

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 591 (Becker)
Version: April 12, 2021
Hearing Date: April 20, 2021
Fiscal: No
Urgency: No
JT

SUBJECT

Senior citizens: intergenerational housing developments

DIGEST

This bill would authorize the establishment of an intergenerational housing development for senior citizens, caregivers, or transition age youths, as provided.

EXECUTIVE SUMMARY

“The [Unruh Civil Rights] Act expresses a state and national policy against discrimination on arbitrary grounds. [Citation.] Its provisions were intended as an active measure that would create and preserve a nondiscriminatory environment in California business establishments by “banishing” or “eradicating” arbitrary, invidious discrimination by such establishments.’ [Citation.]” (*Harrison v. City of Rancho Mirage* (2015) 243 Cal.App.4th 162, 172.) The Unruh Civil Rights Act prohibits housing discrimination on the basis of age but specifically authorizes accessible housing for senior citizens meeting specified parameters. The federal Fair Housing Act likewise prohibits discriminatory housing practices based on certain protected characteristics, including familial status, but expressly exempts housing for older persons, provided that at least 80 percent of the units in a housing development are so dedicated.

This bill would permit the establishment of an intergenerational housing development if (1) at least 80 percent of the occupied dwelling units are occupied by at least one senior citizen, as specified, and up to 20 percent of the occupied dwelling units are occupied by at least one caregiver or transition age youth, as defined, and (2) the development is an affordable rental housing development, as defined, and has received an is affordable to lower income households. It is sponsored by Emeryville Mayor Dianne Martinez, and is supported by other mayors and organizations that focus on housing policy. If the bill passes this Committee, it will be referred to the Senate Housing Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the federal Fair Housing Act (42 U.S.C. § 3601 et seq.), which prohibits discriminatory housing practices based on certain protected characteristics, including familial status. (*Id.* at § 3604(a).) Expressly exempts “housing for older persons,” defined to include housing in which at least 80 percent of the units are for people who are 55 or older, provided certain procedural requirements are observed. (*Id.* at § 3607(b)(2)(C).)
- 2) Establishes the California Fair Employment and Housing Act, which prohibits, and provides remedies for, discrimination in housing accommodations on the basis of specified characteristics, including familial status. (Gov. Code § 12900 et seq.; §§ 12920, 12921(b).)
- 3) Establishes the Unruh Civil Rights Act (Civ. Code § 51 et seq.)¹, which provides that all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (§ 51.)
 - a) Clarifies that the Unruh Civil Rights Act applies to discrimination in the sale or rental of housing based upon age. (§ 51.2(a).)
 - b) Provides, nevertheless, that a business establishment may establish and preserve housing for senior citizens where the accommodations are designed to meet the physical and social needs of senior citizens (*id.*), and identifies architectural features that presumptively satisfy this accessibility requirement (*id.* at (d)).
- 4) Specifically authorizes senior citizen housing developments (§ 51.3(a)):
 - a) Provides the following definitions:
 - i. “Qualifying resident” or “senior citizen” is a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development. (*Id.* at (b)(1).)
 - ii. “Qualified permanent resident” is either:
 1. a person who (1) was residing with a qualifying resident or senior citizen before death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen, and (2) was 45 years of age or older, or a spouse, cohabitant (defined as spouses

¹ All further section references are to the Civil Code unless otherwise indicated.

- or domestic partners), or person providing primary physical or economic support to the qualifying resident or senior citizen (*id.* at (b)(2), (6)); or
2. a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined above, who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness or injury, as specified (*id.* at (b)(3)).
 - iii. "Senior citizen housing development" is a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units, as specified, which may be any residential accommodation other than a mobilehome. (*Id.* at (b)(4), (5).)
 - iv. "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family of the qualifying resident providing that care, as specified. (*Id.* at (b)(7).)
- b) Requires that the covenants, conditions, and restrictions and other documents or written policy must set forth the limitations on occupancy, residency, or use on the basis of age. (*Id.* at (c).) Any such limitation cannot be more exclusive than requiring that one person in residence in each dwelling unit be a senior citizen and that each other resident be a qualified permanent resident, permitted health care resident, or a person under 55 years of age whose right to the housing existed before January 1, 1985. (*Id.* at (c), (h).) The limitation may be less exclusive, but must at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as their primary residence on a permanent basis. (*Id.* at (c).)

