

Date of Hearing: January 15, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

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

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

SUMMARY: Amends Housing Element law to require certain jurisdictions to zone for multi-family above-moderate income housing. Specifically, **this bill:**

- 1) Requires that, for incorporated areas within suburban or metropolitan jurisdiction, at least 50 percent of the jurisdiction's share of the regional housing need for above moderate-income housing must be allocated to sites with zoning that allow at least two, but no more than 20, units of housing.
- 2) Specifies that, for sites with this allocation:
 - a) A project proponent may propose, and a jurisdiction may approve, a single-family detached home;
 - b) A jurisdiction may not deny a project that does comply with the allocation;
 - c) A jurisdiction may not impose price controls, or in lieu thereof, any exactions or conditions of approval; and
 - d) The court may not suspend the ability for a jurisdiction to issue permits, change zoning, or grant subdivision maps to any housing development project.
- 3) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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, within the meaning of Section 17556 of the Government Code.

EXISTING LAW:

Establishes Housing Element law (Government Code Section 65580 through 65589.11). This law:

- 1) 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.
- 2) Requires the housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.

- 3) 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.
 - a) Requires the inventory to provide certain information on each site, such as the general plan designation and zoning of each site and available infrastructure;
 - b) 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
 - c) 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.
- 4) Establishes a jurisdictional typology, including that:
 - 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 less than 25,000 are considered suburban; and
 - b) Suburban jurisdictions include cities and counties located within a Metropolitan Statistical Area (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.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: According to the author, "As we continue to tackle the housing crisis, "missing middle" developments prompt the loudest outcry and have the best chance of being relatively more affordable for residents who make too much for subsidized housing but still can't afford market-rate homes."

Background:

RHNA and Housing Elements: 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 Regional Housing Needs Allocation (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.

RHNAs are assigned by four income categories as guideposts for each community to develop a mix of housing types for all economic segments of the population. These income categories include very low-income (under 50% of Area Median Income (AMI)), low-income (between 50-80% of AMI), moderate income (80%-120% of AMI), and above-moderate income (above 120% 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 developable sites. Per housing element law, sites determined to be eligible for very low-income and low-income housing must be zoned for a density of at least 30 units per acre in metropolitan jurisdiction and 20 units per acre in suburban jurisdictions. There is no density minimum for moderate-income and above moderate-income housing sites.

“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. Whereas in 1970 housing in California was 30% more expensive than the U.S. average, now it is 250% more expensive. While incomes have 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. Over half of renters and 80% of low-income renters are rent-burdened, meaning they pay over 30% 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 (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 are expensive to build). 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, fourplexes, garden apartment, town homes, and their ilk. In addition to being land-efficient while being less expensive to build, these housing types have several other benefits, including:

- Being more contextually similar to existing single-family neighborhoods,
- Providing sufficient density to support the shops, restaurants, and transit that are associated with walkable neighborhoods,
- Helping expand the pool of homebuilders, since the construction and building materials are comparatively less complicated than larger mid- and high-rise structures, and
- Being 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 these units are not being built is that they are not allowed under local zoning. A 2019 Turner Center survey of California cities and counties revealed that only 7 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.

Summary of the Bill: The purpose of this bill is to address this restriction by requiring metropolitan and suburban jurisdictions, through their Housing Element process, to ensure that more land is zoned for these medium-density housing typologies. It would do so by requiring at least 50 percent of the jurisdiction’s share of the regional housing need for above moderate-income housing must be allocated to sites with zoning that allows at least two, but no more than 20, units of housing. The bill also specifies the following for sites that receive this allocation:

- A project proponent may propose, and a jurisdiction may approve, a single-family detached home;
- A jurisdiction may not deny a project that does comply with the allocation;
- A jurisdiction may not impose price controls, or in lieu thereof, any exactions or conditions of approval; and
- The court may not suspend the ability for a jurisdiction to issue permits, change zoning, or grant subdivision maps to any housing development project.

