AMENDED IN SENATE FEBRUARY 22, 2023

SENATE BILL No. 4

Introduced by Senator Wiener
(Principal ~~coauthor: Assembly Member~~ *coauthors: Assembly Members McKinnor and* Wicks)
(Coauthors: Senators ~~Eggman and Gonzalez~~) *Becker, Cortese, Eggman, Gonzalez, Menjivar, and Skinner)*
(Coauthors: Assembly Members *Alvarez, Friedman,* Gabriel, ~~McKinnor,~~ *Quirk-Silva,* and Ward)

December 5, 2022

An act to add Section 65913.16 to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as amended, Wiener. Planning and zoning: housing development: higher education institutions and religious institutions.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development, and the development of certain lands outside its boundaries, that includes, among other mandatory elements, a housing element. That law allows a development proponent to submit an application for a development that is subject to a specified streamlined, ministerial approval process not subject to a conditional use permit, if the development satisfies certain objective planning standards.

Existing law, the Zenovich-Moscone-Chacon Housing and Home Finance Act, establishes the California Tax Credit Allocation Committee within the Department of Housing and Community Development. Existing law requires the committee to allocate state low-income housing tax credits in conformity with state and federal law that establishes a

maximum rent that may be charged to a tenant for a project unit constructed using low-income housing tax credits.

This bill would require that a housing development project be a use by right upon the request of an applicant who submits an application for streamlined approval, on any land owned by an independent institution of higher education or religious institution on or before January 1, 2024, if the development satisfies specified criteria, including that the development is not adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use. The bill would define various terms for these purposes. Among other things, the bill would require that 100% of the units, exclusive of manager units, in a housing development project eligible for approval as a use by right under these provisions be affordable to lower income households, except that 20% of the units may be for moderate-income households, ~~provided that all of the units~~ *and 5% of the units may be for staff of the independent institution of higher education or the religions institution that owns the land, provided that the units affordable to lower income households* are ~~provided~~ *offered* at affordable rent, as set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee, or affordable housing cost, as specified. The bill would authorize the development to include ancillary uses on the ground floor of the development, as specified.

This bill would specify that a housing development project that is eligible for approval as a use by right under the bill is also eligible for a density bonus or other incentives or concessions, except as specified. The bill would require a development subject to these provisions to provide off-street parking of up to one space per unit, unless a local ordinance provides for a lower standard of parking, in which case the ordinance applies. The bill would prohibit a local government from imposing any parking requirement on a development subject to these provisions if the development is located within one-half mile walking distance of *public transit, either* a high-quality transit corridor or *a* major transit stop, as those terms are defined, ~~and~~ *or it is* within one block of a car share vehicle.

This bill would require a local government that determines a proposed development is in conflict with any objective planning standards, as specified, to provide the developer with written documentation explaining those conflicts under a specified timeframe. The bill would ~~require a local government to approve a development~~ *provide that the development shall be deemed to satisfy the required objective planning*

standards if the local government fails to provide the requisite documentation explaining any conflicts. The bill would authorize a local government to conduct a design review, as described, only if the design review focuses on compliance with the requisite criteria of a streamlined, ministerial review process. The bill would prohibit a local government from using a design review, as specified, from inhibiting, chilling, or precluding a streamlined, ministerial approval. The bill would require a local government to issue a subsequent permit for developments approved under the provisions of this act.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA does not apply to the ministerial approval of projects.

This bill, by requiring approval of certain development projects as a use by right, would expand the exemption for ministerial approval of projects under CEQA.

By adding to the duties of local planning officials with respect to approving certain development projects, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

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Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 65913.16 is added to the Government Code, to read:

65913.16. (a) For purposes of this section:

(1) "Applicant" means a qualified developer who submits an application for streamlined approval pursuant to this section.

(2) "Development proponent" means a developer that submits a housing development project application to a local government under the streamlined, ministerial review process pursuant to this chapter.

(3) "Health care expenditures" include contributions pursuant to Section 501(c) or (d) or 401(a) of the Internal Revenue Code and payments toward "medical care" as defined in Section 213(d)(1) of the Internal Revenue Code.

(4) "Housing development project" has the same meaning as defined in Section 65589.5.

~~(2)~~

(5) "Independent institution of higher education" has the same meaning as defined in Section 66010 of the Education Code.

(6) "Industrial use" means utilities, manufacturing, transportation storage and maintenance facilities, and warehousing facilities. "Industrial use" does not include power substations or utility conveyance such as power lines, broadband wires, and pipes.

