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

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**Bill No:** AB 1449 **Hearing Date:** 7/10/2023  
**Author:** Alvarez  
**Version:** 5/1/2023  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Alison Hughes

**SUBJECT:** Affordable housing: California Environmental Quality Act: exemption

**DIGEST:** This bill exempts certain housing affordable housing projects from the California Environmental Quality Act (CEQA), 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 decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance.
- 3) Establishes the CEQA, which generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those impacts to the extent feasible. CEQA applies when a development project requires discretionary approval from a local government. (See “Comments” below for more information.)
- 4) Provides for the following CEQA exemptions or housing streamlining:
  - a) *CEQA exemption for interim motel conversions.* SB 450 (Umberg, Chapter 344, Statutes of 2020) exempted interim motel conversion projects from CEQA, until January 1, 2025, provided the project does not result in an expansion of more than 10% of the floor area of any individual living unit in

the structure or does not result in any significant effects relating to traffic, noise, air quality, or water quality. “Interim motel housing project” is defined as conversion of a motel, hotel, residential hotel, or hostel into supportive or transitional housing.

- b) *CEQA exemption for Project Homekey projects.* AB 83 (Committee on Budget, Chapter 15, Statutes of 2020) included, among other provisions, an exemption from CEQA requirements, until July 1, 2021, for Project Homekey projects if certain requirements are met. Project Homekey is an initiative to purchase and rehabilitate housing, including hotels, motels, vacant apartment buildings, and other types of innovating housing, and convert them into permanent, long-term housing for people experiencing or at risk of homelessness.
- c) *Streamlining for homeless shelters.* AB 101 (Committee on Budget, Chapter 159, Statutes of 2019), among other provisions, defined low-barrier navigation centers as high-quality, low-barrier service-enriched shelters focused on moving people into permanent housing while connecting them with services. AB 101 required, until January 1, 2027, low-barrier navigation centers to be a use by right in areas zoned for mixed uses and non-residential zones permitting multifamily uses if the development meets certain requirements.
- d) *Streamlining for permanent supportive housing.* AB 2162 (Chiu, Chapter 753, Statutes of 2018) streamlined affordable housing projects that include supportive housing and onsite supportive services, by providing that supportive housing shall be a use by right in all zones where multifamily and mixed uses are allowed.
- e) *Streamlined ministerial approval for certain housing projects.* SB 35 (Wiener, Chapter 366, Statutes of 2017) established a ministerial approval process, not subject to CEQA, for certain multifamily affordable housing projects proposed in local jurisdictions that have not met their RHNA allocation.

**This bill:**

- 1) Exempts from CEQA an affordable housing project that satisfies all of the following requirements:
  - a) At least two-thirds of the square footage of the project is designated for residential use;
  - b) All residential units are dedicated to lower income households, as defined;
  - c) The project meets specified labor standards, including that all construction workers are paid the prevailing wage, and the labor standards can be

enforced by the Labor Commissioner, an underpaid worker, or a joint labor-management committee;

- d) At least 75% of the perimeter of the project site adjoins parcels that are developed with urban uses; and
- e) The project is located on parcels that meet any of the following:
  - i) In a city where the city boundaries include some portion of either an urbanized area or urban cluster;
  - ii) In an unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster;
  - iii) Within one-half mile walking distance to either a high-quality transit corridor or a major transit stop;
  - iv) In a very low vehicle travel area, as defined; or
  - v) Within two miles for rural areas, and one mile for all other areas, of six or more specified amenities.

2) Requires the affordable housing project to meet all of the following requirements:

- a) The affordable housing project is subject to a recorded California Tax Credit Allocation Committee (TCAC) regulatory agreement for at least 55 years upon completion of construction;
- b) The affordable housing project site can be adequately served by existing utilities or extensions; and
- c) A public agency confirms all of the following:
  - i) The project is not built on environmentally sensitive or hazardous land, as specified;
  - ii) For a vacant site, the project site does not contain tribal cultural resources that could be affected by the development which cannot be mitigated, as specified;
  - iii) The site has tested for hazardous substances, and any hazardous substances must be remediated, as specified; and
  - iv) For a project site where multifamily housing is not a permitted use, all of the following are met:
    - (1) None of the housing is located within 500 feet of a freeway;
    - (2) None of the housing is located within 3,200 feet of a facility that actively extracts or refines oil or natural gas; and
    - (3) The project site is not within a very high fire hazard severity zone.

- 3) Requires the lead agency to file a notice of exemption with the Office of Planning and Research and the relevant county clerk.
- 4) Sunsets January 1, 2033.

