

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1279 (Bloom) – As Introduced February 21, 2019

**SUBJECT:** Planning and zoning: housing development: high-resource areas

**SUMMARY:** Requires certain development sites in high resource areas to allow for more density and height and makes these sites subject to “use by-right” approval. Specifically, **this bill:**

- 1) Requires the Department of Housing and Community Development (HCD) to designate areas in this state as “high-resource areas,” as follows:
  - a) Specifies the definition of a “high-resource area” to mean an area of high opportunity and low residential density that is not currently experiencing gentrification and displacement, and that is not at a high risk of future gentrification and displacement;
  - b) Requires HCD, in creating these designations, to collaborate with the California Fair Housing Task Force, convened by the department and the California Tax Credit Allocation Committee, and shall solicit input from members of the public and ensure participation from all economic segments of the community as well as members of protected classes;
  - c) Requires that this designation must occur no later than January 1, 2021, and every five years thereafter;
  - d) Requires the designation of an area as a high-resource area remains valid for five years, unless successfully appealed by a city or county. Specifies the appeal process as follows:
    - i. A city or county that includes within its jurisdictional boundaries an area designated as a high-resource area may appeal to HCD to remove that designation at any point during the five-year period by submitting an appeal in a form and manner prescribed HCD.
    - ii. HCD may remove the designation of a city or county that submits an appeal if HCD finds, based on substantial evidence, that the city or county has adopted policies after the area was designated as a high-resource area that meet the following requirements:
      - a. The policies permit development of higher density housing in the high-resource area than were allowed under the city’s or county’s policies in effect at the time the area was designated as a high-resource area;
      - b. The policies are sufficient to accommodate a similar number of housing units within the area and at similar levels of affordability as would be required by being in a high-resource area; and,

- c. The policies are consistent with the city's or county's obligation to affirmatively further fair housing pursuant.
    - iii. In considering an appeal of a city or county submitted, HCD shall consult with the California Fair Housing Task Force and shall issue a decision within 90 days of receiving the appeal; and,
    - iv. The decision of the HCD regarding an appeal pursuant to this paragraph shall be final.
  - 2) Defines "Use by right" to mean that the local government's review of the development project under this section may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" under the California Environmental Quality Act (CEQA), and that any required design review may not trigger review under CEQA.
  - 3) Requires that a housing development project must be a use by right in any high-resource area if the development satisfies the following criteria:
    - a) If the development project is located in any portion of the high-resource area where allowable uses are limited to single-family residential development:
      - i. The development project may consist of no more than four residential units and have a height of no more than 20 feet.
      - ii. Either of the following must apply:
        - a. The initial sales price or initial rent for units in the development project does not exceed the amount of affordable housing cost or affordable rent to households with a household income equal to or less than 100 percent of the area median income; or
        - b. The initial sales price or initial rent exceeds these limits, and the developer agrees to pay a fee to the county or city equal to 10 percent of the difference between the actual initial sales price or initial rent and the sales price or rent that would be affordable to households making up to 100 percent of the area median income. In such an instance, the city or county must deposit this fee into a separate fund reserved for the construction or preservation of housing with an affordable housing cost or affordable rent to households with a household income less than 50 percent of the area median income, with a term of affordability of at least 55 years for units that are rented and 45 years for units that are for sale.
    - iii. The development project must comply with all objective design standards of the city or county. However, the city or county may not require the development project to comply with an objective design standard that would preclude the development from including up to four units or impose a maximum height limitation of less than 20 feet.

