



DATE: August 21, 2023

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager

FROM: Sofia Mangalam, Community Development Director  
Marlene Subhashini, Assistant City Manager

DEPARTMENT: Community Development

SUBJECT: CONSIDERATION OF AB 309 (LEE) THE SOCIAL HOUSING ACT

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## RECOMMENDATION

It is recommended that the City Council review and discuss Assembly Bill (AB) 309 and by Minute Order, provide direction to staff on whether to take any action on AB 309, including directing staff to draft a letter in opposition of the bill unless amended and authorize the Mayor to sign the letter and finding the action exempt under CEQA pursuant to CEQA Guidelines section 15061(b)(3).

## EXECUTIVE SUMMARY

Earlier this year, a group of Bay Area lawmakers led by [Assembly Member Alex Lee introduced AB 309, \("gut and amend" bill\), the Social Housing Act](#). AB 309 will authorize the Department of General Services (DGS) to develop up to three (3) social housing projects, on excess state lands.

Following are the key provisions of the bill:

1. Authorizes the Department of General Services (DGS), to identify and develop up to three (3) social housing projects on land declared excess by a state department and suitable for housing pursuant to Governor Newsom's Executive Order N-06-19, with the intent to use the results to inform public policy related to developing an independent public entity to manage and develop statewide social housing.

2. Describes “social housing” in legislative intent language as: publicly owned, mixed-income housing, removed from market forces and speculation, and built with the express aim of housing people equitably and affordably.
3. Requires social housing and the underlying land to be owned by a public entity, and provide housing for a range of income levels between extremely low income to above moderate income).
4. Requires all housing under the program to be both:
  - i. Located on state property leased pursuant to Section 14671.2 of the Government Code, and
  - ii. Owned by DGS and managed by a private entity. In another section of the bill, however, it stipulates that the state shall act as a land bank for social housing and maintain ownership of the land via ground leases. Prohibits the land upon which the housing is situated from being sold or transferred to a for-profit entity to prevent the privatization of social housing.
5. Authorizes DGS to solicit bids to develop social housing units and prioritize bids which demonstrate either a long-term “revenue neutrality” or “cost rent” model:
  - i. “Revenue neutrality” is described as a system which requires all monetary expenditures that result from the development and operation of the social housing are returned through rents, payments on leasehold mortgages, or other subsidies to further the maintenance and development of more social housing units.
  - ii. “Cost rent” is defined as a system which the rent is calculated based on the cost of providing and maintaining the dwelling, and only allowing for limited or no proceeds.
6. Requires DGS to employ two different leasing models, a “rental model” and an “ownership model.”
  - i. Under the rental model, a unit is leased to eligible households at a rent that “strives” not to exceed 30 percent of household income.
  - ii. Under the ownership model, a unit may be sold to a tenant after five years of occupancy. The program shall retain a right of first refusal to repurchase a unit, but if it does not exercise that right, the unit may be sold to another eligible household at a price that allows an owner to receive a reasonable return on invest that reflects documented capital improvements and adjustments for inflation. Upon death, a unit may pass to an owner’s heir.
7. Provided for limited local reviews, as follows:
  - i. Requires DGS to notify and send conceptual plans to a city or county when a social housing development is proposed within its jurisdiction.
  - ii. Authorizes a city or county to propose “objective design review standards,” which shall not differ from objective design review standards used by the local agency, within 90 days of receipt of conceptual plans. Prohibits such standards from including floor area ratios, height limitations or density requirements. Provides that DGS “may, but is not required to” accept local design review standards.
  - iii. Requires DGS to send completed plans to a city or county when a social housing development is proposed within its jurisdiction. If a city/county makes findings that the proposed development “might” have a specific,

adverse impact on public health and safety, it shall send those findings to DGS within 90 days. The city/county may propose modifications to the plans to mitigate potential impacts to public health and safety, which DGS may, but is not required to, accept.

