
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No: AB 1304 **Hearing Date:** 6/17/2021
Author: Santiago
Version: 4/5/2021
Urgency: No **Fiscal:** Yes
Consultant: Erin Riches

SUBJECT: Affirmatively further fair housing: housing element: inventory of land

DIGEST: This bill strengthens and clarifies the manner in which local governments must affirmatively further fair housing in their housing elements.

ANALYSIS:

Existing federal law:

- 1) Requires, pursuant to the Fair Housing Act, that all executive branch departments and agencies administering housing and urban development programs and activities must administer these programs in a manner that affirmatively furthers fair housing.
- 2) Declares the practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information to be against public policy; and that every person has a civil right to be given the opportunity to seek, obtain, or hold employment and housing without facing discrimination based on these protected classes.

Existing state law:

- 1) Declares it unlawful, pursuant to the California Fair Employment and Housing Act (FEHA), for any housing accommodation owner to inquire about, make known any preference or limitation as to, discriminate, or harass a person based on the person's race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.
- 2) Enacts the Unruh Civil Rights Act, which specifically outlaws discrimination in California based on sex, race, color, religion, ancestry, national origin, age,

disability, medical condition, genetic information, marital status, or sexual orientation.

- 3) Prohibits discrimination through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law that make housing opportunities unavailable.
- 4) Establishes the state Department of Fair Employment and Housing (DFEH) with the powers and duties to, among other things, receive, investigate, and conciliate complaints relating to housing discrimination.
- 5) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element. Requires the housing element to identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.
- 6) Requires each jurisdiction's regional housing need allocation plan to further five statutory objectives:
 - a) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties in the region in an equitable manner.
 - b) Promoting infill development and socioeconomic equity, protecting environmental and agricultural resources, encouraging efficient development patterns, and achieving the state's greenhouse gas reduction targets.
 - c) Promoting an improved intraregional relationship between jobs and housing.
 - d) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category.
 - e) Affirmatively furthering fair housing.

This bill:

- 1) Clarifies that public agencies have a mandatory duty to comply with AFFH requirements.

- 2) Requires a housing element's inventory of sites that are suitable for housing development to include an analysis of the relationship of the sites to the jurisdiction's AFFH duty, and whether the inventory affirmatively furthers fair housing.
- 3) Specifies that a housing element must include a statement of the community's goals, quantified objectives, and policies relative to AFFH.
- 4) Specifies that a housing element's program of action must identify sites as needed to meet the AFFH requirement.
- 5) Specifies that a housing element's assessment of fair housing in the jurisdiction must include trends both within the jurisdiction and of the jurisdiction compared to the region. Specifies that the assessment of factors contributing to fair housing issues must include the local and regional historical origins as well as current policies and practices.

COMMENTS:

- 1) *Author's statement.* "Californians continue to live through a serious housing crisis, and for our most vulnerable communities, the crisis is even greater. In 2018, I authored AB 686 to ensure local governments develop and implement their housing plans in a manner that affirmatively furthers fair housing. This means local jurisdictions must commit to specific strategies to combat discrimination and segregation in their communities, address disinvestment in low-income communities, and protect residents from displacement. As local governments have begun to implement these requirements, recent incidents have revealed that a number of jurisdictions across the state are either in non-compliance or superficial compliance with the original law. AB 1304 will ensure local governments must affirmatively further fair housing in their jurisdictions. Specifically, this bill would clarify enforcement language and make clear that local governments must analyze racial segregation patterns within their own jurisdiction as well as within the broader region, in addition to historical factors and current policies that contribute to fair housing issues. Furthermore, this bill would strengthen the existing requirement that the housing element sites inventory affirmatively further fair housing by requiring the local government to state how the inventory in fact does this."
- 2) *Background: the federal AFFH Rule.* Since its enactment in 1968, the federal Fair Housing Act has directed HUD, other federal agencies, and program participants to affirmatively further the Act's goals of promoting fair housing

and equal opportunity. In 2015, the Obama Administration issued the AFFH Rule to clarify what it means to “affirmatively further fair housing.” The Rule incorporated an “Assessment of Fair Housing” process into broader existing planning processes to help HUD grantees identify issues such as fair housing issues pertaining to patterns of integration and segregation; racially and ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs. HUD grantees were required to submit their Assessments to HUD or potentially lose HUD funding.

On January 5, 2018, under President Trump, HUD largely suspended the obligation to submit an Assessment, effectively postponing implementation of the AFFH Rule until 2025. In July 2020, the 2015 AFFH Rule was repealed, with Secretary Carson noting that “Washington has no business dictating what is best to meet your local community’s unique needs.”

On January 26, 2021, President Biden issued a memorandum directing HUD to examine the effect of the previous Administration’s actions against the AFFH Rule and the effect that it has had on HUD’s statutory duty to both ensure compliance with the Fair Housing Act and to affirmatively further fair housing. The memo also ordered HUD to take the necessary steps to implement the Fair Housing Act’s AFFH requirements and to prevent practices that have a disparate impact. On June 10, 2021, HUD published an interim final rule, which will go into effect on July 31, to restore implementation of the AFFH Rule.

