
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2019 - 2020 Regular

Bill No: AB 1279 **Hearing Date:** 8/6/2020
Author: Bloom
Version: 7/22/2020 Amended
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Planning and zoning: housing development: high-opportunity areas

DIGEST: This bill requires specified housing developments to be a use by right in any high-opportunity area, as determined by the California Department of Housing and Community Development (HCD), if the development is located in any portion of the high-opportunity area, as specified.

ANALYSIS:

Existing law:

- 1) Provides for owner-occupied housing, that “affordable housing cost” may not exceed the following:
 - a) For extremely low-income households, the product of 30% times 30% of the area median income (AMI) adjusted for family size appropriate for the unit;
 - b) For very low-income households, the product of 30% times 50% of the AMI 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% of the AMI adjusted for family size, the product of 30% times 70% of the AMI adjusted for family size appropriate for the unit; and
 - d) For moderate-income households, not less than 28% of the gross income of the household, nor exceed the product of 35% times 110% of AMI adjusted for family size appropriate for the unit.
- 2) Defines "affirmatively furthering fair housing" (AFFH) 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.

- 3) Defines “use by right” as a local government’s review of a residential development may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for the purposes of the California Environmental Quality Act (CEQA).
- 4) Requires a local planning agency, annually by April 1, to submit a report (also known as the annual progress report) to the legislative body, the Office of Planning and Research, and the Department of Housing and Community (HCD) development that includes data points and updates on housing plans and approvals.

This bill:

- 1) Defines “high-opportunity area” as an area designated by HCD pursuant to the process identified below in (4).
- 2) Defines “infill site” as a site in which at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses. Parcels that are only separated by a street or highway shall be considered to be adjoined.
- 3) Defines “residential development” as a multifamily development project that includes two or more, but not more than 120 residential dwelling units. A residential development project may include nonresidential uses as long as 2/3 of the total square footage of the project is devoted to residential uses.

“High-Opportunity” Area Designations

- 4) Requires HCD, no later than January 1, 2021 and every 5 years thereafter, to designate high-opportunity areas. HCD shall collaborate with academic experts and shall solicit input from the public and ensure participation from all economic segments of the community, as well as protected classes. HCD shall consider areas designated as “high resource” or “highest resource” on the most recent “Opportunity Maps” adopted by the California Tax Credit Allocation Committee (TCAC) as a potential high-opportunity area.
- 5) Precludes HCD from designating a potential high-opportunity area as high-opportunity if either of the following conditions apply:

- a) The area is at risk of displacement of lower income households and households of color, or has seen significant displacement of lower income households or households of color within the prior 10 years.
 - b) Low wage workers in the potential high-opportunity area do not have significantly longer commutes to work than other low wage workers within the region.
- 6) Requires HCD to update its designations of high-opportunity areas within 6 months of the adoption of the new Opportunity Maps by TCAC.
- 7) Authorizes a city or county that includes a high-opportunity area within its boundaries to appeal to HCD to remove the designation at any point during the five-year period by submitting an appeal in a form and manner prescribed by HCD.
- 8) Authorizes HCD to remove the designation of a city or county that submits an appeal if it finds, based on substantial evidence, that the locality has adopted policies after the area was designated a high-opportunity area that meet the following requirements:
- a) The policies allow development of higher density in the high-opportunity area in a manner substantially similar to the “Streamlined Housing Approvals” section below than were allowed under the localities’ policies in effect at the time that area was designated as a high-opportunity area.
 - b) The policies are sufficient to accommodate a similar number of housing units within the area and at a similar level of affordability, as would be allowed under the “Streamlined Housing Approvals” section below.
 - c) The policies are consistent with the localities’ obligation to AFFH.
- 9) Requires HCD to issue a decision within 90 days of receiving the appeal. The decision shall be final.

Streamlined Housing Approvals

- 10) Requires a housing development to be a use by right in any high-opportunity area if the development is located in any portion of the high-opportunity area where residential use is an allowable use and:
- a) The development contains no more than 50 units.
 - b) Has a height of no more than 40 feet.
 - c) The development project is on a site that is ¼ acre or greater.

