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SB-744 Planning and zoning: California Environmental Quality Act: permanent supportive housing.
(2019-2020)

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Senate Bill No. 744

CHAPTER 346

An act to amend Sections 65651, 65655, and 65656 of the Government Code, and to add and repeal Chapter 5.5 (commencing with Section 21163) of Division 13 of the Public Resources Code, relating to housing.

[Approved by Governor September 26, 2019. Filed with Secretary of State September 26, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 744, Caballero. Planning and zoning: California Environmental Quality Act: permanent supportive housing.

(1) Existing law, known as the No Place Like Home Program, requires the Department of Housing and Community Development to award \$2,000,000,000 among counties to finance capital costs, including, but not limited to, acquisition, design, construction, rehabilitation, or preservation, and to capitalize operating reserves, of permanent supportive housing for the target population, as specified. Existing law requires that \$1,800,000,000 of the moneys available under the program be awarded, in at least 4 rounds, by a competitive program based on specified criteria, including that the county has developed a county plan to combat homelessness. Existing law requires that, before the disbursement of any funds for loans made pursuant to the competitive component of the No Place Like Home Program, the department and the development sponsor, as defined, enter into a regulatory agreement that includes specified provisions.

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 also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

Existing law authorizes the court, upon the motion of a party, to award attorney's fees to a prevailing party in an action that has resulted in the enforcement of an important right affecting the public interest if 3 conditions are met.

This bill would specify that a decision of a public agency to seek funding from, or the department's awarding of funds pursuant to, the No Place Like Home Program is not a project for purposes of CEQA.

This bill, if a No Place Like Home project, as defined, is not eligible for approval as a use by right, as described below, would authorize the development applicant to request within a specified time period that the lead agency prepare concurrently the record of proceeding for the project with the performance of the environmental review of the program. Within 2 working days of approval, the bill would require the lead agency, if the project is subject to CEQA, to file a notice of the approval or determination regarding the project or, if the project is not subject to CEQA, to file a notice of exemption, in accordance with specified law. The bill would require a person filing an action or proceeding challenging the lead agency's action on the grounds of noncompliance

with CEQA to file the action or proceeding within 30 days of the filing of the notice of determination or, if the local agency fails to comply with the applicable timelines for filing a notice of approval or determination or a notice of exemption, the earlier of 30 days from the date of the local agency's late filing of the notice or 90 days from the date the notice was required to be filed.

The bill would repeal these provisions as of January 1 of the year following notification to the Speaker of the Assembly and President pro Tempore of the Senate by the Department of Housing and Community Development that funding pursuant to the No Place Like Home Program is fully allocated and disbursed.

(2) The Planning and Zoning Law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city that includes, among other mandatory elements, a housing element. Under that law, supportive housing, as defined, is a use by right in zones where multifamily and mixed uses are permitted if the proposed housing development meets specified criteria and the developer provides the planning agency with a plan for providing supportive services, including a requirement that 100% of the units, excluding managers' units, within the development be dedicated to lower income households, as defined, and that the development is receiving public funding to ensure affordability of the housing to lower income Californians.

This bill would, instead, require that 100% of the units, excluding managers' units, within the development be restricted to lower income households and that those units are or will be receiving public funding to ensure affordability of the housing to lower income Californians. The bill would also specify that these provisions do not prohibit a local government from imposing fees and other exactions, as specified, but would prohibit a local government from adopting any requirement, including increased fees, that applies to a project solely or partially on the basis that the housing project constitutes a permanent supportive housing development or based on the development's eligibility for ministerial approval pursuant to these provisions.

Existing law authorizes a local government to require a supportive housing development subject to approval as a use by right under these provisions to comply with objective, written development standards and policies, but requires that the development only be subject to those objective development standards and policies that apply to other multifamily housing within the same zone.

This bill would specify that objective development standards include objective design review standards and that a local government's review of a supportive housing development is not a project for purposes of CEQA. The bill would require that a local government's review of a supportive housing development under these standards and policies be consistent with specified provisions of the Housing Accountability Act.

Existing law limits supportive housing developments allowed under these provisions to 50 units or fewer in certain cities and counties, but authorizes these cities and counties to develop a policy to approve as a use by right a proposed housing development with a limit higher than 50 units.

This bill would provide that a policy to approve as a use by right a development with a limit higher than 50 units, as described above, is not a project for purposes of CEQA.

Existing law specifies that these provisions do not preclude or limit the ability of a developer to seek a density bonus from the local government pursuant to specified law.

This bill would additionally specify that these provisions do not preclude or limit the ability of a developer to seek any concessions, incentives, or waivers of development standards pursuant to that specified law.

Existing law includes findings that these provisions address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

This bill would revise the above-described findings of statewide concern to specify that these changes apply to all cities, including charter cities.

