

Date of Hearing: May 20, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 3107 (Bloom) – As Amended May 11, 2020

SUBJECT: Planning and zoning: general plan: housing development

SUMMARY: Makes housing an authorized use on commercially-zoned land. Specifically, **this bill:**

- 1) Makes a housing development an authorized use on a site designated in any element of the general plan for commercial uses, notwithstanding any inconsistent provision of a city's or county's general plan, specific plan, zoning ordinance, or regulation, if the following apply:
 - a) At least 20 percent of the units are subject to a deed restriction requiring them to be affordable to lower income households;
 - b) The site is not adjacent to any site that is an industrial use, including, but not limited to, utilities, manufacturing, wholesale trade, transportation, and warehousing; and
 - c) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.
- 2) Requires a city or county to apply the following development standards to any housing development that meets the criteria above, unless the existing local zoning standards are less restrictive:
 - a) The height limit must be equal to the higher of the following:
 - i. The highest allowed height for the site;
 - ii. The highest allowed height for commercial use or residential use within a half-mile of the site; or
 - iii. Thirty-six feet.
 - b) The maximum floor area ratio must be equal to 0.6 times the number of stories allowed by the height limit;
 - c) The density must be equal to the greater of the following:
 - i. The greatest allowed density for mixed use or residential use within a half-mile of the site; or
 - ii. The applicable density deemed appropriate to accommodate housing for lower income households contained in housing element law.
 - d) The housing development must adhere to any applicable local design standards provided those standards do not prohibit the maximum height, density, and floor area ratio; and

- e) The housing development may also apply for a density bonus.
- 3) Provides that a jurisdiction is only subject to the requirements in this section until it has completed the rezone required by the 6th revision of its housing element.
- 4) Includes a sunset of January 1, 2030.
- 5) Finds and declares that ensuring the adequate production of affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, and therefore this provision would apply to all cities, including charter cities.
- 6) Provides that no reimbursement is required by this act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

EXISTING LAW:

- 1) Establishes Planning and Zoning Law, which requires every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element, and requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans (Government Code Section 65000 through 66301).
- 2) Establishes Housing Element law (Government Code Section 65580 through 65589.11), which:
 - 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 that cities and counties produce, and HCD certify, a housing element to help fulfill the state's housing goals. In metropolitan areas, these housing elements are required every eight years. Each housing element must contain:
 - i. An assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs;
 - ii. A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing;
 - iii. An implementation plan that identifies any particular programs or strategies being undertaken to meet their goals and objectives, including their RHNA target; and

- iv. 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.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: According to the author, "Californians are facing a housing affordability crisis, with the most significant impact on lower-income renters. Of 6 million renter households in the state, 1.7 million are paying more than 50% of their income toward rent. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units. To solve the shortage, the California Housing Partnership estimates that the state needs an additional 1.4 million homes that are affordable to lower-income Californians. AB 3107 will help increase the supply of available sites for housing developments by allowing critically needed housing in commercial corridors."

Background:

Housing Crisis: The cost of housing in California is twice the national average, and higher than any state excluding 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 two 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. According to the Legislative Analyst 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."

A major reason that insufficient units are being built is that they are not allowed under local zoning. A 2019 Turner Center survey of California cities and counties revealed that only seven percent zoned over half their land for multi-family housing, and only 35 percent zoned even 25 percent of their land for multi-family housing.

Regional Housing Needs Allocation (RHNA) Process and Rezoning: 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.

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 housing in four income categories. The housing elements in the state's major metropolitan areas are all due for completion in 2021 or 2022 as part of the "6th revision" of housing elements. Each jurisdiction then has three years to complete any rezoning necessary to accommodate the units identified in their housing element and in the site inventory than identifies where potential development would occur.

In the period between the 5th and 6th revisions of the housing element, changes were made to the RHNA process to ensure that housing needs reflected not just current demand, but unmet demand as well. As such, throughout the state, many cities and counties have been required to plan for substantially more growth than before. Upon completion of this cycle of housing element revisions, the state is expected to have sufficiently zoned land to accommodate the housing deficit discussed above.

Purpose of this bill: This bill would help facilitate the production of more housing by increasing the sites available to be developed for residential uses to include those currently zoned or otherwise designated in a city or county's general plan only for commercial uses. Guardrails are included to ensure such residential development only occurs in appropriate locations; specifically, infill sites that are not adjacent to industrial uses. Any development resulting from this bill will result in a substantial public benefit by requiring that 20 percent of the units are affordable to low-income households.

This bill provides necessary parameters for residential building and development standards that might otherwise be absent on a site not zoned for housing, including limits on buildings height, overall mass, and density of dwelling units. The city or county may apply any other design standard as long as they do not reduce the development capacity of density established by the bill.

This bill would only be applicable to a city or county until it has completed the rezoning required for the 6th revision of its housing element. As discussed above, upon completion of this revision and accompanying rezonings, cities and counties are expected to have provided zoning to accommodate their share of the housing to address the state's backlog of units. By applying the provisions of this bill only until such rezonings are complete, the bill both serves as a motivation for cities to complete these rezonings, and recognizes that when they have done so, the city will have met the state's expectations regarding the provision of developable land.

Arguments in Support: Arguments in support focus on the need to address the state's housing crisis by making more land available for housing, while ensuring that a substantial amount of that is affordable to low-income households. According to the California Housing Consortium, "there are not enough sites zones for multifamily housing development and the entitlement process can take many years. Commercial corridors are often ideal areas to build affordable housing because they are close to amenities like grocery stores and near public transportation."

Arguments in Opposition: Arguments in opposition express concern about the ramification of allowing multifamily housing in commercial areas. According to Livable California, "AB 3107 essentially rezones every commercial site in every city in California to allow residential use, without any consideration of the adverse consequences."

Other arguments express the need to work through the details of this bill to ensure they are not punitive to cities. For example, according to the California State Association of Counties, “we request AB 3107 be amended to allow counties to count commercial sites where AB 3107 would apply toward their regional housing needs allocation planning requirement irrespective of whether the current zoning allows for residential uses. As an alternative, the bill could be amended to provide counties with the option of a streamlined process to rezone and count such sites toward their RHNA requirements without additional CEQA review.

Related Legislation:

SB 1385 (Caballero) (2020): This bill would deem a housing development project, as defined, an authorized use on a neighborhood lot that is zoned for office or retail commercial use under a local agency’s zoning code or general plan. This bill is pending hearing in the Senate Committee on Governance and Finance.

AB 2580 (Eggman) (2020): This bill would create a streamlined, ministerial approval process for the conversion of motels and hotels into multifamily residential buildings. This bill is pending hearing in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Consortium (Co-Sponsor)
Southern California Association of Nonprofit Housing (Co-Sponsor)
All Home
California Apartment Association
California Community Builders
California Housing Partnership Corporation
California YIMBY
Chan Zuckerberg Initiative
East Bay for Everyone
East Bay Housing Organization
Facebook
Los Angeles Business Council
Non-Profit Housing Association of Northern California
Orange County Business Council
PATH
San Francisco Foundation
SV@HOME
Silicon Valley Community Foundation
TODCO Group
8 Individuals

Support if Amended

AIDS Healthcare Foundation
American Planning Association, California Chapter
California Association of Realtors

TMG Partners
United Way of Greater Los Angeles

Opposition

New Livable California DbA Livable California

Concerns

California State Association of Counties
Rural County Representatives of California
Urban Counties of California

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