This bill:

- 1) States the Legislature finds and declares:
 - a) A growing body of scientific research has linked social isolation and loneliness in seniors to higher risks for a variety of physical and mental conditions, including, but not limited to, high blood pressure, heart disease, obesity, a weakened immune system, anxiety, depression, cognitive decline, Alzheimer's disease, and even death.
 - b) Intergenerational housing decreases the health risks of social isolation and loneliness by surrounding seniors in communities with families and giving seniors structured opportunities to benefit from, and contribute to, the lives of young people. According to research conducted by the Eisner Foundation, nonmedical benefits of intergenerational housing for seniors also include improved mood and self-esteem, increased skills and

knowledge, specifically around technology and culture, increased exercise, access to practical assistance in the form of help with chores and errands, and improved perception of young people.

- c) Intergenerational housing has been successful at the award-winning Treehouse Easthampton community, which combines seniors with foster families in western Massachusetts. Outcome data for this community over 11 years showcases the remarkable impact on the lives of youth.
 - d) Additional benefits of intergenerational housing for youth, according to research conducted by the Eisner Foundation, include improved social skills, increased emotional support, increased self-esteem, increased school attendance, increased knowledge and perspective of the past, and improved perception of elders.
 - e) The purpose of the bill is to facilitate the establishment of intergenerational housing developments in California.
- 2) Finds and declares that provisions of the bill are necessary to establish and preserve specially designed, accessible, intergenerational housing for senior citizen. States that there are senior citizens who need special living environments and services and benefit from intergenerational housing environments, and that there is an inadequate supply of this type of housing in the state.
- 3) Provides for the establishment of an intergenerational housing development consisting of units for senior citizens, caregivers, or transition age youths if the following conditions are satisfied:
- a) At least 80 percent of the occupied dwelling units are occupied by a least one senior citizen.
 - b) Up to 20 percent of the occupied dwelling units are occupied by at least one caregiver or transition age youth.
 - c) The development is affordable to lower income households, based on definitions in existing law.
 - d) If a unit dedicated to a caregiver or transition age youth ceases to house a caregiver or transition age youth, the owner, board of directors, or other governing body has the discretion to require the household in that unit to cease residing in the development upon receipt of a minimum of six months written notice, for the sole purpose of ensuring that the unit may be made available to a qualifying caregiver or transition age youth.
 - e) The housing facility or community must not evict or terminate the lease of a family with children in order to comply with the requirement that at least 80 percent of the occupied unit be occupied by at least one senior citizen.
 - f) The housing complies with all applicable fair housing laws, as provided.
 - g) The covenants, conditions, and restrictions and other documents or written policy for the development set forth the limitations on occupancy, residency, or use consistent with the bill's provisions.

- 4) Includes the following definitions:
 - a) "Caregiver" means a person responsible for meeting the daily care needs of a senior citizen, or a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care.
 - b) "Senior citizen" or "resident" means a person 55 years of age or older.
 - c) "Transition age youth" means a person 18 to 24 years of age, inclusive, who is a current or former foster youth who was adjudged a ward or dependent of the juvenile court, or a homeless youth or former youth, as defined under existing federal law.

COMMENTS

1. Legal background

a. State law

The Unruh Civil Rights Act prohibits arbitrary discrimination by business establishments on the basis of specified characteristics. (§ 51.) In *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Assn.* (1983) 33 Cal.3d 790, the California Supreme Court held that the Unruh Act covered discrimination on the basis of age and that it therefore prohibited apartments and condominium developments, respectively, from excluding families with children. In *Marina Point*, the Court suggested in dicta that its holding was not intended to prohibit seniors-only developments:

In light of the public policy reflected. . . [by the Unruh Act], age qualifications as to a housing facility reserved for older citizens can operate as a reasonable and permissible means under the Unruh Act of establishing and preserving specialized facilities for those particularly in need of such services or environment. [Citation.] Such a specialized institution designed to meet a social need differs fundamentally from the wholesale exclusion of children from an apartment complex otherwise open to the general public.

