

Date of Hearing: January 15, 2020

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 725 (Wicks) – As Amended January 6, 2020

SUBJECT: General plans: housing element: above moderate-income housing: suburban and metropolitan jurisdictions.

SUMMARY: Creates a density requirement for above moderate-income housing for suburban and metropolitan cities. Specifically, **this bill:**

- 1) Requires, for a suburban or metropolitan jurisdiction, at least 50% of the jurisdiction's share of the regional housing need for above moderate-income housing to be allocated to sites with zoning that allows at least two, but not more than 20, units of housing.
- 2) Allows a project proponent to propose, and a jurisdiction to approve, a single-family detached home on a site identified pursuant to 1), above, and zoned for at least two units.
- 3) Provides that the allocation of above moderate-income housing to sites pursuant to 1), above, shall not be the basis for the jurisdiction to do either of the following:
 - a) Deny a project that does not comply with the allocation; or,
 - b) Impose a price minimum, price maximum, price control, or any other exaction or condition of approval in-lieu thereof.
- 4) Prohibits specified remedies available to a court in an action challenging the validity of a general plan or a mandatory element of the general plan from applying to any housing development project on a site allocated pursuant to 1), above. The remedies that would be prohibited include:
 - a) Suspending the authority of the jurisdiction to issue building permits, or any category of building permits, and all other related permits for housing, as specified;
 - b) Suspending the authority of the jurisdiction to grant any and all categories of zoning changes, variances, or both; and,
 - c) Suspending the authority of the jurisdiction to grant subdivision map approvals for any and all categories of subdivision map approvals.
- 5) Provides that the requirements in 1), above, do not apply to an unincorporated area, regardless of whether it is located within a suburban or metropolitan jurisdiction.
- 6) Provides the following definitions:
 - a) "Housing development project" means a use consisting of any of the following:
 - i) Residential units only;

- ii) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; and,
 - iii) Transitional housing or supportive housing;
 - b) “Unit of housing” does not include an accessory dwelling unit or a junior accessory dwelling unit; and,
 - c) “Site” may mean more than one parcel that includes owner-occupied or rental housing.
- 7) Provides that no reimbursement is required by this bill because a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill, as specified.

EXISTING LAW:

- 1) Requires every city and county to prepare and adopt a general plan to guide the future growth of a community. The general plan must include a housing element that identifies and analyzes existing and projected housing needs, identifies adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensures that regulatory systems provide opportunities for, and do not unduly constrain, housing development.
- 2) Requires local governments located within the territory of a metropolitan planning organization (MPO) to revise their housing elements every eight years, following the adoption of every other regional transportation plan. Local governments in rural non-MPO regions must revise their housing elements every five years.
- 3) Provides that each community’s fair share of housing be determined through the Regional Housing Needs Allocation (RHNA) process, which is composed of three main stages: a) the Department of Finance and the Department of Housing and Community Development (HCD) develop regional housing needs estimates; b) councils of governments (COGs) allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and, c) cities and counties incorporate their allocations into their housing elements.
- 4) Requires the housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.
- 5) Requires a locality’s inventory of land suitable for residential development to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the locality’s share of the regional housing need for all income levels.
- 6) Requires the inventory of land to specify the additional development potential for each non-vacant site within the planning period and an explanation of the methodology used to determine the development potential.
- 7) Defines types of jurisdictions for purposes of a housing element’s inventory of land, including the following:

- a) Metropolitan jurisdictions include cities and counties located within a Metropolitan Statistical Area (MSA) with a population of more than 2 million, although cities in such an MSA with a population of less than 25,000 are considered suburban; and,
 - b) Suburban jurisdictions include cities and counties located within a MSA that have a population of less than 2 million, although cities in such an MSA with a population greater than 100,000 are considered metropolitan.
- 8) Requires sites identified for very low- and low-income households to have a minimum allowable density of 30 units per acre for metropolitan jurisdictions and 20 units per acre for suburban jurisdictions.
- 9) Requires, when an order or judgment is rendered in an action challenging the validity of a general plan or a mandatory element of the general plan, a court to include one or more specified remedies for any or all types or classes of developments or any or all geographic segments of the city, county, or city and county until the city, county, or city and county has substantially complied with the requirements of existing law governing general plans.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Author's Statement.** According to the author, "Allowing local jurisdictions to incorporate modest amounts of new density in single family-dominated communities could lead to several new housing opportunities in California. AB 725 will densify above-moderate income zones in an effort to increase the state's overall housing stock, keep residents closer to jobs centers and improve the case for expanding public transportation."
- 2) **Housing Element and RHNA.** Existing law requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.

