
Senator Scott Wiener: YIMBY Hero

Well, there’s the reason why the last election I ever won was for chalkboard monitor in the second grade.

Last Friday, the California Senate passed the Assembly’s version of SB 79 (Wiener), which mandates higher densities and height restrictions within a half-mile of high-quality transit stops (with diminishing densities and heights the farther one goes from the stop). I said last week that I saw no reason why the Legislature should move on this bill now: it would force Governor Gavin Newsom to alienate some constituencies in the run-up to the November special election for the Election Rigging Response Act.

Yet the Legislature went ahead, and the NIMBYs are now putting Newsom on the spot by demanding that he veto the bill. Mayor NIMBY, Karen Bass was considerably more polite, but her letter requesting a veto was picked up by local newspapers and community outlets in Democratic areas are doing the same.

I continue to not get it. Which is probably why, like I said, I am not a successful politician.

But hidden within the bill might be a way for at least some cities to avoid the bill’s impacts. SB 79 has a modest but real inclusionary requirement: units built under it have a choice between including 7% for “extremely low income” housing (affordable for those with up to 30% of Area Median Income); 10% for “very low

income (affordable up to 50% of AMI); or 13% of “lower-income” (affordable up to 80% of AMI).

It also stipulates, however, that “[i]f a local inclusionary housing requirement mandates a higher percentage of affordable units or a deeper level of affordability than that described…then the local inclusionary housing requirement mandate shall apply in place of the [general] requirements.”

This makes sense. Some local governments complained rightfully that if this provision was left out of the bill, their own ordinances with tougher inclusionary requirements around would be pre-empted, leading to *lower* incentives for affordable units. Wiener easily agreed to this provision.

But now you can see where a NIMBY city might take a calculated risk to block the bill’s provisions altogether. Suppose that a city says, “okay, around transit, ***our*** ordinance will require, say, 60% moderate income units.” (“Moderate” income units are affordable to those between 80-120% of AMI). Given California’s high housing prices, that would still be quite a bit under market rate, which means that private for-profit developers could not make an SB 79 project pencil out. And since subsidies for affordable units are never ample enough (especially with the Trump Administration’s destruction of federal housing programs), this might make SB 79 projects go away altogether. It’s always possible that a developer could take them up on it, but it is unlikely, and of course if there is any public subsidy attached to the affordable project, that requires prevailing wage, making it even more difficult for it to pencil out.

Moderate income units are sort of the orphans of the housing policy world. Neither affordable housing advocates –focused on extremely low income units – nor private developers care much about them. It’s quite a gap in the housing landscape. But perhaps this loophole incentive in SB 79 might increase the zoning for them. In any event, assuming that Newsom signs the bill (and you never know), the land use games are just beginning.