- 3) *AFFH in California.* California’s FEHA prohibits employment and housing discrimination based on the protected classes. FEHA further provides that it is a civil right to be able to pursue and maintain housing or employment without facing discrimination. If a dispute is not resolved, DFEH may take legal action if evidence supports a finding of discrimination. In housing discrimination cases, an individual also has the right to file a lawsuit on their own behalf. While FEHA does not explicitly include an AFFH obligation, it does prohibit discrimination through public or private land use practices, decisions, and authorizations due to membership in a protected class. Discrimination includes restrictive covenants, zoning laws, details of use permits, and other actions authorized under the Planning and Zoning Law that make housing opportunities unavailable.

After the 2015 AFFH Rule was enacted, concerns arose about whether it would be preserved going forward. To address these concerns, the Legislature passed and the Governor signed AB 686 (Santiago, 2018), which established an AFFH framework at the state level. This framework remained in place when the Trump Administration repealed the AFFH Rule in 2020.

- 4) *Why AFFH matters.* Multiple studies have shown that life outcomes improve for those living in “high-opportunity areas,” i.e., neighborhoods with high quality public schools, proximity to well-paying jobs, and a clean and safe environment. Such studies have also shown that living in such communities can have a particularly beneficial outcome for low-income people in terms of health, employment, and educational attainment. However, low-income people have historically been excluded from high-opportunity areas through exclusionary zoning policies such as redlining; HCD notes that “Although federal mandates prohibit overt forms of discrimination in housing, forces driving residential segregation have persisted...”¹ For example, race-based zoning was replaced with single-family zoning, which restricts affordable housing options such as apartments or condominiums. Discriminatory practices, coupled with long-term disinvestment, have resulted in neighborhoods with concentrated poverty, poor housing stock, underfunded schools, and deteriorating infrastructure. AFFH analysis and assessment can help California move toward truly integrated neighborhoods and help ensure equal access to opportunity.
- 5) *California AFFH guidelines.* In April 2021, HCD published AFFH guidance to help public agencies and local governments meet AB 686 requirements. The guidance clarifies, and provides examples to illustrate, components of the housing element assessment of fair housing, including a summary of fair housing enforcement and outreach capacity; integration and segregation patterns and trends related to people with protected characteristics and lower incomes; racially and ethnically concentrated areas of poverty; disparities in opportunity; and disproportionate housing needs, including displacement.
- 6) *AFFH enforcement.* In a recent trial court case, *Comunidas Unidas Por un Cambio vs. County of Fresno*, a community organization sued Fresno County for failing to complete its housing element rezoning obligations, on the grounds that the County’s failure to act was a violation of its AFFH duty. The judge did not entertain the AFFH claim, based on an interpretation that AFFH statute does not provide a private right of action to enforce the AFFH duty. The author notes that this interpretation ran counter to the intent of AB 686. This bill clarifies statute to avoid future confusion that the general AFFH duty is mandatory and enforceable in the courts.

In July 2020, HCD notified the City of Encinitas that its draft housing element needed to be revised, in part because it failed to sufficiently demonstrate the

¹ California Department of Housing and Community Development, *Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements* (April 2021), [Affirmatively Furthering Fair Housing \(ca.gov\)](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Affirmatively-Furthering-Fair-Housing-Guidance-for-All-Public-Entities-and-for-Housing-Elements.aspx).

city's efforts to affirmatively further fair housing. HCD's letter noted that the city's housing element "entirely equates affordability with affirmatively furthering fair housing. However, AFFH means taking meaningful actions to combat discrimination, segregation, and to foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics... Therefore, the analysis should not be tied exclusively to affordability." This bill further clarifies local governments' AFFH housing element obligations.

7) *Amendments.* The author proposes minor amendments to align this bill with the recently released HCD guidance, along with adding Assemblymembers Chiu and Wicks as coauthors. **Due to timing, the committee will accept these changes as committee amendments.** The amendments, for page 13, lines 1-7 (Government Code Section 65583.1(c)(10)), are as follows:

(ii) An analysis of available federal, state, and local data and knowledge to identify ~~racial~~ integration and segregation patterns and trends ~~both within the jurisdiction and of the jurisdiction compared to the region in which the jurisdiction is located~~, racially or ethnically concentrated areas of poverty **and affluence**, disparities in access to opportunity, and disproportionate housing needs ~~within the jurisdiction~~, including displacement risk. **The analysis shall identify and examine such patterns, trends, areas, disparities, and needs both within the jurisdiction and comparing the jurisdiction to the region in which it is located based on race and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 commencing with Section 12900) of Division 3 of Title 2) and Section 65008.**

8) *Double referral.* This bill will also be heard by the Senate Judiciary Committee.

RELATED LEGISLATION:

AB 686 (Santiago, Chapter 958, Statutes of 2018) — required a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing; also required local housing elements to affirmatively further fair housing.

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

POSITIONS: (Communicated to the committee before noon on Friday, June 11, 2021.)

SUPPORT:

California Rural Legal Assistance Foundation (Co-Sponsor)
National Housing Law Project (Co-Sponsor)
Public Advocates (Co-Sponsor)
Public Interest Law Project (Co-Sponsor)
Western Center on Law & Poverty (Co-Sponsor)
Bay Area Regional Health Inequities Initiative
California Housing Consortium
California Housing Partnership Corporation
Disability Rights California
Eden Housing
Housing California
Inner City Law Center
Legal Aid of Sonoma County
San Diego Housing Federation

OPPOSITION:

None received

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