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AB-785 California Environmental Quality Act: exemption: City of Los Angeles: County of Los Angeles: affordable housing and transitional housing. (2023-2024)

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Assembly Bill No. 785

CHAPTER 726

An act to amend Section 21080.27 of the Public Resources Code, relating to environmental quality.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 785, Santiago. California Environmental Quality Act: exemption: City of Los Angeles: County of Los Angeles: affordable housing and transitional housing.

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, until January 1, 2025, exempts from the requirements of CEQA certain activities approved or carried out by the City of Los Angeles and other eligible public agencies, as defined, related to supportive housing and emergency shelters, as defined, in the City of Los Angeles. Under existing law, this exemption requires the lead agency, if it determines that an activity is not subject to CEQA and approves or carries out that activity, to file a notice of exemption with the Office of Planning and Research and the county clerk for the County of Los Angeles.

This bill would instead exempt from the requirements of CEQA certain activities undertaken by the City of Los Angeles and other eligible public agencies related to affordable housing, low barrier navigation centers, supportive housing, and transitional housing for youth and young adults, as those terms would be defined by the bill, within the City of Los Angeles and certain activities undertaken by the County of Los Angeles related to affordable housing, low barrier navigation centers, supportive housing, and transitional housing for youth and young adults within the unincorporated areas of the County of Los Angeles and parcels owned by the County of Los Angeles within the City of Los Angeles. The bill would define the Los Angeles County Development Authority as an eligible public agency. The bill would broaden the definition of "supportive housing." The bill would also change the term "emergency shelter" to "low barrier navigation center" and broaden the definition of that term. The bill would require the lead agency to ensure that those projects meet certain labor requirements in order for the exemption to apply. The bill would repeal these provisions on January 1, 2030.

Because the bill would impose additional duties on local public agencies, this bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Los Angeles and the County of Los Angeles.

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.

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 has the largest number of residents experiencing homelessness, with over 171,000 people experiencing homelessness on a given night, almost 30 percent of the nation's number, according to the United States Department of Housing and Urban Development's 2022 Annual Homelessness Assessment Report.

(b) According to the 2022 Greater Los Angeles Homeless Count, the County of Los Angeles has at any given time approximately 69,144 people experiencing homelessness countywide, including approximately 41,980 in the City of Los Angeles.

(c) The County of Los Angeles represents approximately 25 percent of the State of California's population, but over 40 percent of the state's unhoused population.

(d) The City of Los Angeles represents 9.6 percent of the State of California's population, but nearly 25 percent of the state's unhoused population.

(e) According to the 2017–21 American Community Survey 5-year estimates released in December 2022, almost 52 percent of total households are cost burdened, meaning that they spend more than 30 percent of their income on housing costs, while about 27 percent of households are severely cost burdened, meaning they spend more than 50 percent of their income on housing costs.

(f) On December 12, 2022, the City of Los Angeles declared a state of emergency on homelessness and activated the city's Emergency Operations Center.

(g) On January 10, 2023, the Los Angeles County Board of Supervisors unanimously voted to proclaim a local emergency for homelessness in the County of Los Angeles.

(h) Chapter 661 of the Statutes of 2022 specifies both of the following:

(1) That a construction or rehabilitation project receiving funding from the Los Angeles County Affordable Housing Solutions Agency would constitute a public work for which prevailing wages are required to be paid.

(2) That a construction or rehabilitation project with 40 units or greater is eligible to receive funding or financing from the Los Angeles County Affordable Housing Solutions Agency only if all construction and rehabilitation work is subject to a project labor agreement.

(i) On November 8, 2022, voters in the City of Los Angeles approved Measure ULA, which specifies that all construction or rehabilitation work on projects with 40 units or more that receive funding or financing through Measure ULA will be subject to the City of Los Angeles Department of Public Works Project Labor Agreement.

SEC. 2. Section 21080.27 of the Public Resources Code is amended to read:

21080.27. (a) For purposes of this section, the following definitions apply:

(1) "Affordable cost" has the same meaning as "affordable housing cost" as defined in Section 50052.5 of the Health and Safety Code.

