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

Bill No:	SB 4	Hearing Date:	3/21/2023
Author:	Wiener		
Version:	2/22/2023		
Urgency:	No	Fiscal:	Yes
Consultant:	Alison Hughes		

SUBJECT: Planning and zoning: housing development: higher education institutions and religious institutions

DIGEST: This bill requires a housing development project to be a use by right on land owned by an independent institution of higher education or a religious institution, as specified.

ANALYSIS:

Existing law:

- 1) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.
- 2) Requires the board of zoning adjustment or zoning administrator to hear and accept applications for conditional uses or other permits when the zoning ordinance requires.
- 3) Establishes, pursuant to SB 35 (Wiener, Chapter 366, Statutes of 2017), a streamlined, ministerial approval process, for certain infill multifamily affordable housing projects proposed in local jurisdictions that have not met their Regional Housing Needs Assessment (RHNA) allocation.
- 4) Establishes, pursuant to AB 2162 (Chiu, Chapter 753, Statutes 2018), that supportive housing shall be a use by right in all zones where multifamily and mixed uses are allowed.
- 5) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community.

- 6) Requires that cities and counties produce, and the Department of Housing and Community Development (HCD) certify, a housing element to help fulfill the state's housing goals. In metropolitan areas, these housing elements are required every eight years. Each housing element must contain:
- a) An assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs;
 - b) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing;
 - c) An implementation plan that identifies any particular programs or strategies being undertaken to meet their goals and objectives, including their RHNA target; and
 - d) An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period.
- 7) Requires a local government to determine whether each site in the site inventory can accommodate some portion of the jurisdiction's share of the RHNA by income category during the housing element planning period. A community either must use the "default zoning densities" or "Mullin densities" to determine whether a site is adequately zoned for lower income housing or must provide an alternative analysis. Current Mullin densities:
- a) 15 units/acre—cities within non-metropolitan counties; nonmetropolitan counties with metropolitan areas
 - b) 10 units/acre—unincorporated areas in all non-metropolitan counties not included in the 15 units/acre category
 - c) 20 units/acre—suburban jurisdictions
 - d) 30 units/acre—jurisdictions in metropolitan counties

This bill:

- 1) Defines "qualified developer" as a local entity, a developer that is a non-profit corporation, as specified, or a developer that contracts with a nonprofit corporation, as specified.
- 2) Defines "use by right" as a development project that meets both conditions:

- a) The development project does not require a conditional use permit, planned unit development permit, or other discretionary local government review.
- b) The development project is not a project for purposes of the California Environmental Quality Act (CEQA).

Housing project requirements

- 3) Requires, upon request by an applicant, a housing development project to be a use by right if all the following criteria are satisfied:
 - a) The development is on land owned on or before January 1, 2024 by an independent institution of higher education or a religious institution.
 - b) The development is located on a parcel 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 wholly within the boundaries of an urbanized area or urban cluster, and at least 75% of the perimeter of the site adjoins parcels that are developed for urban uses.
 - c) The development is not one of several environmentally sensitive sites, as specified.
 - d) The development is not located on a site where any of the apply:
 - i) The development is not located on a site that would require the demolition of the following housing types:
 - (1) Housing subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to moderate- or lower-income households.
 - (2) Housing subject to rent control.
 - (3) Housing that has been occupied by tenants within the past 10 years.
 - ii) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submitted an application under this bill.
 - iii) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

