
SENATE COMMITTEE ON HOUSING**Senator Scott Wiener, Chair****2019 - 2020 Regular**

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| Bill No: | SB 1299 | Hearing Date: | 5/26/2020 |
| Author: | Portantino | | |
| Version: | 4/1/2020 | | |
| Urgency: | No | Fiscal: | Yes |
| Consultant: | Alison Hughes | | |

SUBJECT: Housing development: incentives: rezoning of idle retail sites

DIGEST: This bill requires the California Housing and Community Development Department (HCD) to administer a program to provide grants to local governments that rezone idle sites used for a big box commercial shopping center to instead allow the development of workforce housing, as defined.

ANALYSIS:

Existing law:

- 1) Defines “use by right” as prohibiting a local government from requiring a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of CEQA. A local government may require a housing development to undergo design review, however it shall not constitute a project for CEQA.
- 2) Defines “very low-income” as persons and families whose income does not exceed 50% AMI.
- 3) Defines “low-income” as persons and families whose income does not exceed 80% AMI.
- 4) Defines “moderate-income” as persons and families whose income does not exceed 120% of AMI.
- 5) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.
- 6) Requires the board of zoning adjustment or zoning administrator to hear and decide applications for conditional uses or other permits when the zoning

ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance.

- 7) Provides that supportive housing, in which 100% of units are dedicated to low-income households (up to 80% area median income, or AMI) and are receiving public funding to ensure affordability, shall be a use by right in all zones where multifamily and mixed uses are allowed, as specified.
- 8) Requires “low-barrier navigation centers” to be a use-by-right, until January 1, 2027, as defined, in areas zoned for mixed uses and nonresidential zones permitting multifamily uses if the development meets certain requirements.

This bill:

- 1) Defines “big box retailer” as a store of greater than 75,000 square feet of gross buildable area that generates or previously generated sales or use taxes.
- 2) Defines “commercial shopping center” as a group of two or more stores that maintain a common parking lot for patrons of those stores.
- 3) Defines “idle” as at least 80% of the leased or rentable square footage of the big box retailer or commercial shopping center site is not occupied for at least a 12-month period.
- 4) Defines “sales and use tax revenue” as the cumulative amount of revenue generated by taxes imposed by a local government, as specified.
- 5) Defines “workforce housing” as an owner occupied or rental housing development with an affordable housing cost or affordable rent to households with a household income greater than or equal to 80% area median income (AMI), but no more than 120% AMI.
- 6) Requires HCD to administer a program to provide incentives in the form of grants to local governments that rezone idle sites used for a big box commercial shopping center and instead allow the development of workforce housing.
 - a) For each calendar year in which funds are made available, HCD shall issue a notice of funding availability (NOFA) for the distribution of funds for the following 12-month period.
 - b) HCD shall allocate the determined grant amount to each local government for each of the seven years following the date of the local government’s application.

- 7) Requires a local government, in order to be eligible for funding, to do all of the following:
 - a) Rezone one or more idle sites used for a big box retailer or commercial shopping center to allow workforce housing as a use by right.
 - b) Approve and issue a certificate of occupancy for a workforce housing development on each site rezoned for which the local government seeks a grant.
 - c) Apply to HCD for an allocation of grant funds and provide documentation that it has complied with the requirements in this bill.

- 8) The amount granted to each eligible local government shall be as follows:
 - a) The annual grant amount shall be equal to the average amount of annual sales and use tax revenue generated by each idle site identified in the local government's application over the seven years immediately preceding the date of the local government's application.
 - b) For any idle big box retailer or commercial shopping center site rezoned to allow mixed uses, the amount of grant shall be reduced in proportion to the percentage of the square footage of the development that is used for a use other than workforce housing.
 - c) If, for any NOFA, the amount of funds made available for purposes of this chapter is insufficient to provide each eligible local government with the full amount specified in (a) and (b) above, based on the number of applications received, HCD shall reduce the amount of grant funds awarded to each eligible local government proportionally.

COMMENTS

- 1) *Author's Statement.* According to the author, "HCD estimates that the state needs upwards of 200,000 housing units per year in order to maintain a healthy housing sector. Currently, the industry is producing less than half of that amount. This scarcity has driven our housing costs to be the highest in the nation prohibiting occupations like teachers, nurses, public safety officers and younger professionals the ability to afford owning a home, essential for building a stronger and vibrant economy. It is imperative that we encourage creative solutions to build more housing to correct this imbalance.

We see an opportunity through the growth of e-commerce and the idling of commercial retail sites. There's an opportunity to convert idle retail sites to workforce housing.

We want to create a pilot program that encourages local governments to partner with the industry to build housing on these sites and reward the local government with a sales tax rebate when these projects are rezoned, completed and have been issued a certificate of occupancy. These rebates will give local governments the resources to replace the sales tax revenues that came from these former retail sites to pay for the necessary public safety and essential infrastructure needed for these new residential properties to operate in their local jurisdiction.”