- d) The site is adjacent to an arterial road or located within a central business district.
- e) The development meets or exceeds the density standards contained within housing element law.
- f) If the development contains 10 or fewer units, either of the following apply:
 - i) The initial sale price or initial rent for units in the development project does not exceed affordable housing cost or affordable rent to households with a household income equal to or less than 100% of the AMI.
 - ii) If the initial sales price or initial rent exceeds (i), the developer agrees to pay a fee, as specified, which shall be deposited into a fund reserved for the construction or preservation of affordable housing, as specified.
- g) If the development contains more than 10 units, the following shall apply:
 - i) If the development includes a density increase of up to 50%, the development includes at least 5% of the units for extremely low-income (ELI) households, and either 6% for very low-income (VLI) households or 9% for lower income (LI) households.
 - ii) If the development includes a density increase between 51% and 80%, the development includes at least 5% for ELI households, and either 9% for VLI households or 12% for LI households.
 - iii) If the development includes a density increase greater than 81%, the development project includes at least 5% for ELI households, and either 12% for VLI households or 17% for LI households.
 - iv) If the local government requires housing developments to contain a specified percentage of units affordable to, and occupied by, moderate income, LI, VLI, or ELI households, the following shall apply:
 - (A) The residential development project shall include the total percentage of affordable units required under this bill or the local requirement, whichever is higher;
 - (B) The residential development project shall meet the deepest income targeting in either policy, including at least 5% of units affordable to ELI households and at least the minimum percentage of units affordable to VLI households by the local government, if any.
 - (C) If the total percentage of affordable units required by the local government is higher than that required in this bill, and the local policy does not require ELI units, then the 5% of

units affordable to ELI households shall be subtracted from the units required by local government at the highest affordability level.

- (D) The residential development shall comply with all other provisions of the local government intended to promote comparability between affordable units and others and achieve fair housing goals.
 - h) The development project complies with all objective design review standards of the city or county, as specified.
 - i) The development project shall be eligible for the applicable parking ratios as specified in density bonus law.
- 11) Requires a housing development to be a use by right in any high-opportunity area if the development is located in any portion of the high-opportunity area where residential or commercial uses are an allowable use and:
- a) The development contains no more than 120 units.
 - b) The development has a height of no more than 55 feet.
 - c) The development project is on a site that is ½ acre or greater.
 - d) The site is adjacent to an arterial road or located within a central business district.
 - e) If the residential development is on a site that does not allow residential uses, any rezoning required shall not require any discretionary review or approval by the local government that would constitute a “project” under CEQA.
 - f) At least 25% have an affordable rent to LI households and at least 25% have an affordable rent to VLI households.
 - g) The development project complies with all objective design review standard of the city or county, as specified.
 - h) The development meets or exceeds the density standards in housing element law.
 - i) The development shall be eligible for a density bonus, concessions, waivers, or reductions of standards and parking ratios under density bonus law.
- 12) Requires affordable units to be affordable for 45 years for units that are owner-occupied and 55 years for units that are rented.
- 13) Prohibits a development project from being eligible for approval as a use by right if any of the following apply:

- a) The development would require the demolition of rental housing that is currently occupied by tenants or has been occupied by tenants within the past 10 years.
 - b) The development project is proposed to be located on a site that is any of the following: a coastal zone, prime farmland or farmland of statewide importance, wetlands, within a very high fire severity zone, a hazardous waste site, within a delineated earthquake fault zone, within a special flood hazard area, within a regulatory floodway, lands identified for conservation in an adopted natural community conservation plan, habitat for protected species, lands under conservation easement, or lands that have been zoned and actively used for industrial or light industrial in any year within the last 10 years.
 - c) The development project is proposed on a site that is not an infill site.
 - d) The development project would require the demolition of a structure that was listed on a national, state, or local historic register before the submittal of the application.
- 14) Requires an approval for a development project to expire after two years, except that a project may receive a one-time, one-year extension if the development proponent provides documentation that there has been significant progress towards getting the development construction ready, including but not limited to, filing a building permit application.
- 15) Requires a local government subject to this bill to exercise due diligence in reviewing a use by-right proposal, and any related application submitted pursuant this section.
- 16) Sunsets the provisions of this bill on or after January 1, 2031.

COMMENTS

- 1) *Author's Statement.* According to the author, "Removing land use barriers to equitable housing development in high-resource areas of the state—places with good schools, jobs, etc.— is an essential part of addressing California's housing crisis and increasing choice and opportunity for low-income families. It's also crucial to meeting our climate goals by ensuring that low-wage workers have an opportunity to live close to where they work in all areas of the state. High-resource areas may or may not be near existing high-quality transit, but they can support green infill development, which is crucial to supporting future transit expansion. If we are serious about addressing the state's housing needs and reducing auto dependence, we need to increase density and expand infill development in more parts of the state. Two years ago we passed AB 1771,

which reformed the RHNA allocation process. Under AB 1771, high-resource areas of the state that lack housing opportunities for their lower-wage workforce will be receiving a larger share of the RHNA than they have in the past. AB 1279 helps ensure that these increased RHNA allocations translate into actual housing units.”