(*Id.* at 742-743.) In 1984, the Legislature enacted two bills designed to codify this dicta in *Marina Point*, AB 3909 (Davis) and SB 1553 (Boatwright), which added sections 51.2 and 51.3, respectively, to the Unruh Act. Section 51.2 affirms that the general prohibition against arbitrary discrimination under section 51 prohibits discriminating in the sale or rental of housing based on age. (*Id.* at (a).) Section 51.2 also states that "[w]here accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by [the federal Fair Housing Act]." (*Id.*)

Section 51.3 declares that its purpose is “to establish and preserve specially designed accessible housing for senior citizens,” and sets forth the below-described specific requirements for senior citizen housing developments. Under these two sections, senior developments may exclude non-seniors without illegally discriminating on the basis of age, if they are not otherwise prohibited from doing so by federal law and the following requirements are observed:

- The development is designed to meet the physical and social needs of senior citizens.
- At least one person living in each dwelling unit is a “qualifying resident” or “senior citizen” – that is, they must either be 62 years or older, or a person 55 years or older in a senior citizen housing development, which is a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units.
- Each other person in each dwelling unit must be either a “qualified permanent resident” who has a specified relationship with the qualifying resident or senior citizen or a “permitted health care resident” hired to provide live-in, long-term, or terminal health care to a qualifying resident.

b. Federal law

Before 1988, the federal housing discrimination statute, Title VIII of the Civil Rights Act of 1968, did not prohibit age discrimination. In the Fair Housing Amendments Act of 1988 (FHAA), Congress made it generally unlawful to discriminate in the sale or rental of housing on the basis of “familial status.” Under the FHAA, a housing facility may discriminate on the basis of age if the facility is intended and operated for occupancy by persons 62 and older, if at least 80 percent of the occupied units are occupied by at least one person who is 62 years old and the housing facility publishes and adheres to policies and procedures that demonstrate the intent to be operated for occupancy by persons 62 years and older.

For housing facilities operated for occupancy by persons 55 and older, there was one more requirement, in addition to the ones applicable to 62 and older parks. Such facilities were required to provide “significant facilities and services specifically designed to meet the physical or social needs of older persons,” unless the provisions of such significant facilities and services is not practicable and it is necessary to provide important housing opportunities for older persons. In 1996, President Clinton signed H.R. 660, which repealed this requirement that 55 and over housing facilities provide significant facilities and services specifically designed to meet the needs of older persons. (Public Law 104-76.) Thus, the FHAA allows housing in which at least 80 percent of the units are for people who are 55 or older, provided certain procedural requirements are observed. (42 U.S.C. § 3607(b)(2)(C).)

2. Authorizes the establishment of intergenerational housing developments

The bill would permit the establishment of an intergenerational housing development if (1) at least 80 percent of the occupied dwelling units are occupied by at least one senior citizen, as specified, and up to 20 percent of the occupied dwelling units are occupied by at least one caregiver or transition age youth, as defined, and (2) the development is affordable to lower income households as defined in under existing provisions.

The bill includes the following definitions:

- “Caregiver” means a person responsible for meeting the daily care needs of a senior citizen, or a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care.
- “Senior citizen” or “resident” means a person 55 years of age or older.
- “Transition age youth” means a person 18 to 24 years of age, inclusive, who is a current or former foster youth who was adjudged a ward or dependent of the juvenile court, or a homeless youth or former youth, as defined under existing federal law.²

Additionally, the bill would provide the following:

- If a unit dedicated to caregivers or transition age youth ceases to house a caregiver or transition age youth, the owner, board of directors, or other governing body has the discretion to require the household in that unit to cease residing in the development upon receipt of a minimum of six months written notice, for the sole purpose of ensuring that the unit may be made available to a qualifying caregiver or transition age youth.
- The housing facility or community must not evict or terminate the lease of a family with children in order to comply with the requirement that at least 80 percent of the occupied unit be occupied by at least one senior citizen. The bill expressly clarifies that this does otherwise alter or affect applicable protections for tenants.
- The housing must comply with all applicable fair housing laws, as provided.

² The federal McKinney-Vento Homeless Assistance Act defines homeless youths as “individuals who lack a fixed, regular, and adequate nighttime residence” who:

- are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- may be living in motels, hotels, trailer parks, or shelters;
- have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- are migratory children who qualify as homeless because they are children who are living in similar circumstances listed above. (42 U.S.C. § 11434a(2).)

- The covenants, conditions, and restrictions and other documents or written policy for the development must set forth the limitations on occupancy, residency, or use, consistent with the bill.