Local governments must accommodate in their housing element their fair share of housing that is determined through the RHNA process. The RHNA allocation is divided into housing affordable at multiple economic strata based on the Area Median Income (AMI). These income categories include very low-income (under 50% of AMI), low-income (between 50-80% of AMI), moderate income (80%-120% of AMI), and above-moderate income (above 120% of AMI). This fair share allocation occurs every eight years, and local governments are required to update their housing element accordingly.

The housing element must include an inventory of land that identifies sites suitable for residential development. These sites must be sufficient to provide for the jurisdiction's RHNA for all income levels. The inventory must specify for each site the number of units that can realistically be accommodated on that site and whether the site is adequate to accommodate lower-income housing, moderate-income housing, or above-moderate income housing. Existing law specifies how the locality must make this determination. If a

community does not have enough sites within its existing inventory of residentially-zoned land to accommodate its entire RHNA, then the community must adopt a program to rezone land within the first three years of the planning period.

Local governments must demonstrate that sites are adequate to accommodate housing for each income group based on the zoning after taking into consideration individual site factors, such as property size, existing uses, environmental constraints, and economic constraints. With respect to the zoning, density can be used as a proxy for affordability. Jurisdictions may establish the adequacy of a site for very low- or low-income housing by showing that it is zoned at the “default” density. These densities range from 10 to 30 units per acre depending on the type of jurisdiction. For example, sites in a suburban jurisdiction must allow at least 20 units per acre to be deemed appropriate to accommodate housing for lower-income households, while sites in a metropolitan county must allow at least 30 units per acre. Jurisdictions may also include sites zoned at lower densities by providing an analysis of how the lower density can accommodate the need for affordable housing. There is no set density for moderate- or above moderate-income housing.

- 3) **Court Remedies in General Plan Challenges.** Existing law also specifies the provisions that must be included when a court issues an order or judgment in an action challenging the validity of a general plan or a mandatory element of the general plan. These remedies include the following (among others):
 - a) Suspending the authority of the jurisdiction to issue building permits, or any category of building permits, and all other related permits for housing;
 - b) Suspending the authority of the jurisdiction to grant any and all categories of zoning changes, variances, or both; and,
 - c) Suspending the authority of the jurisdiction to grant subdivision map approvals for any and all categories of subdivision map approvals.
- 4) **“Missing-Middle” Housing.** 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. While housing in California was 30% more expensive than the U.S. average in 1970, now it is 250% more expensive. Although incomes have also 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. More than half of renters and 80% of low-income renters are rent-burdened, meaning they pay more than 30% of their income towards rent. According to a 2016 McKinsey Global Institute report, Californians pay \$50 billion more per year for housing than they are able to afford (nearly \$3,000 per household).

One of the many reasons that housing is too expensive is the type of housing that is being built. Almost all of the housing built in California is single-family (which can be an inefficient use of land) and mid- and high-rise construction (which is expensive to build). One strategy to reduce the cost of housing is to facilitate the construction of “missing-middle” housing types that accommodate more units per acre, but are not inherently expensive to build. This includes medium-density housing, such as duplexes, fourplexes,

garden apartments, town homes, and so forth. In addition to being land-efficient while being less expensive to build, these housing types have several other benefits, including:

- a) Being more contextually similar to existing single-family neighborhoods;
- b) Providing sufficient density to support the shops, restaurants, and transit that are associated with walkable neighborhoods;
- c) Helping expand the pool of homebuilders, since the construction and building materials are comparatively less complicated than larger mid- and high-rise structures; and,
- d) Being naturally less expensive in the market because each living unit is typically smaller than a single-family home, thereby helping increase access to opportunity and facilitating neighborhood equity and inclusion.

A major reason that these units are not being built is that not enough land is designated for multi-family housing under local zoning. A 2019 Turner Center survey of California cities and counties revealed that only 7% of local jurisdictions zoned more than half their land for multi-family housing, and only 35% zoned one quarter of their land for multi-family housing.

- 5) **Bill Summary.** This bill creates a density requirement for above moderate-income housing for suburban and metropolitan cities. In their housing element's inventory of land, these cities must allocate at least 50% of their regional housing need for above moderate-income housing to sites with zoning that allows at least two, but not more than 20, units of housing.

The provisions of the bill do not apply to an unincorporated area, regardless of whether it is located within a suburban or metropolitan jurisdiction, thereby only applying to cities that meet the definition of "suburban" or "metropolitan" in housing element law. The bill allows a project proponent to propose, and a city to approve, a single-family detached home on a site identified pursuant to the bill's provisions that is zoned for at least two units, giving the city flexibility to approve single-family housing on these sites.

The allocation of above moderate-income housing required by this bill is prohibited from being the basis for the jurisdiction to deny a project that does not comply with the allocation, or, impose a price minimum, price maximum, price control, or any other exaction or condition of approval in-lieu thereof.