- 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 designated for new housing that is sufficient to accommodate its fair share. 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.
- 4) *Streamlined Approval Processes.* Some housing projects can be permitted by city or county planning staff ministerially or without further approval from

elected officials. Projects reviewed ministerially 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 CEQA while projects permitted ministerially generally are not.

- 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.

This bill seeks to incentivize local governments to convert idle retail sites into housing affordable to households at 80% - 120% AMI by requiring HCD to issue grants to cities that rezone commercial sites to make residential an allowable use. In order to receive a grant, a city must rezone the site as a use by

right, approve a housing development project, and issue a certificate of occupancy. A city will only receive a grant for developments that include housing affordable to households earning 80% - 120% AMI and the grant will be proportionate to the amount of housing available for those households if the development also includes a commercial component. The grant is equal to the average amount of annual sales and use tax revenue generated by each idle site identified in the local government's application over the seven years immediately preceding the date of the local government's application. The goal is to offset the lost sales tax revenue that would have been generated from a commercial property.

- 6) *Is workforce housing the most necessary?* California is in the midst of a serious housing crisis, largely due to a shortage of housing stock, primarily for lower-income households. As more and more families feel the financial burden of monthly housing costs, and scarce resources at the state level, there has been a focus on easing the burden for moderate-income households (80% - 120% AMI). In October 2019, the California Housing Partnership Corporation (CHPC) published a report that compared the median asking rent data on Craigslist for two-bedroom apartments with regionally adjusted 2019 area median incomes. The report found that very low-income households earning 50% AMI can afford modest rents in only one county in California; households earning 60% AMI could afford modest rents in 11 counties; 80% AMI could afford modest rents in 29 counties; and households with median incomes earning 100% AMI could afford modest rents in all but 6 counties, primarily in the State's high-cost coastal regions.

Generally, when low-income households experience severe cost burden and spend most of their income on housing, families have to cut back on essentials such as food, healthcare, childcare, and transportation. These families are often those that are closest to becoming homeless. While CHPC recommends prioritizing assistance to households with the lowest income, they note that there are moderate income households in specific neighborhoods and counties that need help. CHPC recommends assistance for households earning more than 80% AMI should generally be limited to areas of the State where median income households cannot afford modest rents and where government intervention is most needed, particularly in the six higher cost coastal counties.

The author intends for the bill to help working families find and maintain affordable housing. In many parts of the state, teachers, licensed vocational nurses, and paralegals, for example, earn less than 80% AMI. This is particularly true in high cost and coastal areas of the state. Given that the need for affordable housing is not limited to moderate-income earners, the author

moving forward may wish to consider expanding the eligible households to include grants to cities for zoning and developing low-income households (*i.e.* 0% AMI – 120% AMI).

- 7) *Competitive Program.* While locals traditionally have been incentivized to build more commercial properties than residential, recent legislative changes may strongly incent locals to rezone commercial sites to residential on the natural. In 2018, the Legislature passed two key bills, SB 828 (Wiener, Chapter 974) and AB 1771 (Bloom, Chapter 989) that made a number of changes to the regional housing needs allocation process that increased transparency and accountability of that process. As a result, many local jurisdictions are seeing increases in the numbers of housing units that their housing elements must accommodate for the next planning cycle.

If many jurisdictions are already contemplating making these kinds of zoning changes, this program may become competitive. Moving forward, the author may wish to consider adding some additional requirements for cities to meet in order to be eligible to receive funding, including but not limited to, requiring the adoption of a compliant housing element, requiring the submission of statutorily required annual housing reports, requiring no violations of state housing law (such as the Housing Accountability Act or Density Bonus Law) within the last five years, and requiring no local ordinances or voter approved limitations on housing development or population restrictions.

- 8) *Show me the money.* While this bill contemplates the creation of a new grant program, the bill does not appropriate any funding to support it.

RELATED LEGISLATION:

SB 1385 (Caballero, 2020) — establishes the Neighborhood Homes Act, which provides that specified housing development project shall be deemed 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 in the Governance and Finance Committee.*

AB 101 (Budget and Fiscal Review, Chapter 159, Statutes of 2019) — among other things, required “low-barrier navigation centers” to be a use-by-right, until January 1, 2027, as defined, in areas zoned for mixed uses and nonresidential zones permitting multifamily uses if the development meets certain requirements.

AB 2162 (Chiu, Chapter 753, Statutes of 2018) — streamlined affordable housing developments that include a percentage of supportive housing units and onsite services

SB 35 (Wiener, Chapter 366, Statutes of 2017) — created a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, May 20, 2020.)

SUPPORT:

Building Industry Association of Southern California, Inc.
California Apartment Association
California Association of Realtors
Employers Group
League of California Cities
Los Angeles Business Council
Los Angeles County Business Federation (BIZFED)
Orange County Business Council
Pasadena Chamber of Commerce and Civic Association
Southland Regional Association of Realtors

OPPOSITION:

None received.

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