~~(3)~~

(7) "Local government" means a city*, including a charter city,* county*, including a charter county,* or city and county*,* ~~whether general law or chartered.~~ *including a charter city and county.*

~~(4)~~

(8) "Qualified developer" means any of the following:

(A) A local public entity, as defined in Section 50079 of the Health and Safety Code.

(B) (i) A developer that is a nonprofit corporation, a limited partnership in which the managing general partner is a nonprofit corporation, or a limited liability company in which the managing member is a nonprofit corporation.

(ii) The developer, at the time of submission of an application for development pursuant to this section, owns *property* or manages housing units located on property that is exempt from taxation

pursuant to the welfare exemption established in subdivision (a) of Section 214 of the Revenue and Taxation Code.

(C) A developer that contracts with a nonprofit corporation that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families with financing in the form of zero interest rate loans.

~~(5)~~

(9) "Religious institution" means an institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization composed of multidenominational members of the same well-recognized religion, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code.

~~(6) "Use by right" means that the local government's review of the development project under this section may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act (Division 2 (commencing with Section 66410)).~~

(10) "Use by right" means a development project that satisfies both of the following 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 Division 13 (commencing with Section 21000) of the Public Resources Code.

(b) Notwithstanding any inconsistent provision of a local government's general plan, specific plan, zoning ordinance, or regulation, upon the request of an applicant, a housing development project shall be a use by right, if all of the following criteria are satisfied:

(1) The development is located on land owned on or before January 1, 2024, by an independent institution of higher education or a religious institution, including ownership through an affiliated

nonprofit public benefit corporation organized pursuant to the Nonprofit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code).

(2) The development is located on a parcel that satisfies the requirements specified in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 65913.4.

(3) The development is located on a parcel that satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(4) The development is located on a parcel that satisfies the requirements specified in paragraph (7) of subdivision (a) of Section 65913.4.

(5) The development is not adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use. For purposes of this subdivision, parcels separated by only a street or highway shall be considered to be adjoined.

(6) The development project is located on a site that is one-quarter acre in size or greater.

(7) One hundred percent of the development project's total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety ~~Code.~~ *Code, and 5 percent of the units may be for staff of the independent institution of higher education or religious institution that owns the land.* Units in the development shall be offered at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or at affordable rent, as set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee. The rent or sales price for a moderate-income unit shall ~~also be at least 20 percent below the market rate~~ *be affordable and shall not exceed 30 percent of income for a moderate-income household or homebuyer* for a unit of similar size and bedroom count in the same ZIP Code in the city, county, or city and county in which the housing development is located. The applicant shall provide the city, county, or city and county with evidence to establish that the units meet the requirements of this paragraph. All units, exclusive of any manager unit or units, shall be subject

to a recorded deed restriction as provided in this paragraph for at least the following periods of time:

(A) Fifty-five years for units that are rented. However, the local government may require that the rental units in the housing development project be restricted to lower income and moderate-income households for a longer period of time if that restriction is consistent with all applicable regulatory requirements for state assistance.

(B) Forty-five years for units that are owner occupied. However, the local government may require that owner-occupied units in the housing development project be restricted to lower income and moderate-income households for a longer period of time if that restriction is consistent with all applicable regulatory requirements for state assistance.

(8) The development project complies with all objective development standards of the city or county that are not in conflict with this section.

(9) If the housing development project requires the demolition of existing residential dwelling units, the applicant shall comply with subdivision (d) of Section 66300, as that section read as of January 1, 2024.

(10) The applicant certifies to the local government that either of the following is true for the housing development project, as applicable:

(A) The entirety of the development project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(B) A development that contains more than 10 units and is not in its entirety a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code and approved by a local government pursuant to Article 2 (commencing with Section 65912.110) of, or Article 3 (commencing with Section 65912.120) of, Chapter 4.1 shall be subject to all of the following:

(i) All construction workers employed in the execution of the development shall be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs provided by the Chief of the

Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(ii) The development proponent shall 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.

(iii) All contractors and subcontractors for those portions of the development that are not a public work shall comply with both of the following:

(I) Pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in the programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(II) Maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in that section. This ~~subparagraph~~ *subclause* 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. For purposes of this ~~subparagraph,~~ *subclause*, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(c) (1) The obligation of the contractors and subcontractors to pay prevailing wages pursuant to this section may be enforced by any of the following:

(A) The Labor Commissioner, through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, that may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development.