By adding to the duties of local planning officials, this bill would impose a state-mandated local program.

(3) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) California is facing an unprecedented affordable housing and homeless crisis.
- (b) Homelessness and access to affordable housing are two of the state's biggest challenges today.
- (c) One in three Californians cannot afford their rents.
- (d) California is home to the largest share of veterans and youth experiencing homelessness.
- (e) The funding for the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code) was adopted by a large percentage of California voters and is focused on helping people who are experiencing homelessness and suffering from a serious mental illness get off the streets and into housing and treatment.
- (f) The No Place Like Home Fund provides moneys to incentivize counties to fund housing for the most vulnerable people experiencing homelessness who are suffering from serious mental illness by building and providing the stable, supportive housing needed to help them heal and live with dignity and stay off the streets.
- (g) Research and common sense show that providing people with a stable place to live along with mental health services promotes housing stability and ends homelessness.
- (h) Stable, supportive housing also significantly reduces public health costs, reduces suffering for people who are experiencing homelessness and suffering from a mental illness, and achieves better health outcomes.
- (i) Permanent supportive housing is good for those who are suffering on our streets and it is good for all Californians.
- (j) Expanding affordable permanent housing with supportive services is what California must do for the health of our community.
- (k) More than 134,000 people are languishing on our streets, huddled on sidewalks, and sleeping under freeways and along riverbanks.
- (l) As many as one-third of the people living in these unsafe conditions are living with an untreated mental illness.
- (m) Decades of research shows providing people with a stable place to live along with mental health services promotes healthy and stable lives.
- (n) Without the foundation of a stable home connected to mental health care, people suffering from serious mental illness are unable to make it to doctor's appointments and specialized counseling services, often showing up in emergency rooms as a last resort.
- (o) Permanent supportive housing significantly reduces public health costs, reduces suffering for patients, and achieves better health outcomes.
- (p) For the public well-being, California must ensure that the No Place Like Home Fund is used quickly for purposes of keeping Californians experiencing homelessness off the streets, out of hospitals and emergency rooms, and receiving the mental health services they need.

SEC. 2. Section 65651 of the Government Code is amended to read:

65651. (a) Supportive housing shall be a use by right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses, if the proposed housing development satisfies all of the following requirements:

- (1) Units within the development are subject to a recorded affordability restriction for 55 years.
- (2) One hundred percent of the units, excluding managers' units, within the development are restricted to lower income households and are or will be receiving public funding to ensure affordability of the housing to lower income Californians. For purposes of this paragraph, "lower income households" has the same meaning as defined in Section 50079.5 of the Health and Safety Code.
- (3) At least 25 percent of the units in the development or 12 units, whichever is greater, are restricted to residents in supportive housing who meet criteria of the target population. If the development consists of fewer than 12 units, then 100 percent of the units, excluding managers' units, in the development shall be restricted to residents in supportive housing.
- (4) The developer provides the planning agency with the information required by Section 65652.

(5) Nonresidential floor area shall be used for onsite supportive services in the following amounts:

(A) For a development with 20 or fewer total units, at least 90 square feet shall be provided for onsite supportive services.

(B) For a development with more than 20 units, at least 3 percent of the total nonresidential floor area shall be provided for onsite supportive services that are limited to tenant use, including, but not limited to, community rooms, case management offices, computer rooms, and community kitchens.

(6) The developer replaces any dwelling units on the site of the supportive housing development in the manner provided in paragraph (3) of subdivision (c) of Section 65915.

(7) Units within the development, excluding managers' units, include at least one bathroom and a kitchen or other cooking facilities, including, at minimum, a stovetop, a sink, and a refrigerator.

(b) (1) The local government may require a supportive housing development subject to this article to comply with written, objective development standards and policies. However, the local government shall only require the development to comply with the objective development standards and policies that apply to other multifamily development within the same zone.

(2) The local government's review of a supportive housing development to determine whether the development complies with objective development standards, including objective design review standards, pursuant to this subdivision shall be conducted consistent with the requirements of subdivision (f) of Section 65589.5, and shall not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(3) Any discretion exercised by a local government in determining whether a project qualifies as a use by right pursuant to this article or discretion otherwise exercised pursuant to this section does not affect that local government's determination that a supportive housing development qualifies as a use by right pursuant to this article.

(c) Notwithstanding any other provision of this section to the contrary, the local government shall, at the request of the project owner, reduce the number of residents required to live in supportive housing if the project-based rental assistance or operating subsidy for a supportive housing project is terminated through no fault of the project owner, but only if all of the following conditions have been met:

(1) The owner demonstrates that it has made good faith efforts to find other sources of financial support.

(2) Any change in the number of supportive housing units is restricted to the minimum necessary to maintain the project's financial feasibility.

(3) Any change to the occupancy of the supportive housing units is made in a manner that minimizes tenant disruption and only upon the vacancy of any supportive housing units.

