Background and Analysis – SB 50 becomes SB 592

The original SB 592 was introduced by Senator Wiener on February 22, 2019, as a simple amendment to change the due date for HCD to deliver its annual report to the Governor and both houses of the Legislature per Health & Safety Code sec. 50408 from December 31 to June 30.

On March 27, Sen. Wiener amended the bill by fully replacing the title and text so that the bill amended Business & Professions Code sec. 7400 to require the Board of Barbering and Cosmetology to update the public profile of a licensee if notified of a licensee's address change. The revised bill – one sentence – was noncontroversial. It went through the Business Professions and Economic Development Committee (April 8) and the Senate Appropriations Committees (May 16) with unanimous approval and was also approved with a unanimous vote on the Senate Floor (May 23).

Separately, SB 50 had been held in the Senate Appropriations Committee on May 16. On June 4, Sen. Wiener substantially amended SB 50. On June 13, he then amended SB 592, replacing it in its entirety with some of the text from SB 50 as amended on June 4.

SB 592 is now titled "Housing Accountability Act" and carries the first part but, as of yet, not the second of SB 50 and amends Gov. Code Sec. 65589.5 (AB 3194, passed in the last session and effective January 1, 2019). SB 592 also includes some language in proposed SB 330.

Some of its provisions:

Definitions
The bill expands the definition of a "housing development project" to include single-family houses, additions to single-family houses, and ADUs.

Affordability

- Paragraph (d) requires the approval of any project for *"very-low, low-, or moderate-income households or any emergency shelter"* unless the project fails on narrowly defined grounds related to public heath and safety, no matter how inconsistent the project may be with local zoning.
- Paragraph (i) restricts conditions and lower density *"that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households."*

These are the only provisions that actually have to do with "affordable housing."

Market Rate Housing
A city cannot disapprove any project (not just low or moderate, but including low or moderate) based on density unless the city finds (within 30 days) that ALL 3 of the following apply.

1. The density proposed is inconsistent with MANDATORY provisions of the general plan and zoning that CANNOT be varied by the appropriate city authority (e.g. staff, Planning Commission, City Council). Sec. (j)(1)(B)

   (B) For purposes of this section, a general plan, zoning, or subdivision standard or criterion is not "applicable" if its applicability to a housing development project is discretionary or if the project could be approved without the standard or criterion being met.

   Note: Because most provisions of our General Plan and Code can be excepted via variance, the practical effect is that this clause could not be used to disapprove a project.

   Also, because a city has discretion, under the Density Bonus Law, to approve density greater than that to which an applicant is entitled by right under that law, it is likely than any application which includes greater density than the formula in the Density Bonus Law would have to be approved, unless the provisions of 2 and 3 below could be met. In essence, the city can no longer control the density of any project under the Density Bonus Law, and nothing in SB 592 requires the additional density to increase the amount of affordable units.

2. The project has *"a specific, adverse impact upon the public health or safety."*

   Note: This is nearly identical to language in the Density Bonus Law – a standard that is very difficult to meet.

3. There is no *"feasible method to satisfactorily mitigate or avoid the adverse impact"* except disapproval or lower density for the project.

   Note: As #2 is unlikely to be applied, this clause is also unlikely to be applied. If it could be, the bill does not indicate who is financially responsible for doing so.

Elimination of Use and Density Restrictions

SB 592 goes further than SB 330 by expressly defining a *"housing development project"* (covered under these provisions) by adding two new elements:

> *(B) A "housing development project" may solely be, or may include, a single unit, including an accessory dwelling unit as defined in Section 65852.2.*
>
> *(C) A "housing development project" may solely be, or may include, the addition of one or more bedrooms to an existing residential unit.*

The bill adds a new definition ((h)(6) for *"Conditions that have the same effect or impact on the ability of the housing development project to provide housing"* to include, but are not limited to:

> *(A) Reduction in the number of bedrooms or other normal residential features, such as a living room or kitchen.*
>
> *(B) The substantial impairment of the housing development project's economic viability.*

Taken together, these allow developments with dense, dorm-style or communal-living and home-sharing type arrangements, in single-family (and other) zones with no affordability requirements.

Summary of some effects:

The Housing Accountability Act, including required timeframes for review and the potential for prospective residents to claim penalties for $10,000 per day, will now apply to single-family, ADU, or other low-density zones (new construction or additions).

All housing development projects – including single-family homes, an addition to that home, or and ADU – can no longer be required to meet General Plan or zoning code requirements, if they provide higher density and if the project could be approved via a variance (e.g. setbacks, height). This will include allowing dorm-style development in single-family zones and greater density above the "by right" provisions of the Density Bonus Law.

Architectural, design, historic, or other aesthetic standards can no long be imposed. Much of the work of the Design Review Commission and Planning Commission becomes voluntary or disappears.

Draft Letter

Assemblymember Berman, Senator Jerry Hill, Assembly Committee on Housing and Community Development (submit via portal), Assembly Committee on Local Govern,ent (submit via portal), Supervisor Joe Simitian, League of California Cities, Cities Association of Santa Clara County

The City Council of Los Altos opposes SB 592 for the following reasons:

1. Although the bill seems to limit local decisions to "objective standards," it gives housing development projects "by right" approval of variances and other discretionary factors. This effectively eliminates regulations related to zoning, planning, design, and subdivision.

A core principle of land-use planning is that no plan or code can account for all circumstances. Our code recognizes this challenge with the following language for single-family, multi-family, office, public facilities, and commercial zones. Such language is essential to assure that application of the General Plan and zoning codes to specific projects meet the stated objectives. This authority would be removed by SB 592.

In order to avoid such practical difficulties, unnecessary physical hardships and results inconsistent with the objectives of the zoning plans stated in Article 1 of Chapter 14.02, as would result from a strict or literal application of the provisions of this chapter, the planning and transportation commission may approve or recommend variances to the regulations controlling site area, width, depth and coverage, yards, and other open spaces, parking spaces, loading spaces, height of structures, allowable building floor area and fences. (LAMC 14.76 and 14.78)

2. The current Density Bonus Law (Calif. Gov. Code sec. 65915 et seq) gives local jurisdictions the authority to approve density greater than the "by right" limit available from the bonuses under that law. By giving development projects under SB 592 the right to any density that could be granted, SB 592 effectively negates 65915 (n). Because we have such language in our municipal code, the city would have no control, absent a health and safety finding, over the density of a proposed development that otherwise meets the requirements of 65915.

65915.(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

3. By eliminating use clauses for residential zones, commercial uses such as bars, hotels, medical clinics, car repair, pet grooming, office space and other "non-residential use" is available "by right" in residential areas, provided it does not occupy more than 1/3 of the development space. This violates the long-standing planning principle that commercial uses must be compatible with shared and adjacent residential uses.

4. Voiding limits on the number of bedrooms in residential zones allows for dorm-style developments in lower density zones, including single-family areas. This may be the intent of the author, but it is opposed vigorously by this council.

5. Other than paragraphs (d) and (i), nothing in this bill promotes affordable housing. Its effect, rather, is to abolish sound planning principles and remove the ability of the city to execute the approved General Plan and related Housing Element.

For these reasons, we oppose SB 592. We also note that the process by which this bill is before the Assembly allowed it to bypass all Senate Committee review, where its problematic provisions might well have been identified. That process, in our view, is also completely antithetical to transparency and open government.