(B) An underpaid worker through an administrative complaint or civil action.

(C) A joint labor-management committee through a civil action pursuant to Section 1771.2 of the Labor Code.

(2) If a civil wage and penalty assessment is issued pursuant to this section, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the

assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(3) This subdivision 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. For purposes of this subdivision, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(d) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing does not apply to those portions of a development that are not a public work if otherwise provided in a bona fide collective bargaining agreement covering the worker.

(e) The requirement of this section to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(f) In addition to the requirements of Section 65912.130, a development of 50 or more housing units approved by a local government pursuant to Article 2 (commencing with Section 65912.110) of, or Article 3 (commencing with Section 65912.120) of, Chapter 4.1 shall meet all of the following labor standards:

(1) The development proponent shall require in contracts with construction contractors and shall certify to the local government that each contractor of any tier who will employ construction craft employees or will let ~~each~~ subcontracts for at least 1,000 hours shall satisfy the requirements in paragraphs (2) and (3). A construction contractor is deemed in compliance with paragraphs (2) and (3) if it is signatory to a valid collective bargaining agreement that requires use of registered apprentices and expenditures on health care for employees and dependents.

(2) A contractor with construction craft employees shall either participate in an apprenticeship program approved by the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code, or request the dispatch of apprentices from a state-approved apprenticeship program under the terms and conditions set forth

in Section 1777.5 of the Labor Code. A contractor without construction craft employees shall show a contractual obligation that its subcontractors comply with this subdivision.

(3) Each contractor with construction craft employees shall make health care expenditures for each employee in an amount per hour worked on the development equivalent to at least the hourly pro rata cost of a Covered California Platinum-level plan for two *adults* 40 years of age and two dependents 0 to 14 years of age for the Covered California rating area in which the development is located. A contractor without *construction* craft employees shall show a contractual obligation that its subcontractors comply with this ~~subdivision.~~ *paragraph.* Qualifying expenditures shall be credited toward compliance with prevailing wage payment requirements set forth in Section 65912.130.

(4) (A) The development proponent shall provide to the local government, on a monthly basis while its construction contracts on the development are being performed, a report demonstrating compliance with paragraphs (2) and (3). The report shall be considered public records under the California Public Records Act (Division 10 (commending with Section 7920.000) of Title 1), and shall be open to public inspection.

(B) A development proponent that fails to provide the monthly report shall be subject to a civil penalty for each month for which the report has not been provided, in the amount of 10 percent of the dollar value of construction work performed by that contractor on the development in the month in question, up to a maximum of ten thousand dollars ($10,000). Any contractor or subcontractor that fails to comply with paragraph (2) or (3) shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of paragraph (2) or (3).

(C) Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the procedures for issuance of civil wage and penalty assessments specified in Section 1741 of the Labor Code, and may be reviewed pursuant to Section 1742 of the Labor Code. Penalties shall be deposited in the State Public Works Enforcement Fund established pursuant to Section 1771.3 of the Labor Code.

(5) Each construction contractor shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code. Each construction contractor shall submit payroll records directly to the

Labor Commissioner at least monthly in a format prescribed by the Labor Commissioner in accordance with subparagraph (A) of paragraph (3) of subdivision (a) of Section 1771.4 of the Labor Code. The records shall include a statement of fringe benefits. Upon request by a joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), the records shall be provided pursuant to subdivision (e) of Section 1776 of the Labor Code.

(6) All construction contractors shall report any change in apprenticeship program participation or health care expenditures to the local government within 10 business days, and shall reflect those changes on the monthly report. The reports shall be considered public records pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000 of Title 1)) and shall be open to public inspection.

(7) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall have standing to sue a construction contractor for failure to make health care expenditures pursuant to ~~subdivision (c)~~ *paragraph (3)* in accordance with Section 218.7 or 218.8 of the Labor Code.

(g) Notwithstanding any other provision of this section, a development project that is eligible for approval as a use by right pursuant to this section may include the following ancillary uses, provided that those uses are limited to the ground floor of the development:

(1) In a single-family residential zone, ancillary uses shall be limited to uses that provide direct services to the residents of the development and have a community benefit, including childcare centers and community centers.

(2) In all other zones, the development may include commercial uses that are permitted without a conditional use permit or planned unit development permit.