**COMMENTS:**

- 1) *Author's statement.* "California is in the midst of a housing crisis. Consider a recent report from McKinsey on the California housing crisis, which found that California is ranked 49th for housing units per capita, 2.5 million units short of demand (which will jump to 3.5 million by 2025), and losing \$140 billion annually in economic output because of our lack of housing. Despite its good intentions, CEQA has played a significant role in preventing necessary housing from being built. The Pacific Research Institute produced a report on CEQA arguing that housing projects subject to CEQA take years longer to get started and add hundreds of thousands of dollars in costs when they go through the CEQA process and face litigation.

These costs might be acceptable if they weren't being abused. The Center for Jobs and the Economy with the California Business Roundtable found that 50% of all housing projects were challenged under CEQA. Meanwhile, Holland & Knight found that between 1997-2012, 62% involved infill development projects, and 67% were in part brought by a neighborhood group, homeowner association, or an entity established for the purpose of bringing a CEQA lawsuit. A CEQA exemption for clearly and narrowly defined affordable housing projects, which includes location, labor, and environmental requirements, is critical to resolving our housing crisis."

- 2) *CEQA, exemptions, and ministerial approvals.* CEQA applies when a development project requires discretionary approval from a local government agency. When a local agency has the discretion to approve a project, its CEQA evaluation begins with deciding whether an activity qualifies as a project subject to CEQA review. If an activity is deemed a "project," the agency decides whether it is exempt from compliance with CEQA under either a statutory or a categorical exemption. Statutory exemptions are activities the Legislature has excluded from CEQA despite potential environmental impacts. If a project is statutorily exempt, it can be implemented without a CEQA evaluation.

In addition to statutory exemptions, the Legislature specifically directed the Secretary of the California Natural Resources Agency to designate categorical exemptions from CEQA. Categorical exemptions include projects that the

Secretary deems do not have a significant impact on the environment. The CEQA Guidelines, found in Title 14 of the California Code of Regulations, set forth more than two dozen categorical exemptions covering a wide range of projects, from minor alterations of existing facilities to construction of certain types of buildings. As with statutory exemptions, if the project is categorically exempt, no formal evaluation is required, and the project can be implemented without a CEQA evaluation.

In recognition of this issue, the state has created multiple statutory and regulatory exemptions from CEQA for residential projects, including ones specific for affordable housing. However, housing developers report that many of these exemptions include subjective provisions that make them easy to challenge, and thus difficult to utilize. Because of these difficulties, affordable housing projects are increasingly utilizing ministerial approval processes – which bypass CEQA – provided by SB 35 (Wiener, Chapter 366, Statutes of 2017) and AB 2162 (Chiu, Chapter 753, Statutes of 2018).

- 3) *A new exemption.* This bill would create a new statutory CEQA exemption for affordable housing projects. To qualify, the affordable housing projects would need to meet objective standards, cannot be located on environmentally sensitive sites, and be located on an infill site. Eligible projects must be near a major transit stop, a very low vehicle travel area, or approximate to at least six specified amenities. To ensure that the workers building the housing are well compensated, the project must meet the labor standards enacted by AB 2011 (Wicks, Chapter 647, Statutes of 2022). These standards include that all construction workers are paid the prevailing wage, and the labor standards can be enforced by the Labor Commissioner, an underpaid worker, or a joint labor-management committee. Such labor standards are unprecedented for a CEQA exemption.

The CEQA exemption afforded by this bill would apply to a range of actions taken by a public agency to facilitate the creation of eligible affordable housing projects, including:

- a) The issuance of the entitlement by the local agency;
- b) Planning for the land via rezoning, specific plan amendments, or general plan amendments required specifically and exclusively to allow the construction of an affordable housing project;
- c) Providing the land via lease, conveyance, or encumbrance, or facilitating those actions; and
- d) Providing financial assistance to the project.

4) *Here, there, and everywhere.* This bill was heard in the Senate Environmental Quality Committee on June 21 and received a vote of 6-0.

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

**POSITIONS:** (Communicated to the committee before noon on Wednesday, July 5, 2023.)

**SUPPORT:**

California Housing Consortium (Co-Sponsor)  
California Housing Partnership (Co-Sponsor)  
Housing California (Co-Sponsor)  
American Planning Association, California Chapter  
East Bay for Everyone  
East Bay YIMBY  
Eden Housing  
Grow the Richmond  
How to ADU  
Midpen Housing Corporation  
Mountain View YIMBY  
Napa-Solano for Everyone  
Northern Neighbors  
Peninsula for Everyone  
People for Housing Orange County  
Planning and Conservation League  
Progress Noe Valley  
Resources for Community Development  
San Diego Housing Commission  
San Francisco YIMBY  
Santa Cruz YIMBY  
Santa Rosa YIMBY  
Slo County YIMBY  
South Bay YIMBY  
Southern California Association of Non-profit Housing (SCANPH)  
Southside Forward  
Supportive Housing Alliance  
The Pacific Companies  
Urban Environmentalists  
Ventura County YIMBY  
YIMBY Action

**OPPOSITION:**

None received.

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