The author writes:

A growing body of scientific research has linked social isolation and loneliness in seniors to higher risks for a variety of physical and mental conditions and this was before the start of COVID-19 and the Shelter in Place requirements. Research shows that when seniors move into independent living environments, they lose social and physical connections to the outside world. According to the National Institute on Aging, losing a sense of connection changes a person's perspective of the world, causing social isolation and loneliness, which is linked to a variety of mental and physical conditions, including high blood pressure, heart disease, obesity, Alzheimer's disease and even death. It is vital that housing developments incorporate active, therapeutic, and social activities to keep seniors engaged and active.

3. Comment from the Senate Human Services Committee

Typically, provisions of this bill would trigger the jurisdiction of the Senate Human Services Committee. However, due to the limitations placed on committee hearings due to ongoing health and safety risks of the COVID-19 virus, the referral to the Senate Human Services Committee was rescinded. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Human Services Committee. The Senate Human Services Committee specifically states that:

As currently in print, this bill enables TAY aged 18 to 24 who are a current or former foster youth, as defined, or a homeless youth or former homeless youth, as defined, to reside in specially designated units within intergenerational housing developments. With at least 80 percent of the housing allocated to seniors and the remaining 20 percent of units to be available for TAY or senior caregiver housing, the bill in print does not place requirements on these intergeneration housing developments beyond these unit allocations. Senior and TAY residents may have very different expectations regarding their housing environment and appropriate tenant behavior, thus the author may wish to consider how youth will be selected for these intergenerational developments and what efforts will be made to ensure both the seniors and young people are supported so both populations succeed in this intergenerational community.

It is well documented that additional, affordable housing opportunities are needed for California's TAY, as TAY homelessness is an ongoing concern. There are currently multiple efforts being considered by the legislature to address the

needs of homeless youth and current or former foster youth. Although this bill would provide an additional, creative alternative housing option for qualifying youth, which has been successfully modeled by the LA LGBT Center's Anita May Rosenstein Campus, additional considerations are needed as the bill moves through the legislative process. Specifically, the author may wish to require the inclusion of a stakeholder process to assist in the creation of a regulatory framework for these intergenerational housing developments that ensures the inclusion of child welfare and youth homelessness service providers and advocates. This would provide for the regulatory process to consider the potential service and support needs of youth in these placements so that the intergenerational model is a successful one.

4. Support

In a letter echoed by other supporters, Emeryville Mayor Dianne Martinez writes:

As it relates to financing affordable housing, the options to pay for and build these projects are limited. Previously, tax credits were used to help finance senior affordable housing for people age 55 and older, though it came with a restriction that prohibited the financing of other types of affordable units in the same building. An affordable housing project aimed at serving seniors could not include some units for transition-aged youth, despite the well documented social and health benefits to seniors associated with building some units for TAY in the same building. Without that opportunity, seniors are missing opportunities to access social and health benefits and services.

Here in Emeryville, there is a project at 4300 San Pablo Avenue that is 100% affordable and on city property. The project proposes 68 affordable units and affordability will go from 30-80 AMI%. 30-40% AMI for seniors and up to 80% AMI for youth. Unfortunately, this project, like many in our state, has hit a roadblock related to how to finance the project. Tax credits used to help finance senior affordable housing for people age 55+ however there is a restriction that prohibits the financing of other types of affordable units in the same building. An affordable housing project aimed at serving seniors could not include some units for transition-aged youth, despite the well documented social and health benefits to seniors of living with different age groups, such as transition age youth. In the absence of this law change, an affordable housing developer would need to build two separate buildings, which is physically and financially infeasible in most regions of our State.

In addition, transition age youth are a vulnerable population in our state. Due to histories of neglect and abuse, many foster youths lack the stability and support of a family. There are over 60,000 youth in the foster care system that are waiting to find a family and a home. Each year around 3,500 transition-age youth exit

foster care without having found a permanent home, causing emotional and cognitive dysfunction due to the lack of housing, food, safety, and difficulty reintegrating into society. Unfortunately, foster youth are the fastest growing homeless population in California, which puts them at risk of poverty and incarceration.

SUPPORT

City of Emeryville Mayor Dianne Martinez (sponsor)
California Apartment Association
California Alliance for Retired Americans
City of Berkeley Mayor Jesse Arreguin
City of Half Moon Bay Mayor Robert Brownstone
City of Oakland Mayor Libby Schaaf
EAH Housing
Non-Profit Housing Association of Northern California
Mentis
MidPen Housing
The People Concern

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: *See Comment 1.*