The bill also prohibits a court from applying several remedies, which would otherwise be available under existing law, to any housing development project on a site allocated pursuant to this bill in an action challenging a general plan or a mandatory element of the general plan. A court would not be able to suspend the authority of the jurisdiction to do any of the following: issue building permits, or any category of building permits, and all other related permits for housing; grant any and all categories of zoning changes, variances, or both; and, grant subdivision map approvals for any and all categories of subdivision map approvals.

This bill is sponsored by the author.

6) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Future RHNA Allocations.** There have been major reforms in Housing Element law and the RHNA process in the last several years, which will likely result in higher RHNA numbers for cities and counties in the upcoming RHNA cycle. Density and upzoning will become necessary tools for cities and counties to meet these increased allocation numbers. The Committee may wish to consider whether this bill is premature given the ongoing implementation of these recent changes to housing law.
- b) **Broader Conversation on Upzoning and Density.** This bill targets zoning for sites only for above moderate-income housing, and only in certain suburban and metropolitan cities. The Committee may wish to consider this bill in the context of broader conversations in the Legislature regarding increased density near transit, increased affordable housing, and how to encourage cities and counties to upzone for higher density generally.
- c) **Unintended Consequences.** This bill's ceiling of 20 units per site might unnecessarily restrict demand for higher-density above-market developments, thereby creating an artificial cap. The Committee may wish to consider whether this cap could unintentionally function as a restriction on housing production.
- d) **Judicial Discretion.** This bill prohibits a court from applying several remedies that are available under existing law to any housing development project on a site allocated pursuant to this bill in an action challenging a general plan or a mandatory element of the general plan. The Committee may wish to consider whether it wishes to limit judicial discretion in this manner, and the precedent that could be established in doing so.
- e) **Different Jurisdictions, Different Housing Markets.** Single-family housing is in extremely high demand in some jurisdictions, while multi-family housing is more marketable in others. The Committee may wish to consider the state's varying housing markets, and whether this bill will result in additional housing being successfully built and sold.
- f) **Planning vs. Building.** Housing element law requires local governments to plan for housing, but it does not require local governments to build anything. Building is a market decision on the part of developers. Many have argued that the state's housing element law has not yielded results in terms of actual housing production, and that additional planning requirements (such as those contained in this bill) might not change that outcome. The Committee may wish to consider the relative value of increasing the planning requirements on local governments compared to other approaches designed to increase home construction.
- g) **Clarifying Existing Law.** In its analysis of this bill, the Housing and Community Development Committee notes, "The bill states a jurisdiction may not deny a project that does comply with the allocation or impose price controls, or in lieu thereof, any exactions or conditions of approval. Much of this language is declaratory of existing law. To address this issue, the Committee may wish to consider amending the bill to add language clarifying that this language is declaratory of existing law."

- 7) **Committee Amendments.** In order to address some of the policy considerations noted above, as well as concerns raised and amendments proposed by the Housing and Community Development Committee in its analysis of this bill, the Committee may wish to consider the following amendments:
- a) Reduce the allocation requirement on above moderate-income sites from 50% to 25%;
 - b) Add an allocation requirement on moderate-income sites of 25%;
 - c) Limit the bill to metropolitan jurisdictions;
 - d) Establish the density maximum for applicable sites to 35 units per acre;
 - e) Remove the ban on specific court remedies on sites allocated per this bill; and,
 - f) Add language declaring that enumerated restrictions on local government decision making regarding specific projects is declaratory of existing law.
- 8) **Related Legislation.** SB 50 (Wiener) sets minimum density standards in certain areas, including establishing a minimum of four units per parcel. SB 50 is pending a hearing in the Senate Appropriations Committee.
- 9) **Previous Legislation.** AB 1771 (Bloom), Chapter 989, Statutes of 2018, made changes to the regional housing needs plan objectives, methodology, distribution, and appeals process.
- SB 828 (Wiener), Chapter 974, Statutes of 2018, made changes to the RHNA process.
- 10) **Arguments in Support.** California YIMBY, in support, writes, “This (bill) will require many local governments, especially in high-cost coastal areas, to plan for multigenerational neighborhoods that are more inclusive and more able to accommodate multiple income levels. By requiring local governments to plan for more housing in coastal areas, it also makes it more likely that housing will be built, because these places are those where housing itself is in the highest demand.”
- 11) **Arguments in Opposition.** The California Chamber of Commerce, opposed to a prior version of the bill, wrote, “AB 725 inflates California’s housing crisis by artificially constraining market rate supply of new single-family residences which in turn will slow housing production and further increase the already exorbitant cost to buy a house in California.”
- 12) **Double-referral.** This bill is double-referred to the Housing and Community Development Committee, where it will be heard on January 15, 2020.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association

California League of Conservation Voters (prior version)

California YIMBY

Opposition

California Chamber of Commerce (prior version)

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