(h) Notwithstanding any other provision of this section, a development project that is eligible for approval as a use by right pursuant to this section may include any religious institutional use, or any use that was previously existing and legally permitted by the city or county on the site, if all of the following criteria are met:

(1) The total square footage of nonresidential space on the site does not exceed the amount previously existing or permitted in a conditional use permit.

(2) The total parking requirement for nonresidential space on the site does not exceed the lesser of the amount existing or of the amount required by a conditional use permit.

(3) The new uses abide by the same operational conditions as contained in the pervious conditional use permit.

~~(h)~~

(i) A housing development project that qualifies as a use by right pursuant to subdivision (b) shall be allowed the following density, as applicable:

(1) (A) If the development project is located in a zone that allows residential uses, the development project shall be allowed a density of the applicable density deemed appropriate to accommodate housing for lower income households identified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2.

(B) If the local government allows for greater residential density on that parcel, or greater residential density or building heights on an adjacent parcel, than permitted in subparagraph (A), the greater density or building height shall apply.

(C) A housing development project that is located in a zone that allows residential uses shall be eligible for a density bonus or other incentives or concession pursuant to Section 65915.

(2) (A) If the development project is located in a zone that does not allow residential uses, the development project shall be allowed a density of 40 units per acre and a height of one story above the maximum height otherwise applicable to the parcel.

(B) If the local government allows for greater residential density or building heights on that parcel, or an adjacent parcel, than permitted in subparagraph (A), the greater density or building height shall apply. A development project shall not use an incentive, waiver, or concession to increase the height of the development to greater than the height authorized under this subparagraph.

(C) Except as provided in subparagraph (B) a housing development project that is located in a zone that does not allow residential uses shall be eligible for a density bonus or other incentives or concession pursuant to Section 65915.

~~(i)~~

(j) (1) Except as provided in paragraph (2), the proposed development shall provide off-street parking of up to one space per unit, unless a local ordinance provides for a lower standard of parking, in which case the ordinance shall apply.

(2) A local government shall not impose a parking requirement if either of the following is true:

(A) The parcel is located within one-half mile walking distance of public transit, either a high-quality transit corridor *or a major transit stop* as defined in subdivision (b) of Section 21155 of the Public Resources ~~Code or a major transit stop as defined in Section 21064.3 of the Public Resources~~ Code.

(B) There is a car share vehicle located within one block of the parcel.

~~(j)~~

(k) (1) If the local government determines that the proposed development is in conflict with any of the objective planning standards specified in this section, it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, within the following timeframes:

(A) Within 60 days of submittal of the development proposal to the local government if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development proposal to the local government if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the required objective planning standards.

(3) For purposes of this section, a development is consistent with the objective planning standards if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(4) The determination of whether a proposed project submitted pursuant to this section is or is not in conflict with the objective planning standards is not a “project” as defined in Section 21065 of the Public Resources Code.

(5) Design review of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review shall be objective and be strictly focused on assessing compliance with criteria required for streamlined, ministerial review of projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submittal of the development to the local government, and shall be broadly applicable to developments within the jurisdiction. That design review shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development proposal to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development proposal to the local government pursuant to this section if the development contains more than 150 housing units.

(6) The local government shall ensure that the project satisfies the requirements specified in subdivision (d) of Section 66300, regardless of whether the development is within or not within an affected city or within or not within an affected county.

(7) If the development is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(8) A local government's approval of a development pursuant to this section shall, notwithstanding any other law, be subject to the expiration timeframes specified in subdivision (f) of Section 65913.4.

(9) Any proposed modifications to a development project approved pursuant to this section shall be undertaken pursuant to subdivision (g) of Section 65913.4.

(10) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or

inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive streamlined, ministerial review pursuant to this section.

(11) A local government shall issue a subsequent permit required for a development approved under this section pursuant to paragraph (2) of subdivision (h) of Section 65913.4.

(12) A public improvement that is necessary to implement a development that is approved pursuant to this section shall be undertaken pursuant to paragraph (3) of subdivision (h) of Section 65913.4.

~~(k)~~

(l) The Legislature finds and declares that ensuring residential development at greater density on land owned by independent institutions of higher education and religious institutions is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.

(m) The provisions of paragraph (3) of subdivision (f) concerning health care expenditures are distinct and severable from the remaining provisions of this section. However, all other provisions of subdivision (f) are material and integral parts of this section and are not severable. If any provision of subdivision (f), exclusive of those included in paragraph (3), is held invalid, the entire section shall be invalid and shall not be given effect.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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