



- a) An assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs;
  - b) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing;
  - c) An implementation plan that identifies any particular programs or strategies being undertaken to meet their goals and objectives, including their RHNA target; and
  - d) 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.
- 6) Requires a local government to determine whether each site in the site inventory can accommodate some portion of the jurisdiction's share of the RHNA by income category during the housing element planning period. A community either must use the "default zoning densities" or "Mullin densities" to determine whether a site is adequately zoned for lower income housing or must provide an alternative analysis. Current Mullin densities:
- a) 15 units/acre—cities within non-metropolitan counties; nonmetropolitan counties with metropolitan areas
  - b) 10 units/acre—unincorporated areas in all non-metropolitan counties not included in the 15 units/acre category
  - c) 20 units/acre—suburban jurisdictions
  - d) 30 units/acre—jurisdictions in metropolitan counties

**This bill:**

- 1) Defines "housing development project" as a project containing residential units only, or a mixed-use development with at least 50% of the square footage of the new construction for residential use.
- 2) Defines "neighborhood lot" as a parcel with an office or retail commercial zone that is not adjacent to an industrial use.
- 3) Defines "office or retail commercial zone" as any commercial zone, except for zones where office uses and retail uses are not permitted, or are permitted only as an accessory use.
- 4) Establishes the Neighborhood Homes Act, and deems a housing development project an allowable use on a neighborhood lot if it complies with all of the following:

- a) The density for the development shall meet or exceed the applicable density appropriate to accommodate housing for lower income households as follows:
    - i. 15 units/acre—cities within non-metropolitan counties; nonmetropolitan counties with metropolitan areas
    - ii. 10 units/acre—unincorporated areas in all non-metropolitan counties not included in the 15 units/acre category
    - iii. 20 units/acre—suburban jurisdictions
    - iv. 30 units/acre—jurisdictions in metropolitan counties
  - b) The development shall be subject to local zoning, parking, design and other ordinances, local code requirements, and procedures applicable to the processing and permitting of a housing development in a zoning that allows for housing pursuant to (4)(a) above. If the existing zoning designation for the parcel is greater than (4)(a) above, that existing density shall apply.
  - c) The housing development shall contain at least an unspecified percentage of units affordable to lower income households.
  - d) All other local requirements for a neighborhood lot, other than those that prohibit residential use, or allow residential use at a lower density than (4)(a).
  - e) The developer has certified that the entirety of the development is a public work and that a skilled and trained workforce shall be used to perform all construction work on the development.
- 5) Requires a local agency to require that a rental of any unit shall be for longer than 30 days.
  - 6) Permits a local agency to be exempt from the provisions in this bill if in its land use element, the local agency concurrently reallocates the lost residential density to other lots so that there is no net loss in residential density in the jurisdiction. A local agency may reallocate its density only if the site or sites are suitable for residential development and the sites are subject to an ordinance that allows for development by right.
  - 7) Provides that this bill does not alter or lessen the applicability of any housing, environmental, or labor law, and permits an applicant for a housing development to apply for a density bonus.
  - 8) Requires all local demolition ordinances to apply.

- 9) Prohibits a development from utilizing SB 35 streamlining if the following conditions apply:
  - a) The development has previously been developed using SB 35 streamlining with a project of 10 or fewer units, or
  - b) The developer of the project has previously proposed an SB 35 development with 10 or fewer units on the same or adjacent site.
- 10) Authorizes a development that meets the requirements in this bill to be eligible for SB 35 streamlined approval.
- 11) Provides that a project on a neighborhood lot, shall be deemed consistent with objective zoning standards, objective design standards, and objective subdivision standards if the project is consistent with the provisions of this bill.
- 12) Sunsets the provisions of this bill on January 1, 2029.