- iv) The property contains housing units that are occupied by tenants and the units at the property are, or were, offered to the general public by the subdivider or subsequent owner of the property.
 - e) The development is not adjoined to any site where more than $\frac{2}{3}$ of the square footage of the site is dedicated to industrial use.
 - f) The development project is located on a site that is $\frac{1}{4}$ acre in size or greater.
 - g) All of the units are for lower income households, except that up to 20% of the units may be for moderate-income households and 5% may be for staff of the independent institution of higher education or religious institution that owns the land. Units shall be subject to a recorded deed restriction for at least the following periods of time:
 - i) 55 years for units that are rented.
 - ii) 45 years for units that are owner occupied.
 - h) Any demolition of existing dwelling units shall comply with specified relocation assistance and anti-displacement provisions.
- 4) Provides that a housing development project permitted under this bill shall be entitled to the following density:
- a) If the development is located in a zone that allows residential uses, “Mullin densities” apply (see (7) under the “existing law” section). If the local government allows for greater density, or greater density or building heights on an adjacent parcel, the greater density or building height shall apply. The housing development project shall be eligible for a density bonus.
 - b) If the development is located in a zone that does not allow residential uses, 40 units per acre and a height of one store above the maximum height otherwise applied to the parcel. If the local government allows for greater residential density or building heights on that parcel, or an adjacent parcel, the greater density or height shall apply. The housing development project shall be eligible for a density bonus.
- 5) Requires a development proponent shall provide off-street parking up to one space per unit, unless a local ordinance provides for a lower standard of parking.

- 6) Prohibits a local government from imposing a parking requirement if either of the following are true:
 - a) The parcel is located within ½ mile walking distance of public transit, as specified.
 - b) There is a car share vehicle located within one block of the parcel.
- 7) Requires a local government, within specified timeframes, to provide written documentation if the proposed development is in conflict with any of the objective planning standards.

Labor Standards

- 8) An applicant must certify to the local government that either of the following is true:
 - a) The entirety of the project is a public work; or
 - b) A development that contains more than 10 units and is not entirely a public work shall be subject to the following:
 - i) All construction workers employed in the execution of the development must be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as specified, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate;
 - ii) The developer must ensure that 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; and
 - iii) All contractors and subcontractors for those portions of the development that are not a public work must maintain and verify payroll records, as specified, and make those records available for inspection and copying. This requirement does not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure.

- 9) Requires that the obligation of the contractors and subcontractors to pay prevailing wages are subject to the following enforcement provisions:
 - a) They may be enforced by the Labor Commissioner, an underpaid worker, and a joint labor-management committee through a civil action, as specified; and
 - b) If a civil wage and penalty assessment is issued, the contractor, subcontractor and surety on a bond issued to secure the wages covered by the assessment shall be liable for specified liquidated damages.
 - c) These enforcement provisions do not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure.
- 10) The requirement that the employer pay prevailing wages does not apply to those portions of development that are not a public work if otherwise provided in a bona fide collective bargaining agreement covering the worker.
- 11) For a development of 50 or more housing units, the development proponent must require in contracts with construction contractors, and must certify to the local government, that each contractor of any tier who will employ construction craft employees or will let subcontracts for at least 1,000 hours must ensure all of the following:
 - a) A contractor with construction craft employees must either participate in an apprenticeship program approved by the State of California Division of Apprenticeship Standards, as specified, or request the dispatch of apprentices from a state-approved apprenticeship program, as specified. A contractor without construction craft employees must show a contractual obligation that its subcontractors meet these requirements;
 - b) Each contractor with construction craft employees must make health care expenditures for each employee, as specified. A contractor without construction craft employees must show a contractual obligation that its subcontractors comply with this requirement. Qualifying expenditures are credited toward compliance with prevailing wage payment requirements;
 - c) A construction contractor is deemed in compliance with the requirements of (a) and (b), above, if it is signatory to a valid collective bargaining

agreement that requires utilization of registered apprentices and expenditures on health care for employees and dependents; and

- d) The development proponent is subject to reporting requirements, as specified.

COMMENTS:

- 1) *Author's statement.* "SB 4 would make building affordable housing easier, faster, and cheaper for faith-based institutions and nonprofit colleges that want to do so. Many of these are already community anchors, and this would help them build stable, safe, affordable housing for local residents and families and open doors to high-resource neighborhoods. Unfortunately, many of these institutions are located in areas that are not zoned to permit multifamily housing. This means the religious institution and affordable housing developer partner have to rezone the land, which is a tricky process that costs money and can cause long delays in building the affordable housing units Californians need. These religious institutions and nonprofit colleges would partner with affordable housing developers and agree to maintain the affordability of these homes for at least 55 years for rental housing and 45 years for homeownership opportunities. Depending on the location of the property and proximity to commercial areas and different types of residential neighborhoods, these institutions would be able to build new affordable homes without undergoing costly and time intensive rezonings."

