



Councilmember Dan Kalb

CITY OF OAKLAND

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## Agenda Memorandum

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To: Rules & Legislation Committee

From: Councilmember Dan Kalb

Date: April 26, 2018

Subject: Support of AB 1771:

Colleagues on the City Council and Members of the Public,

With my introduced Resolution of Support for AB 1771 (Bloom), I am submitting the attached Fact Sheet, March 19, 2018 bill analysis from the Assembly Committee on Housing and Community Development, and text of the bill.

Respectfully submitted,

Dan Kalb, Councilmember

# AB 1771 (Bloom) Ensuring Equitable Allocation of the RHNA Fact Sheet

## PURPOSE

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This bill reforms the regional housing needs assessment (RHNA) process to ensure a more equitable, data-driven distribution of the RHNA within regions, establish greater transparency in the distribution process, and provide additional oversight to ensure that the process furthers statutory objectives.

## SUMMARY

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AB 1771 would improve the RHNA distribution process by:

- Adding avoiding displacement, increasing access to opportunity, and affirmatively furthering fair housing to the list of statutory objectives.
- Adding additional data points to the distribution methodology, including overcrowding rates.
- Restricting a COG's ability to use other factors beyond those listed in statute.
- Requiring HCD to determine whether a COG's distribution methodology is consistent with the law.
- Allowing non-profit housing organizations to challenge the RHNA share assigned to one or more jurisdictions.
- Requiring HCD, rather than the COG, to hear appeals if a COG denies an initial challenge to one or more jurisdictions' RHNA allocations.

## EXISTING LAW

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Since 1969, California has required that all local governments (cities and counties) adequately plan to meet the housing needs of everyone in the community. California's local governments meet this requirement by adopting housing plans as part of their "general plan" (also required by the state). General plans serve as the local government's "blueprint" for how the city and/or county will grow and develop and include seven elements: land use, transportation, conservation, noise, open space,

safety, and housing. The law mandating that housing be included as an element of each jurisdiction's general plan is known as "housing-element law."

California's housing-element law acknowledges that, in order for the private market to adequately address the housing needs and demand of Californians, local governments must adopt plans and regulatory systems that provide opportunities for (and do not unduly constrain), housing development. As a result, housing policy in California rests largely on the effective implementation of local general plans and, in particular, local housing elements.

The Regional Housing Need Allocation (RHNA) is the state-mandated process to identify the total number of housing units (by affordability level) that each jurisdiction must accommodate in its Housing Element.

## BACKGROUND

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Every eight years (or five in some rural areas), through the RHNA process, the state projects the number of additional housing units a region needs at all income levels to address both existing shortfalls and anticipated population growth. The council of governments (COG) then takes that regional number and assigns a share to every jurisdiction within the region by income category.

The RHNA plays a critical role in setting the stage for housing production. In adopting their housing elements, jurisdictions must be able to show that they have enough sites zoned for housing to accommodate their RHNA share at every income level. To show that they can accommodate their lower-income housing needs, jurisdictions must be able to point to densely zoned sites that allow for the production of multifamily housing.

While the RHNA distribution process is supposed to be data-driven, unfortunately it is often influenced heavily by regional politics, resulting in low allocations to wealthier and often job-rich jurisdictions that could accommodate far more housing, particularly multifamily housing. For example, Beverly Hills famously received a RHNA allocation of 3 units, one each at the very low-, low-, and moderate-income categories and none at the above moderate-income (i.e. market rate) category for the current housing element cycle, while other similarly sized jurisdictions within the same region received allocations in the hundreds.

The state has a number of laws on the books designed to ensure that housing gets built, but these laws generally only protect projects proposed on sites zoned for housing. When a jurisdiction gets a low RHNA number and thus has to zone very little land for housing, it frustrates the application of these laws and effectively allows that jurisdiction to remain off limits to housing construction.

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### **SPONSORS**

Western Center on Law and Poverty  
California Rural Legal Assistance Foundation

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### **SUPPORT**

None on file

**Version:** 4/5/2018

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1771 (Bloom) – As Amended March 19, 2018

**SUBJECT:** Planning and zoning: regional housing needs assessment

**SUMMARY:** Makes changes to the regional housing needs allocation plan objectives, methodology, and distribution process. Specifically, **this bill:**

- 1) Changes the requirement that the regional housing needs allocation plan "be consistent" with specified objectives to the regional housing needs plan "shall further and not undermine the intent of" the specified objectives.
- 2) Revises the objectives a regional housing needs allocation plan is required to further to include:
  - a) Promote improved intraregional relationships between jobs including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction;
  - b) Allocate a higher portion of housing needs to an income category when a jurisdiction already has a disproportionately low share of households in that income category; and
  - c) Increase access to areas of high opportunity for lower-income residents, avoiding displacement, and affirmatively furthering fair housing.
- 3) Adds the following to the list of factors a local government shall include when developing the methodology for allocating regional housing needs:
  - a) Data on the number of low-wage jobs within the jurisdiction and how many housing units within the jurisdiction are affordable to workers at those wage levels;
  - b) Data on how many jobs were added and at what wage levels compared to how many housing units were added and at what income levels in the last planning period;
  - c) The existing and projected demand for housing for very low-, lower, moderate, and above moderate- income households;
  - d) The percentage of existing very low-, lower, moderate, and above-moderate income households that are paying more than 30% and more than 50% of their income in rent; and,
  - e) The rate of overcrowding.
- 4) Requires a council of governments (COG) to specify how any additional factors they adopt as part of the methodology further and do not undermine the objectives of the regional housing needs assessment.

