

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Lorena Gonzalez, Chair  
AB 491 (Lorena Gonzalez) – As Amended May 4, 2021

Policy Committee: Housing and Community Development                      Vote: 7 - 0

Urgency: No                      State Mandated Local Program: Yes                      Reimbursable: Yes

**SUMMARY:**

This bill prohibits certain discriminatory features in mixed-income multi-family housing developments and states its provisions are declaratory of existing law. Specifically, this bill:

- 1) Requires, for a mixed-income multifamily structure, both of the following:
  - a) The occupants of the affordable housing units within the mixed-income multifamily structure must have the same access to the common entrances and amenities in that structure as the occupants of the market-rate housing units.
  - b) Affordable housing units within that structure must not be isolated to a specific floor or an area on a specific floor.
- 2) States the above provisions are declaratory of existing law.

**FISCAL EFFECT:**

- 1) Minor and absorbable costs to the Department of Housing and Community Development.
- 2) State-mandated costs to cities and counties, unknown but likely minor, to make necessary administrative changes, if any, to reflect the requirements of this bill. These costs are potentially reimbursable by the state, subject to a determination by the Commission on State Mandates, should a local agency submit a claim.

**COMMENTS:**

- 1) **Purpose.** According to the author, “[This bill] will put an end to the discriminatory practice of treating residents of affordable housing units in a mixed-income multifamily structure differently from residents of market-rate housing units.
- 2) **Background.** State law includes numerous prohibitions against discrimination in housing. Existing law broadly prohibits a local government from using public or private land use practices, decisions or authorizations to discriminate against low- or moderate-income families or individuals. The prohibition applies to publicly subsidized projects, those that receive density bonus or are subject to an inclusionary zoning ordinance.

California's Fair Employment and Housing Act (FEHA) prohibits housing discrimination against any member of a protected class under FEHA, as well as based on the income of the intended occupants of the housing. Although FEHA does not explicitly apply to lower income people, some lower-income people fall in to other categories of protected class and so receive the protection from discrimination provided by the FEHA.

In addition, California's policy to affirmatively further fair housing (AFFH) requires cities and counties to consider AFFH in their housing element's implementation plans. By placing AFFH provisions into housing element law, the California law expanded its reach to all cities and counties, rather than just those that receive federal funding for housing developments.

- 3) **Poor Door.** Recent news stories covered cases in which developers, in New York City and San Diego, proposed housing developments with features that would discriminate against lower-income residents. In particular, developers proposed a separate entrance for lower income residents, nicknamed a "poor door," and limiting-lower income residents' access to amenities such as a swimming pool. In the San Diego case, the development was market rate and subject to the local inclusionary housing ordinance which restricted 10% of the units to affordable housing. The developer proposed constructing three towers, two that would be entirely market rate and one that would be affordable to lower-income households, and a roof-top deck and pool that the residents of the affordable structure would be unable to access.

Although the discriminatory actions this bill is addressing may be covered by existing law, they are still occurring at the local level. By explicitly prohibiting these actions in mixed-income developments, this bill reinforces the prohibition against such practices.

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