## COMMENTS

- 1) *Author's statement.* "This bill will allow cities to approve, through an expedited process, the reuse of infill property zoned for retail and office space for residential construction. This adaptive reuse of shopping malls or strip malls will reduce greenhouse gas emissions and urban sprawl. Shopping malls, strip malls, and 'big box' retail stores face a new reality: consumers' needs are being met online. Many shopping centers struggle to remain viable as large anchor stores like Sears, K-Mart, and Toys-R-Us close their doors or go out of business leaving vacant, often-times run-down, commercial centers. While commercial vacancies are growing, California's housing crisis continues to worsen. According to the California Budget and Policy Center, over 50% of renters and nearly 40% of homeowners pay more than 30% of their income in rent. In addition, the Public Policy Institute of California recently reported that California's housing shortage continues to grow as the number of residential building permits issued for 2018 and 2019 were far below the recommended annual average of new homes needed. This bill allows for the transformation of underperforming commercial sites into mixed-use use centers with residential units, with some affordability restrictions, often in locations that are well-connected to major transportation routes."
- 2) *Housing needs and approvals generally.* Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions,

as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs, which is completed through the regional housing needs allocation (RHNA) process. To do so, each community establishes an inventory of sites ("site inventory") designated for new housing that is sufficient to accommodate its fair share. 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. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

- 3) *Zoning ordinances generally.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. A zoning ordinance may be subject to CEQA if it will have a significant impact upon the environment. The adoption of ADU ordinances, however, are explicitly exempt from CEQA. There are also some several statutory exemptions that provide limited environmental review for projects that are consistent with a previously adopted general plan, community plan, specific plan, or zoning ordinance.

In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially, or by-right, require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the CEQA, while projects permitted ministerially generally are not.

- 4) *Mullin densities*. A local government must determine whether each site in its site inventory for its housing element can accommodate some portion of the jurisdiction's share of the regional housing needs assessment requirement by income category during the housing element planning period. A community must use the "default zoning densities," also referred to as "Mullin densities," to determine whether a site is adequately zoned for lower income housing or must provide an alternative analysis. Current default densities are as follows:
- a) 15 units per acre: cities within non-metropolitan counties; non-metropolitan counties with metropolitan areas.
  - b) 10 units per acre: unincorporated areas in all nonmetropolitan counties not included in the 15 units per acre category.
  - c) 20 units per acre: suburban jurisdictions.
  - d) 30 units per acre: jurisdictions in metropolitan counties.
- 5) *Need for more residential zoning*. The concept of the "fiscalization of land use" is familiar to many. Ever since the passage of Proposition 13 in 1978, property taxes have constituted a diminishing source of revenue for governments. This situation was exacerbated in the early 1990s when the state effectively commandeered local property tax revenues to meet its obligation to the public schools through the Education Revenue Augmentation Fund (ERAF). In many cases, the additional revenues a local government now earns from each new housing unit are insufficient to cover the added expense of providing services to the new residents of that home. Some of the fixed costs of infrastructure can be recouped through fees, but the on-going service costs remain at issue. Thus, a city council deciding the fate of a new housing development faces the unenviable dilemma of denying needed housing or reducing services to existing constituents. As one might expect, new housing developments tend to be the loser.

At the same time, when a city council considers an alternate proposal to develop a parcel of land as a retail center, the fiscal incentives strongly support approval. Local governments receive a large portion of all sales tax revenue generated within their borders. The additional revenue received from a large retail facility—such as a big-box retailer, online distribution center, or a car dealer—easily outweighs the costs of providing services to the facility. Local government can use these surplus revenues to enhance services to its constituents. As a result, housing is subject to a double whammy. Not only can it be difficult to get approval for a new housing development on residentially-zoned land, but more land is zoned commercial in the hope that retail

establishments can be attracted. The only real fiscal incentive local governments have to approve housing is to ensure there are enough residents to support the retailers.

6) *COVID-19 and impacts to brick-and-mortar retail.* According to an April 24, 2020 brief published by McKinsey and Company, the onset of COVID-19 has aggravated the existing challenges that the retail sector faces, including:

- a) A shift to online purchasing over brick-and-mortar sales;
- b) Customers seeking safe and healthy purchasing options;
- c) Increased emphasis on value for money when purchasing goods;
- d) Movement towards more flexible and versatile labor; and
- e) Reduced consumer loyalty in favor of less expensive brands.

With several large retailers such as Neiman Marcus, J.C. Penney, J. Crew, and Pier 1 filing for bankruptcy, store closings have already been announced or are expected in the future. According to the research and advisory firm Coresight Research, 2020 saw the closures of 8,741 stores, and 2021 could bring as many as 10,000 additional closures. The investment firm UBS estimates that by 2025, 100,000 stores in the United States will close as online sales grow from 15% to 25% of total retail sales.