- 2) *Housing needs and approvals generally.* Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs, which are allocated through the RHNA process. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the California Environmental Quality Act (CEQA), while projects permitted ministerially generally are not.

In addition to bypassing the CEQA process and the potential for litigation, housing streamlining provides more certainty as to what is required for permitting approval, and generally also requires approval within specified timelines. This certainty and shortened approval timelines are particularly beneficial to affordable housing developers seeking funding from multiple federal, state, and local public funding sources. Additionally, this certainty provides more opportunities for multifamily developers to build in jurisdictions that are not housing friendly. Some local governments have intentionally made entitlement and permitting onerous to such a degree developers – and in particular affordable housing developers -- have avoided working in those jurisdictions altogether. Longer, uncertain permitting situations are risky for developers, and could kill projects all together. Streamlining unlocks more land opportunities, particularly in higher-resource, unfriendly housing cities.

- 3) *Other streamlining bills.* Since the passage of SB 35 in 2017, the Legislature has passed several other bills to streamline the approval of other multifamily housing developments. Notably, AB 2162 (Chiu, Chapter 753, Statutes of 2018) streamlined affordable housing developments that include a percentage of supportive housing units and onsite services. This process was later expanded by SB 744 (Caballero, Chapter 346, Statutes of 2019), which created a CEQA exemption for developments that qualify for No Place Like Home funding. AB 1783 (Rivas, Chapter 866, Statutes of 2019) created a new streamlined, ministerial approval process for agricultural employee housing that is not dormitory style housing, on land zoned for agricultural uses, and AB 2011

(Wicks, Chapter 647, Statutes of 2022) requires specified housing development projects to be a use by right on specified sites zoned for retail, office, or parking.

According to data provided by local governments in their annual progress reports (APRs) between 2018 and 2021¹ statewide, SB 35 has resulted in 19,239 units, 60% of which are affordable to lower income households. One affordable housing developer, Related, testified in a joint oversight hearing of the Senate Housing Committee and Assembly Housing and Community Development Committee on February 28th, 2023 that they have entitled 818 Units in seven projects, with another 1,176 in process — some just months away. In the same hearing, a representative of San Francisco testified that SB 35 has reduced housing permitting times in San Francisco by four times (3-6 months versus 18-24 months). Clear timelines for affordable housing permitting is particularly critical as affordable developers often require between eight and 12 different sources of funding to make an affordable housing development pencil financially, and any delays risk the loss of available public funds.

- 4) *Where does this bill apply?* This bill applies to land owned by a religious institution and land owned by nonprofit colleges, specifically non-public, non-profit higher education institutions that are accredited by an agency recognized by the US Department of Education. According to a 2020 report UC Berkeley Turner Center evaluating a prior version of this bill, the potential for siting new housing on religious property is substantial. The Turner Center identified over 38,000 acres of potentially developable land statewide that are currently zoned for religious use. Of this, 45% of land is located in the state’s “high” or “highest” resourced opportunity areas, signaling an opportunity for building housing in neighborhoods with lower poverty rates and greater economic and educational opportunities.
- 5) *Affordability threshold.* This bill requires units to be restricted to 80% AMI or lower, except that 20% of units may be designated for moderate incomes up to 120% AMI. The rents for units that are offered to households earning between 80% and 120% of AMI should not exceed 30% of income for a moderate income household or homebuyer for a unit of a similar size and bedroom count in the same zip code.
- 6) *Adopting AB 2011 (Wicks, 2022) labor standards.* This bill adopts the AB 2011 labor standards. These provisions require prevailing wages for all construction

¹ 2022 APRs are not due to HCD until April 1, 2023, so 2022 data is not yet available.

workers on projects with 10 or more units, and with enforcement provisions by private sector labor management committees. Additionally, in projects with over 50 units, all construction workers are entitled to healthcare benefits and paid prevailing wages. These larger projects also require all contactors to either participate in state approved apprenticeship programs or request the dispatch of apprentices. In other words, projects move forward if one trades apprenticeship programs cannot or will not dispatch apprentices. According to the sponsors, half of California's 300,000 housing construction workers rely on Medi-Cal or are uninsured. These provisions will allow affordable housing projects to move forward only if they provide high wages and, for larger projects, full healthcare benefits. Additionally, the sponsors note the goal is to increase demand for workers who can meet more specific "skilled and trained" standards in the future.