- 2) *Exclusionary zoning practices.* California’s high — and rising — land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density. In a 2016 analysis, the Legislative Analyst’s Office (LAO) found that the housing density of a typical neighborhood in California’s coastal metropolitan areas increased only by four percent during the 2000s. In addition, the pattern of development in California has changed in ways that limit new housing opportunities. A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores surrounded by vast swaths of low-density single-family housing. Specifically, construction of moderately-dense housing (2 to 49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades.

Stricter land use controls are also associated with greater displacement and segregation along both income and racial lines. Past practices such as redlining, which led to the racial and economic segregation of communities in the 1930s, have shown the negative effects that these practices can have on communities. The federal National Housing Act of 1934 was enacted to make housing and mortgages more affordable and to stop bank foreclosures during the Great Depression. These loans were distributed in a manner to purposefully exclude “high risk” neighborhoods composed of 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. People living in these “redlined” communities had unequal access to quality, crucial resources such as health and schools. These redlined communities experience higher minority and poverty rates today and are experiencing gentrification and displacement at a higher rate than other neighborhoods. Today, exclusionary zoning can lead to “unintended” segregation of low-income and minority groups, which creates unequal opportunities for Californians of color. Both the LAO and an analysis by the Institute of Governmental Studies (IGS) at the University of California, Berkeley indicate that building new housing would reduce the likelihood that residents would be displaced in future decades.

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. Some jurisdictions in the US have taken steps to increase density in single-family zones. For example, Minneapolis will become the first major U.S. city to end single-family home zoning; in December, the City Council passed a comprehensive plan to permit three-family homes in the city's residential neighborhoods, abolish parking minimums for all new construction, and allow high-density buildings along transit corridors. According to the 2016 McKinsey Report, California has the capacity to build between 341,000 and 793,000 new units by adding units to existing single-family homes.

- 3) *Facilitating access to housing in high-opportunity areas.* Multiple studies have shown that life outcomes improve for those living in “high-opportunity 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, low-income people historically have been excluded from high-opportunity areas, as noted in Comment 2. 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 have 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 prioritized allocation of its tax credits into “high-opportunity areas.” The defining and mapping of these areas has been undertaken by TCAC 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.

This bill would allow specified housing development projects in high-opportunity areas on infill sites to be approved by right, as follows:

- a) In areas zoned for residential use that are 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 50 residential units with a

height of up to 40 feet. Projects with 10 or fewer units would need be affordable to a household income equal or less than 100% of the area median income. Projects of more than 10 units would need to include a specified percentage of units affordable to ELI and VLI or LI households, depending on a density increase. These projects are eligible for reduced parking under density bonus law.

- b) In areas zoned residential or commercial on parcels exceeding one-half acre, 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 120 residential units with a height of up to 55 feet. These projects are eligible for a density bonus and other benefits under density bonus law.
- c) No qualifying project can require the demolition of housing that is currently occupied by tenants or has been in the past ten years, be located in an environmentally unsafe or sensitive area, or require the demolition of a structure that was listed on a national, state, or local historic register.

High-opportunity areas would be designated by HCD in consultation with academic experts and input from members of the public, and consider those areas designated “highest resource” or “high resource” by TCAC. Local jurisdictions may appeal a designation if they disagree with it.

- 4) *Expanding the applicability of the bill.* Given the severity of the housing crisis in California, the committee is concerned that this bill as drafted may be too narrowly focused. While this bill will not and is not intended to solve the housing crisis on its own -- and should be viewed as a part of an overall package of solutions, both this year and beyond -- the committee may wish to consider amending this bill to apply more broadly, as follows:

- a) Clarify the definition of arterial. This bill requires housing projects, both the larger and smaller, to be on sites adjacent to an arterial road. This could potentially limit the number of parcels eligible for the development benefits under this bill, or allow local governments to determine they do not have any eligible parcels, depending on what a local government considers an arterial. **The committee may wish to consider clarifying the definition of arterials.**
- b) *Clarify the definition of central business districts.* This bill requires housing projects, both larger and smaller, to be on a site located within a central business district. Because this is not defined in the bill, a local government could potentially determine they do not have any such sites. **The committee may wish to consider clarifying the definition of central business districts.**