Committee Comments:

Changes to RHNA: Over the next couple of years, most cities will be adopting their “sixth cycle” Housing Element. Changes to RHNA law (specifically 2018’s AB 1771 (Bloom) and SB 828 (Wiener) since the “fifth cycle” will likely result in substantially higher housing allocations for these cities, as recently exhibited in the Southern California Association of Governments area. As such, many cities will choose to meet these allocations by increasing the amount of permissible multi-family housing. The result is that the intended goal of this bill, to facilitate multi-family housing may already be accomplished by processes underway. However, this bill would ensure that a substantial amount of the new development capacity would occur in medium-density housing types, rather than high-density housing.

Affordable by Design: The bill is focused on how cities plan their above-moderate income housing (above 120 percent of AMI). As discussed above, one of the advantages of medium-density housing is that it can be more affordable by design, given they are typically smaller. As such, it is likely that cities would want to identify these site that meet the bill’s requirement as addressing their allocation of “moderate-income” (80 to 120 percent of AMI) sites. **To address this issue, the Committee may wish to consider amending the bill to shift some of the allocation requires from above-moderate to moderate-income housing, such that cities would be required to identify 25 percent of units in each category for multi-family housing.**

Accounting for the Market: As currently written, the bill would apply to suburban and metropolitan jurisdictions. Many suburban jurisdictions do not have the development market for market-rate multi-family housing. Therefore, requiring them to identify sites for market-rate multi-family housing would be largely a paper exercise that could generate additional work but minimal outcomes. **To address this issue, the Committee may wish to consider amending the bill to have it only apply to metropolitan jurisdictions, rather than also suburban ones.**

Nuancing Density: The bill identifies medium-density sites as allowing between a minimum of two units and a maximum twenty units. On the low end of the scale, that density makes sense, as it would require, at minimum, a duplex. However, on the high end of the scale, the proposal is problematic because sites vary greatly in size. This is why most density requirements, including the housing element density requirements for very low- and low-income residents, utilize “per acre” as their metric. Utilizing a per acre metric requires adjusting the high end of the scale, as per acre, 20 units does not incorporate any but the lowest density medium-density housing typologies. **To address these issues, the Committee may wish to consider amending the bill to require that the maximum density to be 35 units per acre.**

Court Remedies: Existing law (Government Code 65755) enables a court to penalize a city if aspects of the General Plan, including their housing element, are not in compliance. These penalties include that the court may suspend the ability for a jurisdiction to issue permits, change

zoning, or grant subdivision maps to any housing development project. The proposed bill states that the court could not undertake these remedies for development projects on a site allocated to meet the requirements of this bill. The notion that the courts should not be able to penalize developers for the failure of a city to comply with state law bears consideration. However, its application in this bill is problematic for several reasons, including that the “fix” would only apply to the approximately 15 percent of a city’s development potential that would be on sites allocated per this bill. Also, the remedy would apply to these sites regardless of what is actually developed on these sites. **To address this issue, the Committee may wish to consider amending the bill to remove the ban on applying certain court remedies to these sites.**

Declaratory of Existing Law: 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.**

Summary of Committee Amendments: The following is a summary of the amendments proposed above:

- Reduce the allocation requirement on above moderate-income sites from 50 percent to 25 percent;
- Add an allocation requirement on moderate-income sites of 25 percent;
- Limit the bill to metropolitan jurisdictions;
- Establish the density maximum for applicable sites to 35 units per acre;
- Remove the ban on specific court remedies on sites allocated per this bill; and
- Add language declaring that enumerated restrictions on local government decision making regarding specific projects is declaratory of existing law.

Related Legislation:

AB 1771 (Bloom), Chapter 989, Statutes of 2018: This bill makes changes to the regional housing needs plan objectives, methodology, distribution, and appeals process.

SB 828 (Wiener), Chapter 974, Statutes of 2018. This bill makes changes to the regional housing needs allocation process.

SB 50 (Wiener) (2019): This bill would set minimum density standards in certain areas, including establishing a minimum of four units per parcel. This bill is pending hearing in the Senate Appropriations Committee.

Double referred: This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California League of Conservation Voters

California YIMBY

Opposition

None on file

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