- 7) *Opposition.* The State Building and Construction Trades and the California Labor Federation argue that the labor standards are insufficient for several reasons, including: (1) that the requirement to pay for healthcare may be preempted by federal law; (2) that the apprenticeship standards are inadequately specified; (3) that developers can split projects into multiple projects to stay under the threshold where healthcare expenditures and apprenticeships are required; and (4) the lack of a skilled and trained workforce. Additionally, they ask that the bill include a sunset. California Contact Cities Association and the City of Brentwood oppose due to concerns over loss of local control and assertion that this bill would disregard local zoning and land use planning documents. The California Association of Realtors are opposed unless amended to place height specified limitations on projects and to limit mixed uses for the projects to childcare facilities and facilities operated by nonprofit community based organizations.
- 8) *Double-referral.* This bill was also referred to the Senate Governance and Finance Committee.

RELATED LEGISLATION:

AB 2011 (Wicks, Chapter 647, Statutes of 2022) — required specified housing development projects to be a use by right on specified sites zoned for retail, office, or parking, as specified.

AB 2162 (Chiu, Chapter 753, Statutes of 2018) — streamlined affordable housing developments that include a percentage of supportive housing units and onsite services.

SB 35 (Wiener, Chapter 366, Statutes of 2017) — created a ministerial approval process for specified infill, multifamily housing development projects.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, March 15, 2023.)

SUPPORT:

California Conference of Carpenters (Co-Sponsor)
Inner City Law Center (Co-Sponsor)
Jewish Public Affairs Committee (Co-Sponsor)
Non-profit Housing Association of Northern California (NPH) (Co-Sponsor)
Southern California Association of Non-profit Housing (SCANPH) (Co-Sponsor)
21st Century Alliance
Abundant Housing LA
Active San Gabriel Valley
Activesgv
All-Electric California
Ascencia
Bay Area Community Health Advisory Council (BACHAC)
Bay Area Council
Bay District of The California-Nevada Annual Conference of The United Methodist Church
Best Techs Contracting Design Build Remodel
BuildCasa
Burlingame United Methodist Church
California Apartment Association
California Association of Local Housing Finance Agencies
California Community Builders
California Home Builders Alliance
California Housing Consortium
California Housing Partnership
California School Employees Association (CSEA)
California State Council of Laborers
California State Council of Service Employees International Union (SEIU)
California YIMBY
Carpenter Local Union 1599
Carpenters Local 152
Carpenters Local 1607
Carpenters Local 213

Carpenters Local 323
Carpenters Local 35
Carpenters Local 562
Carpenters Local 619
Carpenters Local 661
Carpenters Local 701
Carpenters Local 714
Carpenters Local 721
Carpenters Local 951
Carpenters Local Union #1109
Carpenters Local Union 1789
Carpenters Union Local 180
Carpenters Union Local 217
Carpenters Union Local 405
Carpenters Union Local 46
Carpenters Union Local 505
Carpenters Union Local 605
Carpenters Union Local 713
Carpenters Union Local 751
Carpenters Union Local 805
Carpenters Women's Auxiliary 001
Carpenters Women's Auxiliary 007
Carpenters Women's Auxiliary 101
Carpenters Women's Auxiliary 1904
Carpenters Women's Auxiliary 417
Carpenters Women's Auxiliary 710
Carpenters Women's Auxiliary 91
Castro Valley Democratic Club
Catholic Charities San Francisco, Marin, San Mateo Counties
City and County of San Francisco
City of Santa Monica
Climate Resolve
Coastside Jewish Community
Community Coalition
Community Corporation of Santa Monica
Community Economics, INC.
Con-Com-T, Inc
Congregation Beth Am
Congregation Beth Jacob
Congregational Church of Belmont
Congregational Church of San Mateo
Construction Employers' Association