- b) If the development project is located in any portion of the high-resource area where residential use is an allowable use, is located on a site that is at least one-quarter acre in size, and is either adjacent to an arterial road or located within a central business district:
- i. The development project may consist of no more than 40 residential units and has a height of no more than 30 feet;
  - ii. For development projects consisting of 10 or fewer units, either of the following must apply:
    - a. The initial sales price or initial rent for units in the development project does not exceed the amount of affordable housing cost or affordable rent to households with a household income equal to or less than 100 percent of the area median income; or
    - b. The initial sales price or initial rent exceeds these limits, and the developer agrees to pay a fee to the county or city equal to 10 percent of the difference between the actual initial sales price or initial rent and the sales price or rent that would be affordable to households making up to 100 percent of the area median income, as provided in this subparagraph. The city or county shall deposit any fee received pursuant to this subparagraph into a separate fund reserved for the construction or preservation of housing with an affordable housing cost or affordable rent to households with a household income less than 50 percent of the area median income, with a term of affordability of at least 55 years for units that are rented and 45 years for units that are for sale.
  - iii. For development projects consisting of more than 10 units, at least 10 percent of the units in the development project must have an affordable housing cost or affordable rent to lower income households and at least five percent must have an affordable housing cost or affordable rent to very low income households, with a term of affordability of at least 55 years for units that are rented and 45 years for units that are for sale. However, if the city or county requires that the development project include a greater percentage of units that are affordable to lower income and very low income households, the development project shall comply with that greater requirement; and
  - iv. The development project must comply with all objective design standards of the city or county. However, the city or county may not require the development project to comply with an objective design standard that would preclude the development from including up to 40 units or impose a maximum height limitation of less than 30 feet.
- c) If the development project is located in any portion of the high-resource area where residential or commercial uses are allowed use, is located on a site that is one-half acre in size or greater, and is either adjacent to an arterial road or located within a central business district:

- i. The development project may consist of no more than 100 residential units and has a height of no more than 55 feet, and would be eligible for a density bonus or other incentives or concessions if it includes more affordable units than described below;
  - ii. At least 25 percent of the units in the development project must have an affordable housing cost or affordable rent to lower income households and at least 25 percent have an affordable housing cost or affordable rent to very low income households, with a term of affordability of at least 55 years for units that are rented and 45 years for units that are for sale;
  - iii. The development project must comply with all objective design standards of the city or county. However, the city or county may not require the development project to comply with an objective design standard that would preclude the development from including up to 100 units or impose a maximum height limitation of less than 55 feet.
- d) None of the following circumstances apply:
- i. The development project would require the demolition of rental housing that is currently occupied by tenants or has been occupied by tenants within the past 10 years.
  - ii. The development project is proposed to be located on a site that is any of the following:
    - a. A coastal zone;
    - b. Either prime farmland, farmland of statewide importance, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction;
    - c. Wetlands;
    - d. Within a high- or very high-fire hazard severity zone, unless the site has an adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development;
    - e. A hazardous waste site, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses;
    - f. Within a delineated earthquake fault zone, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission and by any local building department;
    - g. Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood), unless the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management

Agency and issued to the local jurisdiction or the site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program;

- h. 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;
  - i. Lands identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan;
  - j. 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, the California Endangered Species Act, or the Native Plant Protection Act; or
  - k. Lands under conservation easement.
- iii. The development project is proposed to be located on a site that is not an infill site, defined to mean a site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.
- 4) Specifies that this law shall not be construed to prevent a developer from submitting an application for a development permit in a high-resource area under the county's or city's general plan, specific plan, zoning ordinance, or regulation for a project that does not meet the criteria specified herein;

**EXISTING LAW:**

- 1) Provides for owner-occupied housing "affordable housing cost" may not exceed the following:
- a) For extremely low income households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit;
  - b) For very low income households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit;
  - c) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit; and

- d) For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.
- 2) Defines "affirmatively furthering fair housing" as taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, AFFH means taking meaningful actions that together address segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to AFFH extends to all of a public agency's activities and programs relating to housing and community development.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

*Purpose of the Bill:* According to the author, "This bill would facilitate mixed-income and affordable housing development in high-resource, lower-density communities through local zoning overrides and other land use incentives. The bill is aimed at addressing the housing shortage in a way that also addresses exclusionary zoning practices that exacerbate racial and economic segregation and that provide few opportunities for lower-wage workers to live close to where they work in many areas of the state."

*Background:* The cost of housing in California is the highest of any state in the nation. Additionally, the pace of change has far outstripped that in other parts of the county. Whereas in 1970 housing in California was 30% more expensive than the U.S. average, now it is 250% more expensive. While incomes have increased over that period, they have done so at a much slower pace. The result is that housing has become much more expensive. Only 28% of households can buy the median priced home. Over half of renters and 80% of low-income renters are rent-burdened, meaning they pay over 30% of their income towards rent. According to a 2016 McKinsey Global Institute, every year Californians pay \$50 billion more for housing than they are able to afford.

