
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 1299 (Portantino) - Housing development: incentives: rezoning of idle retail sites

Version: April 1, 2020

Urgency: No

Hearing Date: June 9, 2020

Policy Vote: HOUSING 10 - 0

Mandate: No

Consultant: Mark McKenzie

Bill Summary: SB 1299 would establish a program administered by the Department of Housing and Community Development (HCD), upon appropriation of funding by the Legislature, to provide grants to cities and counties that rezone idle or underutilized big box retailer or commercial shopping center properties and instead provide for the development of workforce housing, as specified.

Fiscal Impact:

- HCD administrative costs in the range of \$1 million to \$1.5 million annually following the appropriation of funding for the program in a future fiscal year. There would be one-time costs to develop and adopt guidelines, and ongoing administrative costs to provide technical assistance to developers and local governments, develop Notices of Funding Availability (NOFAs), review applications, and process funding agreements. Actual costs for ongoing administration of the program would depend upon the amount of funding available and the number of applications submitted by local jurisdictions for review by HCD. (General Fund)
- Unknown annual cost pressures, likely in the tens of millions annually, in future fiscal years to provide funding for the grant program. Since the bill requires grants to be awarded for seven consecutive years, the cost pressures could grow annually in order to fund the second through seventh year of grant funds and to award new grants in future years, depending on how the program is structured. (General Fund)

Background: Existing law requires cities and counties to prepare a general plan comprised of seven mandatory elements, including a housing element that identifies existing and projected housing needs. The housing element must include an inventory of adequate sites zoned for housing at all income levels and to accommodate a jurisdiction's share of the regional housing needs that is sufficient to account for population growth and to overcome existing housing deficiencies over the planning period. If the city or county does not have enough sites within its existing inventory of residentially zoned land to accommodate its share of the regional housing needs, it must adopt a program to rezone land within the first three years of the planning period. Housing elements must be updated every eight years in urban areas, and every five years in more rural areas. For purposes of determining housing affordability, existing law defines "very low-income" as persons and families whose income does not exceed 50% of the area median income (AMI), "low-income" as not exceeding 80% of AMI, and "moderate income" as not exceeding 120% of AMI.

Existing law defines “use by right” as prohibiting a local government from requiring a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of the California Environmental Quality Act (CEQA). A local government may require a “by right” housing development to undergo design review, but it does not constitute a project for CEQA purposes.

Proposed Law: SB 1299 would require HCD to administer a program, upon appropriation of funds by the Legislature, to provide grants to cities and counties that rezone specified idle big box retailer or commercial shopping center sites to allow for the development of workforce housing for households with an income of 80% to 120% of the AML. Specifically, this bill would:

- Define “idle” to mean that at least 80% of the leased or rentable square footage is not occupied for at least a 12-month calendar period on the site of a big box retailer of at least 75,000 square feet or a commercial shopping center comprised of two or more stores that maintain a common parking lot for store patrons, as specified.
- Require HCD, in each calendar year in which funding is appropriated, to allocate a grant to a city or county that has: (1) rezoned one or more specified idle commercial sites to allow for workforce housing as a use by right; (2) approved and issued a certificate of occupancy for a housing development on a specified rezoned site, and (3) provided HCD with documentation proving compliance with eligibility requirements.
- Require HCD to issue a NOFA for each year in which funds are appropriated for the distribution of funds during the 12-month period following issuance, and require HCD to accept applications at the end of the 12-month period.
- Specify that the annual amount of the grant must be equal to the average annual amount of specified local sales and use tax revenue generated by each idle site over the previous seven years (the local Bradley Burns Sales and Use Tax, and the local Transactions and Use Tax amounts).
- Require HCD to allocate grants to each eligible local government annually for each of the seven years following the application date.
- Require HCD to reduce the amount of the grant for sites rezoned to allow for mixed uses in proportion to the percentage of the development’s square footage that is used for something other than workforce housing, as specified.
- Require HCD to reduce the grant amount allocated to each local government by a proportionate share if the total amount of grant funding available in any NOFA is insufficient to provide each local entity with the full amount.
- Authorize HCD to adopt guidelines for purposes of this grant program in accordance with the Administrative Procedures Act (APA).

Related Legislation: SB 1385 (Caballero), which is also being heard in this Committee today, would enact the Neighborhood Homes Act, which requires a specified housing development project to be deemed an authorized use on a neighborhood lot that is zoned for office or retail commercial use under a local zoning code or general plan.

AB 3107 (Bloom), which is pending on the Assembly Floor, would require cities and counties to allow housing as an authorized use on commercially-zoned land until January 1, 2030 under specified circumstances.

Staff Comments: The Senate Housing Committee analysis notes that: “This bill seeks to incentivize local governments to convert idle retail sites into housing affordable to households at 80% - 120% AMI by requiring HCD to issue grants to cities that rezone commercial sites to make residential an allowable use. In order to receive a grant, a city must rezone the site as a use by right, approve a housing development project, and issue a certificate of occupancy. A city will only receive a grant for developments that include housing affordable to households earning 80% - 120% AMI and the grant will be proportionate to the amount of housing available for those households if the development also includes a commercial component. The grant is equal to the average amount of annual sales and use tax revenue generated by each idle site identified in the local government’s application over the seven years immediately preceding the date of the local government’s application. The goal is to offset the lost sales tax revenue that would have been generated from a commercial property.”

HCD estimates that establishing and administering this grant program would require 7 PY of additional staff at a cost of approximately \$1.5 million annually, based on the assumption that the department would award 75 grants in a year in which funding is appropriated for the program. Actual administrative costs and staffing needs would likely depend upon the amount of available funding and the demand for the program. Staff notes that the implementation of the program is contingent upon an appropriation of funding by the Legislature. Furthermore, program eligibility requires a city or county to engage in a time-consuming process of identifying eligible idle retail sites, rezoning those sites, attracting a developer to design and construct a workforce housing project, and issuing a certificate of occupancy. Assuming this process would likely take a minimum of several years, it seems unlikely that there the bill would result in a state fiscal impact in the near term.

This bill creates significant cost pressures in future fiscal years to provide funding for this new grant program. It is difficult to estimate the amount of funding necessary to establish an effective program, as the characteristics of each site, such as the size of the commercial space and historical sales tax generation, are likely to vary significantly and would not be known until after applications are filed. For illustrative purposes, if a 100,000 square foot idle big box retailer site historically generated \$300 per square foot in average annual sales, and 80% of sales were subject to the local share of sales and use tax (1.25% for Bradley Burns Local Sales and Use Tax and a statewide average of 1.33% for the local Transactions and Use Tax), that site would be eligible for an annual grant of \$619,200 for seven years. Grants for smaller commercial strip malls would likely be much smaller. Staff estimates this bill would create cost pressures in the tens of millions annually.

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