(2) "Affordable housing" means a housing development project that meets all of the following:

(A) A project with 100 percent of all units in the development, exclusive of a manager's unit or units, dedicated to lower income households, as described in Section 50052.5 of the Health and Safety Code, at an affordable cost or an affordable rent, except that up to 20 percent of the units in the development may be dedicated to moderate-income households, as defined in Section 50053 of the Health and Safety Code, at an affordable cost or an affordable rent.

(B) The units are subject to a recorded deed restriction for affordable rent for a period of 55 years for rental units and for affordable cost for a period of 45 years for owner-occupied units.

(C) The project is funded, in whole or in part, by any of the following:

(i) The No Place Like Home Program pursuant to Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code.

(ii) The Building Homes and Jobs Trust Fund established pursuant to Section 50470 of the Health and Safety Code.

(iii) Measure H sales tax proceeds approved by the voters at the March 7, 2017, special election in the County of Los Angeles.

(iv) General obligation bonds issued pursuant to Proposition HHH approved by the voters of the City of Los Angeles at the November 8, 2016, statewide general election.

(v) The City of Los Angeles Housing Impact Trust Fund.

(vi) The program referred to as Homekey, as described in Section 50675.1.1 of the Health and Safety Code.

(vii) The Veterans Housing and Homeless Prevention Act of 2014 established pursuant to Article 3.2 (commencing with Section 987.001) of Chapter 6 of Division 4 of the Military and Veterans Code.

(viii) The Multifamily Housing Program established pursuant to Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code.

(ix) The Infill Infrastructure Grant Program of 2019 established pursuant to Part 12.5 (commencing with Section 53559) of Division 31 of the Health and Safety Code.

(x) The California Housing Accelerator program established pursuant to Chapter 6.6 (commencing with Section 50672) of Part 2 of Division 31 of the Health and Safety Code.

(xi) The Affordable Housing and Sustainable Communities Program established pursuant to Chapter 2 (commencing with Section 75210) of Part 1 of Division 44.

(xii) The City of Los Angeles House LA Fund approved by the voters of the City of Los Angeles at the November 8, 2022, statewide general election.

(xiii) Funding distributed by the Los Angeles County Affordable Housing Solutions Agency established pursuant to Title 6.9 (commencing with Section 64700) of the Government Code.

(xiv) Funding distributed by the California Debt Limit Allocation Committee and the California Tax Credit Allocation Committee.

(D) The housing development project site meets both of the following conditions:

(i) The site is located in an urbanized area or urban cluster, as designated by the United States Census Bureau.

(ii) If the project is located on a vacant site, the site does not contain tribal cultural resources that could be affected by the development that were found pursuant to a consultation as described by Section 21080.3.1 and the effects of which cannot be mitigated pursuant to the process described in Section 21080.3.2.

(E) The housing development project site is not any of the following:

(i) A site located within a very high fire hazard severity zone, as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 or as designated pursuant to subdivisions (a) and (b) of Section 51179 of the Government Code.

(ii) A site that is either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(iii) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(iv) A hazardous waste site that is listed pursuant to Section 65962.5 of the Government Code or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply:

(I) The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses. This section does not alter or change the conditions to remove a site from the list of hazardous waste sites listed pursuant to Section 65962.5 of the Government Code.

(II) The State Department of Public Health, the State Water Resources Control Board, the Department of Toxic Substances Control, or a local agency making a determination pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.

(v) A site located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this clause and is otherwise eligible for an exemption under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this clause if either of the following are met:

(I) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(II) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(vi) A site located within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this clause and is otherwise eligible for an exemption under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(vii) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(viii) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(ix) Lands under conservation easement.

(3) "Affordable rent" means a rent amount consistent with the rent limits established by the California Tax Credit Allocation Committee.

(4) "Eligible public agency" means any of the following:

(A) The County of Los Angeles.

(B) The Los Angeles Unified School District.

(C) The Los Angeles County Metropolitan Transportation Authority.

