultural districts. At present there are 14 state designated cultural districts but an unknown number of locally designated cultural districts. For example, the city and county of San Francisco contains two state designated cultural districts and an additional eight locally designated cultural districts. Local governments may already reserve units for artists in mixed-income housing projects, but no such program exists in the state. This may be because local governments believe reserving units for artists would run afoul of the state's Fair Employment and Housing Law (FEHA). By affirming in state law that it is legal for local governments to reserve units for artists, this bill would clarify that such an action would not interfere with FEHA.

- 5) *Zero-sum game.* While California has invested heavily in recent years in programs that build affordable housing and enacted policies to incentivize housing production more broadly, as noted above, the housing crisis in California has had a detrimental impact upon many Californians, most

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<sup>3</sup> US Internal Revenue Code Section 42(g)(9)

especially for those at the lowest-end of the income spectrum. Policymakers must ensure that all vulnerable populations receive equitable access to safe affordable housing, including the homeless, persons with disabilities, unaccompanied youth, veterans, and domestic violence survivors, just to name a few. Unfortunately, however, there simply are not enough resources available to finance the construction of housing necessary to meet the needs of all vulnerable populations. This bill would provide an incentive to target housing for artists, over and above other lower-income and vulnerable populations. Additionally, incentives for one population over others often invites other similar set-asides. The committee may wish to consider the implications of benefitting artists over other lower-income, housing insecure populations, particularly when locals already have the authority to provide local tenant preferences to prevent displacement. **The committee may wish to consider narrowing the scope of the bill to one of the following: (1) within ½ mile of a state cultural district and exclusively within the boundaries of a local cultural district, or (2) within one mile of a state cultural district only (and remove the applicability of the bill to locally designated districts).**

## RELATED LEGISLATION

**SB 649 (Cortese, Chapter 649, Statutes of 2022)** -- created a state policy supporting local tenant preferences for lower income households, that are subject to displacement risk, and authorized local governments and developers in receipt of specified affordable housing funds to restrict occupancy to those at risk of displacement.

**AB 189 (Bloom, Chapter 396, Statutes of 2015)** -- required the California Arts Council (CAC) to establish criteria and guidelines for, and to certify, "state-designated cultural districts", as defined.

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

**POSITIONS:** (Communicated to the committee before noon on Wednesday, May 31, 2023.)

## SUPPORT:

Actors' Equity  
 Art Works Downtown  
 Arts for LA  
 Brava! for Women in The Arts  
 California Arts Advocates

California Cultural Districts Coalition  
Encinitas Friends of The Arts  
Japanese American Cultural & Community Center  
Main Street Oceanside, INC.  
Nevada County Arts Council  
San Diego Regional Arts and Culture Coalition  
Surfing Madonna Oceans Project  
5 Individuals

**OPPOSITION:**

None received.

**-- END --**