- c) *Reduce the minimum size requirements for parcels.* This bill requires larger projects to be on parcels that are at least ½ acre in size, and for smaller projects to be on parcels that are at least ¼ acre in size. To maximize site eligibility, the committee may wish to consider asking the author to reduce those parcel sizes.
 - d) *Align benefits with density bonus law for all AB 1279 housing projects.* Larger projects are eligible for both concessions and incentives and reduced parking ratios as applicable under density bonus law, while smaller projects are only eligible for reduced parking ratios. **In order to facilitate the construction of smaller projects and to align with density bonus law, the committee may wish to allow smaller projects to also receive concessions and incentives as applicable under density bonus law.**
- 5) *More data please!* Local jurisdictions are required to submit an annual report to HCD with various housing data points, such as projects approved under SB 35 (Wiener, Chapter 366, Statutes of 2017) and accessory dwelling units. **The committee may wish to consider amending the bill to require that local governments report in the annual report on the number of approved projects under this bill.**
- 6) *Alignment with the Senate Housing Package.* The Senate Housing package contains several housing streamlining bills which exempted similar environmentally sensitive areas as this bill. Those bills, unlike this one, do not exempt sites in the Coastal zone. **In order to align this bill with the Senate Housing Package, the committee may wish to consider removing that exemption from this bill.**
- 7) *Opposition.* The California State Association of Counties (CSAC), the Urban Counties of California (UCC), and the Rural County Representatives of California (RCRC) are opposed to the delegation to the executive branch the requirement to develop definitions as to where this bill will apply, and would prefer the definition in statute. They are also concerned that the appeals process for where this bill applies is too prescriptive. The League of California Cities also asks for the definition of “high-opportunity areas” to be in statute; requests fixed timelines for maps to be updated; and allowing locals to create their own community production plan consistent with this bill. Others in opposition are concerned about the loss of local control, changing the character of high-opportunity areas, and impacts to cities.

On the other hand, California YIMBY, Abundant Housing LA, and SPUR oppose the bill unless amended because they do not feel it goes far enough to

produce housing. They ask for several amendments including: expanding the location of applicable parcels, reducing restriction on the types of parcels eligible, authorizing applicability to commercial zones, reducing the inclusionary requirements, tracking projects using this bill in an annual report, reducing parking requirements, and changing the method of determining high-opportunity areas.

- 8) *Triple referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the other committees included in the original referral. The Senate Governance and Finance Committee continues to monitor this bill.

According to the Senate Environmental Quality Committee:

“Public participation and transparency in a local government’s approval of a project is a cornerstone of CEQA; the act does not care what decision is made as long as it is an informed one. If a residential development project is deemed a use by right in high-opportunity areas, it removes the ability of local governments to be fully informed of the development’s potential environmental consequences. AB 1279 does not contain any project size restrictions, allowing for potentially large projects with densities well above what is otherwise permitted by the jurisdiction’s land use policies. The larger a project site, the greater likelihood of causing significant environmental impacts that were not previously contemplated by a local jurisdiction in its approved land use policies and none of which will be considered or mitigated. Although constrained to infill sites, is it prudent to create a use by right for projects of potentially unlimited size? Additionally, AB 1279 would exempt from CEQA any rezoning required for the approval of a project with up to 120 residential units. Is it appropriate for the public to live with the consequences of local government decisions that may not be fully vetted and whose environmental impacts are not mitigated or alternatives considered?”

RELATED LEGISLATION:

AB 686 (Santiago, Chapter 958, Statutes of 2018) — required a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Friday, July 24, 2020.)

SUPPORT:

California Rural Legal Assistance Foundation (Co-Sponsor)
Public Advocates (Co-Sponsor)
Western Center on Law & Poverty (Co-Sponsor)
California Alliance for Retired Americans
California Housing Partnership Corporation
City of Oakland
East Bay Housing Organizations
Los Angeles Homeless Services Authority
Non-profit Housing Association of Northern California

OPPOSITION:

Abundant Housing LA
Brentwood Housing and Environmental Coalition
California State Association of Counties
California YIMBY
Cities Association of Santa Clara County
City of Laguna Niguel
City of Long Beach
City of Monterey Park
City of Murrieta
City of Pleasanton
City of Redondo Beach
City of San Mateo
City of Thousand Oaks
Comstock Hills Homeowners Association
Franklin Corridor Coalition
Friends of Sunset Park
Grayburn Avenue Block Club
Homeowners Of Encino
League of California Cities
Livable California
Livable Riverside & Moreno Valley
Los Angeles County Division, League of California Cities
Orange County Council of Governments

Protecting Our Foothill Community
Rural County Representatives of California
San Francisco Bay Area Planning and Urban Research Association
Shadow Hills Property Owners Association
Southeast Torrance Homeowners' Association
Sustainable Tamalmonite
Tamalpais Design Review Board
United Neighborhoods for Los Angeles (UN4LA)
Urban Counties Caucus
56 Individuals

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