(d) If the proposed housing development is located within a city with a population of fewer than 200,000 or the unincorporated area of a county with a population of fewer than 200,000, and the city or the unincorporated area of the county has a population of persons experiencing homelessness of 1,500 or fewer, according to the most recently published homeless point-in-time-count, the development, in addition to the requirements of subdivision (a), shall consist of 50 units or fewer to be a use by right pursuant to this article. A city or county described in this subdivision may develop a policy to approve as a use by right proposed housing developments with a limit higher than 50 units. A policy by a city or county to approve as a use by right proposed housing developments with a limit higher than 50 units does not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(e) This article does not prohibit a local government from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to housing developments. However, a local government shall not adopt any requirement, including, but not limited to, increased fees or other exactions, that applies to a project solely or partially on the basis that the project constitutes a permanent supportive housing development or based on the development's eligibility to receive ministerial approval pursuant to this article.

SEC. 3. Section 65655 of the Government Code is amended to read:

65655. This article shall not be construed to do either of the following:

(a) Preclude or limit the ability of a developer to seek a density bonus, including any concessions, incentives, or waivers of development standards, from the local government pursuant to Section 65915.

(b) Expand or contract the authority of a local government to adopt or amend an ordinance, charter, general plan, specific plan, resolution, or other land use policy or regulation that promotes the development of supportive housing.

SEC. 4. Section 65656 of the Government Code is amended to read:

65656. The Legislature finds and declares that, by adoption of Proposition 2 at the November 6, 2018, statewide general election, the voters expressly approved of the development of permanent supportive housing pursuant to the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code). The Legislature further finds and declares that the provision of adequate supportive housing to help alleviate the severe shortage of housing opportunities for people experiencing homelessness in this state and of necessary services to the target population described in Section 50675.14 of the Health and Safety Code, and that ensuring the development of permanent supportive housing in accordance with programs such as the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code) by removing zoning barriers that would otherwise inhibit that development, are matters of statewide concern and are not municipal affairs as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this article applies to all cities, including charter cities.

SEC. 5. Chapter 5.5 (commencing with Section 21163) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 5.5. No Place Like Home Projects

21163. For purposes of this chapter, "No Place Like Home project" means a permanent supportive housing project that meets the criteria for funding pursuant to the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code) and for which a public agency applies for, or receives, funding from the Department of Housing and Community Development.

21163.1. A decision by a public agency to seek funding from, or the Department of Housing and Community Development's awarding of funds pursuant to, the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code) does not constitute a "project" for purposes of this division.

21163.2. If a No Place Like Home project is not eligible for approval as a use by right pursuant to Article 11 (commencing with Section 65650) of Chapter 3 of Division 1 of Title 7 of the Government Code and is subject to this division, the development applicant may request, within 10 days after the lead agency determines the type of environmental documentation required for the project pursuant to this division, that the lead agency prepare and certify the record of proceeding for the environmental review of the No Place Like Home project in accordance with Section 21186.

21163.3. (a) (1) If a local agency approves or determines to carry out a No Place Like Home project that is subject to this division, the local agency shall file notice of that approval or determination in accordance with the requirements of subdivision (a) of Section 21152, except that the notice shall be filed within two working days after the approval or determination becomes final.

(2) If a local agency approves or determines to carry out a No Place Like Home project that is not subject to this division, the local agency shall file a notice of exemption in accordance with the requirements of subdivision (b) of Section 21152, except that the notice shall be filed within two working days after the approval or determination becomes final.

(b) Notwithstanding Section 21167, an action or proceeding to attack, review, set aside, void, or annul the acts or decision of a public agency on the grounds of noncompliance with this division for a No Place Like Home project shall commence within 30 days from the date of the filing of the notice required pursuant to subdivision (a).

(c) If the local agency fails to comply with the applicable timing requirements set forth in subdivision (a), an action or proceeding to attack, review, set aside, void, or annul the acts or decision of a public agency on the grounds of noncompliance with this division for a No Place Like Home project shall commence within 30 days from the date of the local agency's late filing of the notice required pursuant to subdivision (a) or 90 days from the date that the notice was required to be filed pursuant to subdivision (a), whichever is earlier.

21163.4. (a) (1) The Department of Housing and Community Development shall notify the Speaker of the Assembly and the President pro Tempore of the Senate when the funding provided pursuant to the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code) is fully allocated and disbursed. Notification from the Department of Housing and Community Development pursuant to this subdivision shall be printed in the journal of each of the respective houses of the Legislature.

(2) The Department of Housing and Community Development shall post a copy of the notification provided pursuant to this subdivision on its internet website.

(b) This chapter shall remain in effect only until January 1 of the year following notification from the Department of Housing and Community Development pursuant to subdivision (a), and as of that date is repealed.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, 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.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.