## BACKGROUND/ANALYSIS

AB 309 would create the Social Housing Program within DGS to facilitate the construction of government-owned housing on leased state property or excess state-owned property.

Currently, there are three (3) Caltrans-owned properties in Foster City, including:

1. Maintenance office/yard at 380 Foster City Blvd.
2. Maintenance yard adjacent to Bridgeview Park
3. Wetlands mitigation area between E. 3<sup>rd</sup> Ave and Mariners Point Golf Course

Foster City has many affordable housing units, also known as Below Market Rate (BMR) units, and these units are not social housing units.

The bill includes the following provisions for Social Housing:

- (a) The housing units or the land on which housing units are built is owned by a government entity.
- (b) If a housing unit is in a social housing development, the development contains housing units that accommodate a mix of household income ranges that may include extremely low income, very low income, low income, moderate income, and above moderate income.
- (c) Residents of housing units are afforded, at a minimum, all protections granted to tenants with tenancies in private property under Section 1946.2 of the Civil Code, including protection against termination without just cause or for any discriminatory, retaliatory, or other arbitrary reason, and shall be afforded due process prior to being subject to eviction procedures, in addition to other protections provided by this title.
- (d) The housing units or the land on which housing units are built that are owned by a government entity shall be protected for the duration of their useful life from being sold or transferred to a private entity to prevent the privatization of social housing.
- (e) Residents of the housing units have the right to participate directly and meaningfully in decision making affecting the operation and management of their housing units.

### Staff Comments

While this bill demonstrates that the State needs to share the burden of addressing the affordable housing crisis by making its lands available for social housing, there are several aspects of this pilot proposal that do not appear to be fully fleshed out.

- There is currently no mechanism in place for a local jurisdiction to know that state land within its boundaries has been “selected” as part of this pilot program until after a bid for development/management has been awarded by DGS.
- Lack of Criteria for Program: As currently drafted, it is unclear if these would be ground up developments or redevelopments or conversions of certain vacant buildings.
- Local Consultation: The bill requires DGS to send copies of conceptual and completed plans to the applicable city/county. The city/county may then:
  - Propose objective design review standards but cannot address floor area ratios, density, or height.
  - Adopt findings identifying specific adverse impacts on public health or safety.
- The bill includes a provision that “*Within 90 days of receiving the conceptual plans, the city or county may propose objective design review standards.*” This is a tight timeline to invite public participation, conduct studies and develop design standards. Also, the bill includes that the DGS may, but is not required to, accept design review standard proposals made by a city or county. Thus, even if a city does develop the standards in a timely manner, it is not guaranteed that these will be accepted by DGS.
- Regional Housing Needs Allocation (RHNA). Foster City has recently adopted its 6<sup>th</sup> cycle Housing Element 2023-31 which includes sites to accommodate 1,896 housing units for the planning period 2023-31. It is unclear if the units developed under this bill would count towards City’s RHNA or these would be additional housing units.
- Estero Municipal Improvement District (EMID) recently adopted Water Neutrality Growth Ordinance requiring proposed new development(s), redevelopment(s), or change in use projects to be water-neutral (from the City-delivered water system) through any combination of on-site and/or off-site water offset measures within the EMID service area boundary. It is unclear if EMID regulations would apply or if EMID would be required to provide water to these units.
- Payment of Impact Fees. The bill does not discuss if the housing units would be subjected to City’s development impact fees.

Thus, staff would like to recommend to the City Council to oppose the bill unless it is amended to provide clarity on the issues highlighted above.

### California Environmental Quality Act

The analysis of the proposed bill is exempt per CEQA Guideline Section 15061(b)(3), Common Sense Exemption (14 Cal. Code Regs. § 15061(b)(3)) because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment.

### FISCAL IMPACT

There is no fiscal impact associated with the recommended action.

### CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

**ATTACHMENTS:**

Attachment 1 – Draft Letter