(D) The Housing Authority of the City of Los Angeles.

(E) The Los Angeles Homeless Services Authority.

(F) The Los Angeles Community College District.

(G) The successor agency for the former Community Redevelopment Agency of the City of Los Angeles.

(H) The Department of Transportation.

(I) The Department of Parks and Recreation.

(J) The Los Angeles County Development Authority.

(5) "Housing development project" has the same meaning as defined in subdivision (h) of Section 65589.5 of the Government Code.

(6) "Low barrier navigation center" means a low barrier navigation center, as defined in subdivision (a) of Section 65660 of the Government Code, that is funded in whole or in part by any of the following:

(A) The Homeless Housing, Assistance, and Prevention program established pursuant to Section 50217 of the Health and Safety Code.

(B) Measure H sales tax proceeds approved by the voters at the March 7, 2017, special election in the County of Los Angeles.

(C) General obligation bonds issued pursuant to Proposition HHH, approved by the voters of the City of Los Angeles at the November 8, 2016, statewide general election.

(D) The program referred to as Homekey, as described in Section 50675.1.1 of the Health and Safety Code.

(E) The Encampment Resolution Funding program established pursuant to Section 50251 of the Health and Safety Code.

(F) The Building Homes and Jobs Trust Fund established pursuant to Section 50470 of the Health and Safety Code.

(G) The Behavioral Health Bridge Housing Program established pursuant to Item 4260-101-0001 of Section 2.00 of the Budget Act of 2022.

(H) The Behavioral Health Continuum Infrastructure Program established pursuant to Chapter 1 (commencing with Section 5960) of Part 7 of Division 5 of the Welfare and Institutions Code.

(7) "Project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(8) "Supportive housing" means supportive housing, as defined in Section 50675.14 of the Health and Safety Code, that meets the eligibility requirements of Article 11 (commencing with Section 65650) of Chapter 3 of Division 1 of Title 7 of the Government Code or the eligibility requirements for qualified supportive housing or qualified permanent supportive housing set forth in City of Los Angeles Ordinance No. 185,489 or 185,492, and that is funded, in whole or in part, by any of the following:

(A) The No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code).

(B) The Building Homes and Jobs Trust Fund established pursuant to Section 50470 of the Health and Safety Code.

(C) Measure H sales tax proceeds approved by the voters at the March 7, 2017, special election in the County of Los Angeles.

(D) General obligation bonds issued pursuant to Proposition HHH, approved by the voters of the City of Los Angeles at the November 8, 2016, statewide general election.

(E) The City of Los Angeles Housing Impact Trust Fund.

(F) The program referred to as Homekey, as described in Section 50675.1.1 of the Health and Safety Code.

(G) The Veterans Housing and Homeless Prevention Act of 2014 established pursuant to Article 3.2 (commencing with Section 987.001) of Chapter 6 of Division 4 of the Military and Veterans Code.

(H) The Multifamily Housing Program established pursuant to Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code.

(I) The Infill Infrastructure Grant Program of 2019 established pursuant to Part 12.5 (commencing with Section 53559) of Division 31 of the Health and Safety Code.

(J) The California Housing Accelerator program established pursuant to Chapter 6.6 (commencing with Section 50672) of Part 2 of Division 31 of the Health and Safety Code.

(K) The Affordable Housing and Sustainable Communities Program established pursuant to Chapter 2 (commencing with Section 75210) of Part 1 of Division 44.

(L) The City of Los Angeles House LA Fund approved by the voters of the City of Los Angeles at the November 8, 2022, statewide general election.

(M) Funding distributed by the Los Angeles County Affordable Housing Solutions Agency established pursuant to Title 6.9 (commencing with Section 64700) of the Government Code.

(N) Funding distributed by the California Debt Limit Allocation Committee and the California Tax Credit Allocation Committee.

(9) "Transitional housing projects for youth and young adults" means buildings configured as rental housing developments for youth and young adults, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance, or as defined in Section 65582 of the Government Code, and that is funded, in whole or in part, by any of the following:

(A) The Homeless Housing, Assistance, and Prevention program established pursuant to Section 50217 of the Health and Safety Code.