*Building Additional Housing:* According to the Legislative Analyst's Office, "a collection of factors drive California's high cost of housing. First and foremost, far less housing has been built in California's coastal areas than people demand. As a result, households bid up the cost of housing in coastal regions. In addition, some of the unmet demand to live in coastal areas spills over into inland California, driving up prices there too. Second, land in California's coastal areas is expensive. Homebuilders typically respond to high land costs by building more housing units on each plot of land they develop, effectively spreading the high land costs among more units. In California's coastal metros, however, this response has been limited, meaning higher land costs have translated more directly into higher housing costs. Finally, builders' costs—for labor, required building materials, and government fees—are higher in California than in other states. While these higher building costs contribute to higher prices throughout the state, building costs appear to play a smaller role in explaining high housing costs in coastal areas."

According to Up for Growth's 2018 analysis, housing underproduction is rampant throughout the United States, but California's underproduction is greater than the other 49 states combined.

According to the 2016 McKinsey study, California's housing deficit is over 2 million units, and that it would require production of 500,000 units a year (3.5 million units total) over a seven year period to normalize the state's housing prices. According to HCD, there needs to be 180,000 units built per year to maintain housing costs. By contrast, housing production averaged less than 80,000 new homes annually over the last 10 years.

Facilitating the necessary growth will require building at higher densities than are currently allowed in much of the state. The UC Berkeley Turner Center conducted a residential land use survey in California from August 2017 to October 2018. The survey found that most jurisdictions devote the majority of their land to single family zoning and in two-thirds of jurisdictions, multifamily housing is allowed on less than 25% of land. The LAO's 2016 analysis found that the housing density of a typical neighborhood in California's coastal metropolitan areas increased only by four percent during the 2000s. The prevailing development pattern continues to be single-family sprawl, with increasing pockets of high density housing in or near the downtown of large cities.

Increasing housing density has the risk of demonstrably changing the character of a neighborhood, potentially for the worse. A strategy for building more densely in a way that can be more in character is through "missing middle" construction types. This includes duplexes, triplexes, fourplexes, townhomes, courtyard apartments, and bungalow courts. According to SACOG's 2018 Housing Toolkit, this type of housing is cheaper to produce than larger apartment buildings, tends to become naturally affordable rental housing as it ages, provides sufficient density to support the shops, restaurants, and transit that are associated with walkable neighborhoods, and usually fits in with the look and feel of a single-family neighborhood.

*Facilitating Access to Housing in High-Resource Areas:* Multiple studies have shown that life outcomes improve for those living in "high-resource areas," i.e., neighborhoods with high quality public schools, proximity to well-paying jobs, and a clean and safe environment. Such studies have also shown that living in such communities can have a particularly beneficial outcome for low-income people in terms of health, employment, and educational attainment.

However, historically low-income people have been excluded from high-resource areas through a number of means. According to a 2018 paper by Nancy Walsh, JD, "racially restrictive covenants were widespread tools of discrimination during the first half of the 20th century. By the time the Supreme Court ruled them to be unenforceable in 1948, it is estimated that more than half of all residential properties built in the intervening decades were constrained by racially restrictive covenants. This also includes the "redlining" practices that came into place after the adoption of the federal National Housing Act of 1934. This act made mortgages more affordable and stopped bank foreclosures during the Great Depression. However, these loans were distributed in a manner to purposefully exclude "high risk" neighborhoods composed of minority groups, and to limited access to these loans by minority groups. This practice led to underdevelopment and lack of progress in these segregated communities while neighborhoods surrounding them flourished due to increased development and investment.

The rapidly rising cost of housing in California has only exacerbated these historic trends. A 2019 study by UC Berkeley's Urban Displacement Project showed that rising housing prices in the Bay Area has led to "new concentrations of poverty and racial segregation in the region and the perpetuation of racial disparities in access to high-resource neighborhoods."

