

Date of Hearing: May 20, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 3040 (Chiu) – As Amended May 11, 2020

**SUBJECT:** Local planning: regional housing need assessment

**SUMMARY:** Allows cities and counties to receive a specified credit towards meeting their Regional Housing Needs Allocation (RHNA) for rezoning single-family neighborhoods to allow four units per parcel. Specifically, **this bill:**

- 1) Provides that the Department of Housing and Community Development (HCD) must provide a credit of 0.1 units per site for any site that a city or county includes in its inventory of land suitable for residential development if:
  - a) The site contains an existing single-family dwelling unit that received its first certificate of occupancy at least 15 years before inclusion in the site inventory;
  - b) The site is permitted to contain four dwelling units as a use by right;
  - c) The site is identified in the city's or county's inventory as satisfying either the moderate or the above-moderate income regional housing need income level;
  - d) The city or county does all of the following:
    - i. Adopts a resolution or ordinance regarding these sites that meets all of the following requirements:
      - I. Provides, at a minimum, that the units may be developed as a use by right, and provides a description of the land use provisions that enable the identified sites to be redeveloped at a higher density, including, but not limited to, height limits, parking requirements, setback requirements, and historic resource designation;
      - II. Includes findings that those land use provisions do not impede the redevelopment of these sites at a higher density; and
      - III. Adopts the resolution or ordinance within the two-year period immediately preceding the deadline for certification of the housing element.
    - ii. Does not identify the cumulative credit received from the identified sites as exceeding more than 25 percent of the total units needed to meet its regional housing needs allocation.
    - iii. Includes in the annual progress report required to be submitted a summary of the units developed on sites identified pursuant to this paragraph.

- 2) Requires HCD to review and make findings regarding any resolution or ordinance adopted by a city or county in order to receive the 0.1 credit per eligible site.
- 3) Allows HCD to provide additional credit, as well as credit for low-income units, if it determines that the city or county has adopted a plan or program that would further accelerate the production of units identified by this process.
- 4) Allows HCD to determine, based on the annual progress report, if a city or county is making inadequate progress toward meeting its RHNA on sites identified by this process. If such a determination is made, HCD may require that the city or county amend a plan or program, including identifying other adequate sites in the appropriate income category.

**EXISTING LAW:**

- 1) Establishes Housing Element law (Government Code Section 65580 through 65589.11). This law:
  - a) Provides that each community's fair share of housing to 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 government (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.
  - b) Requires the housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.
  - c) 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, including very low-, low-, moderate-, and above moderate-income.
  - d) Requires the inventory to provide certain information on each site, such as the general plan designation and zoning of each site and available infrastructure;
  - e) 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; and
  - f) 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.
- 2) Requires each city and county to provide, by April 1 of each year, an annual report to HCD that includes the status of their general plan and progress in its implementation, including the progress in meeting its share of regional housing needs (Government Code Section 65480).

**FISCAL EFFECT:** Unknown

**COMMENTS:**

*Author's Statement:* According to the author, "AB 3040 is an important tool to address California's housing crisis in a manner that is contextual, expedient, and meaningful. AB 3040 will spur desperately needed housing production by giving local governments additional RHNA credits when they up-zone single-family parcels to allow four housing units per parcel. By specifying up front of the amount of credit received, it avoids the uncertainty that cities otherwise experience when adding zoning capacity to areas that already have existing housing."

*Background:*

*Housing Crisis:* The cost of housing in California is twice the national average, and higher than any state except Hawai'i. Only 28 percent of households can buy the median priced home. Over half of renters and 80 percent of low-income renters are rent-burdened, meaning they pay over 30 percent 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. 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 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, 180,000 units need to be built per year to maintain housing costs. By contrast, housing production averaged less than 80,000 new homes annually over the last 10 years.

*Medium-Density Housing:* One strategy to lower 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 typologies such as duplexes and fourplexes. In addition to being land-efficient while being less expensive to build, these housing types have several other benefits, including that they:

- Are contextually similar to existing single-family neighborhoods;
- Provide sufficient density to support the shops, restaurants, and transit that are associated with walkable neighborhoods;
- Help the pool of homebuilders, since the construction and building materials are comparatively less complicated than larger mid- and high-rise structures; and
- Are naturally less expensive in the market because they are typically smaller than single-family homes, thereby helping increase access to opportunity and facilitate neighborhood equity and inclusion.