(B) Measure H sales tax proceeds approved by the voters at the March 7, 2017, special election in the County of Los Angeles.

(C) General obligation bonds issued pursuant to Proposition HHH approved by the voters of the City of Los Angeles at the November 8, 2016, statewide general election.

(D) The program referred to as Homekey, as described in Section 50675.1.1 of the Health and Safety Code.

(E) The Encampment Resolution Funding program established pursuant to Section 50251 of the Health and Safety Code.

(10) "Youth and young adults" means persons between 12 and 24 years of age, inclusive. "Youth and young adults" includes persons who are pregnant and parenting.

(b) Subject to subdivision (e), this division does not apply to any of the following activities undertaken by the City of Los Angeles within the City of Los Angeles:

(1) The issuance of an entitlement for, or the approval of the construction of, an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(2) An action to lease, convey, or encumber land for an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(3) An action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased for an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(4) Rezoning, specific plan amendments, or general plan amendments required specifically and exclusively to allow the construction of an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(5) An action to provide financial assistance in furtherance of implementing an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(c) Subject to subdivision (e), this division does not apply to any of the following activities undertaken by the County of Los Angeles within the unincorporated areas of the County of Los Angeles or parcels owned by the County of Los Angeles within the City of Los Angeles:

(1) The issuance of an entitlement for, or the approval of the construction of, an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(2) An action to lease, convey, or encumber land for an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(3) An action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased for an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(4) Rezoning, specific plan amendments, or general plan amendments required specifically and exclusively to allow the construction of an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(5) An action to provide financial assistance in furtherance of implementing an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(d) Subject to subdivision (e), this division does not apply to any of the following activities undertaken by an eligible public agency in the City of Los Angeles or within the unincorporated areas of the County of Los Angeles:

(1) An action to lease, convey, or encumber land for an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(2) An action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased for an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(3) An action to provide financial assistance in furtherance of implementing an affordable housing project, a low barrier navigation center, a supportive housing project, or a transitional housing project for youth and young adults.

(e) (1) (A) For an affordable housing project, low barrier navigation center, supportive housing project, or transition housing project for youth and young adults, that 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, this section applies only if the project sponsor certifies to the lead agency that all of the following will be met for any construction or rehabilitation work:

(i) All construction and rehabilitation workers employed in the execution of the project will 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 approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(ii) The project sponsor ensures that the prevailing wage requirement is included in all contracts for the performance of the work for those portions of the project that are not a public work.

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

(I) Pay to all construction and rehabilitation workers employed in the execution of the work at least the general prevailing rate of per diem wages, 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) 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 subclause does not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure.

(B) (i) The obligation of the contractors and subcontractors to pay prevailing wages pursuant to subparagraph (A) may be enforced by any of the following:

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

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

(III) A joint labor-management committee through a civil action under Section 1771.2 of the Labor Code.

(ii) If a civil wage and penalty assessment is issued pursuant to this subparagraph, 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.

(iii) This subparagraph does not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure.

(C) 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 the project that are not a public work if otherwise provided in a bona fide collective bargaining agreement covering the worker.

(D) The requirement of subparagraph (A) 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.

(2) In addition to paragraph (1), for an affordable housing project, supportive housing project, or transitional housing project for youth and young adults involving the construction or rehabilitation work of 40 or more housing units, this section applies only if the project sponsor certifies to the lead agency that the work will be subject to a project labor agreement.

(f) If a lead agency determines that an activity is not subject to this division pursuant to subdivision (b), (c), or (d), and determines to approve or carry out the activity, the lead agency shall file a notice of exemption with the Office of Planning and Research and the county clerk in the manner specified in subdivisions (b) and (c) of Section 21108 or subdivisions (b) and (c) of Section 21152.

(g) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 3. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances facing the City of Los Angeles and the County of Los Angeles with regard to affordable housing and homelessness, as described in Section 1 of this act.

SEC. 4. 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.