To address these historic disparities, the state has prioritizing allocation of its tax credits into “high opportunity areas.” The defining and mapping of these areas has been undertaken by the California Tax Credit Allocation Committee (TCAC) in the State Treasurer’s Office and HCD. TCAC and HCD convened a group of independent organizations and researchers called the California Fair Housing Taskforce (Taskforce). The Taskforce released a detailed opportunity mapping methodology document that identifies specific policy goals and purposes, as well as detailed indicators to identify areas that further the policy goals and purposes.

*Increasing Development in High Resource Areas:* As stated by the author, the bill would facilitate mixed-income and affordable housing in high-resource areas that are not experiencing nor at risk of gentrification and displacement. The bill would make certain kinds of housing development a use by-right in these areas, as follows:

- In areas zoned only for single-family residential development, the development project could consist of up to four residential units with a height of up to 20 feet. The units would have to be either affordable to households making 100% of the area median income (AMI), or sold or rented at a higher AMI if the developer pays 10% of the difference to the local jurisdiction, who would be required to use it to build deed-restricted units for households at 50% AMI or less;
- In areas zoned for residential use that are in more prime development locations (i.e., at least one-quarter acre in size and located on a major street and/or the central business district), the development project could consist of up to 40 residential units with a height of up to 30 feet. Projects with 10 or fewer units would need to meet the same affordability parameters as the projects in single-family zones discussed above. Projects of more than 10 units would need to dedicate at least 10% of the units to households with low incomes (typically 50%-80% AMI) and 5% to very low incomes (typically under 50% AMI);
- If the parcel exceeded one-half acre in these prime locations, the development would have an extra incentive to have higher affordability requirements. A project that had at least 25% of its units dedicated to low-income households and 25% to very-low income households would be allowed to have up to 100 residential units with a height of up to 55 feet. Such a project could receive a density bonus if it were to include additional affordable units; and,
- No qualifying project must require the demolition of housing that is currently for rent or has been in the past ten years, or be located in an environmentally unsafe or sensitive area.

To facilitate the implementation of these requirements, the bill requires HCD to undergo a process to define “high-resource areas,” based on consultation with a diversity of stakeholders, and with an appeal process for jurisdictions that disagree with designations within their borders.

*Staff Comments:* Were this bill to pass out of the committee, the author should consider several refinements to further clarify and fulfill the intent of the bill. Potential refinements include:

- For qualifying projects not limited to single-family zoning, the proposed unit cap does not account for the variations in parcel size and allowed height. As such, projects might under-develop relative to preferable densities in order to utilize the bill’s by-right approval process. Instead, the author may consider applying a density-based unit cap that is responsive to the parcel size and allowed height.



- For qualifying projects to be allowed up to 55 feet they must meet a 50% affordability target. Such a target requires that the project receive public funding and/or be subsidized by a large commercial development on the same site. This enticement of large commercial developments may be counterproductive to reducing the jobs/housing mismatch that has exacerbated our current housing crisis. To better meet the intent of increased affordable development and decreased upward pressure on rents, the author may consider increasing the affordability requirement for qualifying projects to 100%. By contrast, if the author would like to see more market rate development in these communities, and commensurately more affordable housing that could come from a market-based solution, the author may consider reducing the affordable housing requirement to the maximum amount that would still facilitate housing development that would not require subsidization.
- This bill makes a development eligible for a density bonus or other incentives or concessions if it includes affordable units “in excess” than otherwise required to be a qualified project. This would allow projects providing one additional unit of affordable housing to get the density bonus. If that is not the intent, the author might consider specifically defining how much “in excess” a project should be to qualify.
- The bill relies on the terms “arterial road” and “central business district.” The author should consider defining these terms to ensure clarity of application.

*Related Legislation:*

- SB 50 (Wiener) (2019): Would requires a local government to grant increased development capacity in transit-rich and high-resource areas when a development proponent meets specified requirements. This bill is pending hearing in Senate Governance and Finance Committee.
- AB 686 (Santiago, Chapter 958, Statutes of 2018): Requires a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Status: Chapter 958, Statutes of 2018

*Double referred:* This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Rural Legal Assistance Foundation (co-sponsor)  
Public Advocates (co-sponsor)  
Western Center on Law and Poverty (co-sponsor)

**Opposition**

None on file.

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