A major reason that insufficient units are being built is that they are not allowed under local zoning. A 2019 Turner Center survey revealed that in only seven percent of California cities and counties allowed multifamily housing on over half their land, and only 35 percent allowed it on more than a quarter of their land. The result is that two to four unit projects are infrequently built, compared to historic development patterns. Currently, eight percent of units statewide are in buildings with two to four units. However, of units built in the last 30 years, only three percent of new units are in buildings with two to four units.

*RHNA Process:* Housing element law requires local jurisdictions to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. The amount of housing required to be planned for is established by the RHNA process. For all but the state's most rural areas, this process occurs on an eight-year cycle, during which the state determines the anticipated population growth and then assigns a growth target to the state's regions, which then assign them to the jurisdictions therein. These growth targets are specified by income categories to support the development of a mix of housing types for all economic segments of the population. These income categories include very low-income (under 50 percent of Area Median Income (AMI)), low-income (between 50-80 percent of AMI), moderate income (80-120 percent of AMI), and above-moderate income (above 120 percent of AMI).

Upon receiving its RHNA, each jurisdiction must then demonstrate, through its housing element that the development capacity exists to accommodate, at a minimum, the allocation for each of the four income categories. Jurisdictions do so by creating an inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period. The housing element also must include a statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing. Each housing element must include an implementation plan that identifies any particular programs or strategies being undertaken to meet their goals and objectives, including their RHNA target.

When cities and counties include non-vacant sites in their housing inventory, they are required to provide an explanation of the methodology used to determine the development potential. Per Government Code Section 65583.2(g)(1), "The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the city's or county's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites." This methodology is typically submitted to HCD with the rest of their required materials as part of HCD's certification process. HCD then conveys to the city or county whether their methodology is acceptable and how many units will be credited in the site inventory from non-vacant sites.

The cities and counties in the major regions in the state are currently or imminently working on their housing elements. The 6<sup>th</sup> cycle of housing elements must be certified by HCD for the San Diego region by April 2021, for the Sacramento region by May 2021, for Southern California region by October 2021, and for the Bay Area by November 2022.

*Purpose of this bill:* This bill makes it easier for cities and counties to receive credit towards their above moderate-income and moderate-income regional housing needs allocation when they upzone existing single-family housing to allow four units. By specifying the credit at 0.1 units per site, the bill provides certainty to cities and counties that would otherwise need to provide ample evidence to HCD that such development on non-vacant sites would occur. HCD could grant additional credit if it determines that the city or county has a plan or program that would further accelerate the production of these units.

The bill establishes multiple guardrails to ensure that sites truly have the potential to accommodate more units. Cities and counties seeking this credit are required to allow new units by right, and prove to the state that other land use provisions do not impede the redevelopment of these sites at a higher density. Applicable sites must have housing that is over 15 years old, recognizing that newer housing is less likely to be demolished or subdivided. Localities could not utilize this upzoning to account for more than 25 percent of their overall housing allocation, unless allowed by HCD. To ensure accountability, cities and counties provide annual updates on development on these sites. HCD may then ask localities to revisit this program if it is not meeting expectations, up to and including requiring a city or county to identify other adequate sites in the appropriate income category.

*Arguments in Support:* Arguments in support focus on the benefits of increased certainty for local governments and how that could result in increased development of smaller projects. According to the League of California Cities, “Your bill would provide a process whereby local governments would have greater certainty that they could accommodate portion of their RHNA by upzoning to allow small multifamily projects in existing neighborhoods with single-family units.”

*Arguments in Opposition:* The arguments in opposition state that this bill is creating state mandate. According to Livable California, “AB 3040 is yet another weakening of local government, that government which is closest to the people served.”

*Related Legislation:*

AB 1397 (Low), Chapter 375, Statutes of 2017: This bill required, for nonvacant sites identified in the housing element’s inventory of land, the locality to specify the additional development potential for each site within the planning period and provide an explanation of the methodology used to determine the development potential.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Planning Association, California Chapter  
California Apartment Association  
Facebook  
Habitat for Humanity California

*Support In Concept*

California State Association of Counties  
League of California Cities  
Rural County Representatives of California  
Urban Counties Caucus

*Support If Amended*

East Bay for Everyone

**Opposition**

New Livable California Db a Livable California

**Analysis Prepared by:** Steve Wertheim / H. & C.D. / (916) 319-2085