7) *Authorizing residential in commercial zones.* 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. First, it applies housing development standards, adopted by the local government, from nearby parcels to office and commercial retail sites. It also limits the potential for incompatible uses to be sited near one another by prohibiting the bill from being used on sites adjacent to industrial uses. The bill only applies to sites where local government has adopted those retail and office zoning designations, which inherently come with the expectation by the local government that people will spend extended periods of time in those areas. This bill also recognizes that density suitable for an urban jurisdiction is not suitable for rural jurisdictions by importing density requirements from existing housing element law.

8) *If at first you don't succeed...* SB 1385 (Caballero, 2020) was substantially similar to this bill, although SB 1385 did not include several provisions contained in this bill, most notably: (1) labor protections, and (2) a requirement for a certain percentage of the housing units to be affordable. This bill is also similar to AB 115 (Bloom, 2021), which also allows residential developments in commercial zones, but differs from this bill in several ways. AB 115: (1) does not include labor protections, (2) establishes development standards in the

bill instead of deferring to local governments, (3) requires 20% of the units to be affordable, and (4) sunsets on January 1, 2031. AB 115 is almost identical to AB 3107 (Bloom, 2020).

- 9) *Housing Production Package*. This bill has been included in the Senate’s 2021 Housing Production Package.
- 10) *Opposition*. A coalition of state and regional affordable housing groups are opposed to this bill unless it is amended to require housing developments that are allowable on neighborhood lots to include at least 20% of units for lower-income households and to include guardrails in the “skilled and trained” workforce requirement that ensure there is sufficient access to workers for construction to proceed without extreme delays and at a reasonable cost. California State Association of Counties, the Urban Counties of California, and the Rural County Representatives of California are opposed unless amended to narrow the scope of the bill to office or retail uses so as to avoid building housing on incompatible sites; removing eligibility for by right approval of non-zoning compliant projects; offering credit towards meeting housing element requirements, and improving the reallocation provisions. Several cities are opposed to the loss of local control.
- 11) *Triple-referral*. Due to the COVID-19 Pandemic and the unprecedented nature of the 2021 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than two committees as a typical timeline would allow. This bill passed out of the Governance and Finance Committee on a 5-0 vote on March 11, 2021. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the third committee included in the original referral, the Senate Judiciary Committee.

#### **RELATED LEGISLATION:**

**AB 115 (Bloom, 2021)** — makes specified housing developments an authorized use on commercially-zoned land. *This bill is pending in the Assembly Local Government Committee.*

**SB 1385 (Caballero, 2020)** — would have enacted the Neighborhood Homes Act, establishing housing as an allowable use on any parcel zoned for office or retail uses. *This bill failed passage in the Assembly Local Government Committee.*



**AB 3107 (Bloom, 2020)** — would have made specified housing developments an authorized use on commercially-zoned land. *This bill died in the Senate Housing Committee.*

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS:** (Communicated to the committee before noon on Friday, April 23, 2021.)

**SUPPORT:**

AARP

Abundant Housing LA

Alameda County Democratic Central Committee

Alameda County Democratic Party

American Planning Association, California Chapter

Build Affordable Faster CA

California Apartment Association

California Association of Realtors

California State Association of Electrical Workers

California State Pipe Trades Council

County of Monterey

East Bay for Everyone

Facebook, INC.

Los Angeles Business Council

Schneider Electric

State Building & Construction Trades Council of California

State Building and Construction Trades Council of Ca

Techequity Collaborative

Turner Center for Housing Innovation At the University of California, Berkeley

Valley Industry and Commerce Association (VICA)

Western States Council Sheet Metal, Air, Rail and Transportation

Zillow Group

**OPPOSITION:**

California Cities for Local Control

California Coalition for Rural Housing

California Contract Cities Association

California Housing Consortium

California Housing Partnership

California State Association of Counties

Catalysts  
City of Beverly Hills  
City of Chino Hills  
City of Cupertino  
City of Dublin  
City of Lafayette  
City of Livermore  
City of Pleasanton  
City of Rancho Santa Margarita  
City of San Jose  
City of San Ramon  
City of Santa Clarita  
City of Saratoga  
City of Thousand Oaks  
City of Torrance  
Housing California  
Latino Alliance for Community Engagement  
Livable California  
Non Profit Housing Association of Northern California  
Riviera Homeowners Association  
Rural County Representatives of California  
Southern California Association of Nonprofit Housing  
Sustainable Tamalmonite  
Town of Danville  
Urban Counties of California  
Western Electrical Contractors Association

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