Council of Infill Builders
Cupertino for All
Door of Hope
Downtown Women's Center
Drywall Lathers Local 9109
Drywall Lathers Union Local 9068
Drywall Lathers Union Local 9083
Drywall Local Union 9144
East Bay Asian Local Development Corporation
East Bay for Everyone
Eden Housing
Eden United Church of Christ
End Poverty in California (EPIC)
Enterprise Community Partners, INC.
Episcopal Community Services of San Francisco
Everybody's Long Beach
Faith Action for All
Faith in The Valley
Fieldstead and Company, INC.
Firm Foundation Community Housing
First Congregational Church of San Jose
Friends Committee on Legislation of California
Greenbelt Alliance
Grow the Richmond
Habitat for Humanity California
Hillsdale United Methodist Church
Holos Communities
Hope Solutions
Hopics
House Farm Workers!
Housing Action Coalition
Housing Leadership Council of San Mateo County
How to ADU
Ikar
Industrial Carpenters Union Local 2236
Institute of The Sisters of Mercy of The Americas
Interfaith Solidarity Network
International Union of Operating Engineers, Cal-Nevada Conference
Island United Community Church
Jewish Community Relations Council (SACRAMENTO)
John and Marilyn Wells Family Foundation, Stories From the Frontline
Justice & Witness Ministry of Plymouth United Church of Christ

LA Forward
LA Voice
Lafayette Orinda Presbyterian Church
Linc Housing
Livable Communities Initiative
Local Initiatives Support Corporation (LISC) Bay Area
Long Beach Gray Panthers
Los Angeles Area Chamber of Commerce
Los Angeles Business Council
Los Angeles Homeless Services Authority
Lutheran Office of Public Policy - California
Mayor of City & County of San Francisco London Breed
Menlo Together
Mercy Housing
Merritt Community Capital Corporation
Messiah Lutheran Church Redwood City
Midpen Housing Corporation
Millwrights Local 102
Mission Bay Community Church
Mountain View YIMBY
Multi-faith Action Coalition
Napa Valley Unitarian Universalists Social Justice Committee
Napa-Solano for Everyone
Nor Cal Carpenters Union
Northern Neighbors
One San Mateo
Our Future Los Angeles
PACT (People Acting in Community Together)
PATH (People Assisting the Homeless)
Peninsula for Everyone
People for Housing - Orange County
People for Housing Orange County
Pile Drivers Local 34
Place Initiative
Presbytery of San Gabriel
Presbytery of The Pacific
Progress Noe Valley
Resources for Community Development
Rt. Rev. John Harvey Taylor, Bishop of The Episcopal Diocese of Los Angeles
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Foundation
San Francisco Housing Accelerator Fund

San Francisco YIMBY
San Pedro United Methodist Church
Santa Cruz YIMBY
Santa Rosa YIMBY
Sierra Foothills Unitarian Universalists
Silicon Valley Community Foundation
Skyline Community Church, United Church of Christ,
SLO County YIMBY
South Bay YIMBY
Southside Forward
Southwest Regional Council of Carpenters
St James Ame Zion
St. Joseph Center
St. Mark's Episcopal Church
St. Mary's Episcopal Church in Los Angeles
Stories From the Frontline
Sustainable Claremont
SV@Home Action Fund
Tabernacle Community Development Corporation
The John Stewart Company
The People Concern
The Unity Council
Trinity Baptist Church of San Mateo
Union Station Homeless Services
United Way of Greater Los Angeles
Urban Environmentalists
Venice Community Housing Corporation
Wakeland Housing and Development Corporation
Walnut Creek Presbyterian Church
Woodside Road United Methodist Church
YIMBY Action
7 Individuals

OPPOSITION:

California Association of Realtors
California Contract Cities Association
California Labor Federation, AFL-CIO
Catalysts for Local Control
City of Brentwood
Housing Contractors of California
Mission Street Neighbors

State Building and Construction Trades Council of CA
1 Individual

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