- 5) Increases the number of public hearings a COG is required to hold on the methodology for distributing regional housing needs from one to two hearings.
- 6) Deletes the requirement that COGs identify any existing local, regional, or state incentives such as a priority for funding or other incentives available to local governments willing to accept a higher share of the regional housing need.
- 7) Provides that the requirement to allocate housing within the region consistent with the development pattern included in the sustainable community strategy, cannot be a basis for limiting development from all suitable housing sites and land suitable for urban development.
- 8) Requires a COG to submit a draft regional housing needs allocation to Department of Housing and Community Development (HCD) after receiving public comment and making revisions.
- 9) Requires HCD to determine within 60 days whether or not the methodology furthers and does not undermine the objectives that are required to be included in the regional housing needs allocation plan.
- 10) Requires a COG to make any necessary changes based on HCD's determination prior to adopting a final housing need allocation methodology.
- 11) Allows a housing organization to request a COG revise the share of regional housing needs to one or more local governments in accordance with the objectives for allocating a regional housing needs allocation plan.
- 12) Requires a housing organization or local government that requests revision in their share of regional housing need to include a statement as to how the revision does not undermine the intent of the objectives required for the regional housing need allocation plan.
- 13) Allows a housing organization or local government to appeal a decision by the COG to reject a revision or modification of the regional housing needs plan, to HCD.
- 14) Requires HCD, rather than the COG, to conduct a public hearing to hear all appeals within 60 days of the date established to file appeals.
- 15) Requires the final action by HCD on an appeal to be in writing and include written findings supported by a preponderance of the evidence on the record as to how the action is consistent with the requirements of the regional housing need methodology and allocation requirements.
- 16) Requires the COG to take HCD's action on all appeals into consideration in issuing a final regional housing needs allocation.
- 17) Defines "housing organization" to mean a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households.

**EXISTING LAW:**

- 1) Requires HCD, in consultation with each COG, to determine each region's existing and projected housing need at least two years prior to a scheduled housing element revision.

- 2) Requires a COG, or for cities or counties without a COG, HCD to adopt a final regional housing needs plan that allocates a share of the regional housing need to each city or county at least one year prior to a scheduled housing element revision.
- 3) Requires the regional housing needs assessment plan to be consistent with all of the following objectives:
  - a) Increasing the housing supply and the mix of housing types, tenure and affordability in all cities and counties within the region in an equitable manner that results in each jurisdiction receiving an allocation of units for low- and very low-income households;
  - b) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and encouraging efficient development patterns;
  - c) Promoting an improved intraregional relationship between jobs and housing; and
  - d) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a high share of households in the income category as compared to the county wide distribution of households in that category for the most recent U.S. census.
- 4) Requires each COG to develop a proposed methodology for distributing the existing and projected regional housing need to cities and counties within the region, two years prior to the scheduled housing element revision.
- 5) Requires, to the extent that data is available, the COG to include the following factors in developing the methodology that allocates the regional housing needs assessment:
  - a) Each member jurisdiction's existing and projected jobs housing relationship;
  - b) Opportunities and constraints to developing additional housing in each jurisdiction including the following:
    - c) Lack of capacity for sewer or water due to federal or state laws, regulations, or regulatory actions or decisions made by a sewer or water service provider other than the jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period;
    - d) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development increased residential densities, including the potential for increased residential development under alternative zoning ordinances and land use restrictions;
    - e) Lands preserved or protected from urban development under existing federal or state programs;
    - f) County policies to preserve prime agricultural land;
    - g) Distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and the existing transportation infrastructure;

- h) Market demand for housing;
  - i) Agreements between a county and cities to direct growth toward incorporated areas of the county;
  - j) Loss of low income units in assisted housing developments as a result of mortgage prepayment, expiration of subsidy contracts, and the termination of use restrictions;
  - k) The housing needs of farmworkers;
  - l) The housing needs of universities; and
  - m) Any other factor adopted by the COG.
- 6) Requires each COG to survey each member jurisdiction and request the information necessary to allow for the development of the methodology described in 5) above, six months prior to developing the methodology.
- 7) Requires public participation and access in drafting the methodology and in the process of drafting and adopting the allocation of the regional housing need, including at least one public hearing to receive oral and written comments.
- 8) Requires each COG to explain in writing how each of the factors required to be incorporated in the methodology are incorporated and how they further the objectives required to be included in the regional housing needs plan.
- 9) Requires each COG in addition to the factors listed in 5), to identify any existing local, regional or state incentives such as priority for funding to those local governments willing to accept a higher share of housing than proposed in the draft allocation plan.
- 10) Requires a COG to adopt a final housing needs allocation methodology after the public comment period and make any revisions as a result of the public comments received.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

Background: Housing element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. The housing element update process addresses the statewide concern of providing "decent housing and a suitable living environment for every California family," in part by facilitating increases in housing supply to accommodate the needs of the state's population and its growth. The law recognizes the most critical decisions regarding housing development occur at the local level within the context of the general plan. In order for the private sector to adequately address housing needs and demand, local governments must regularly update their general plans, zoning, and development standards to provide opportunities for, and not unduly constrain, housing development for all income groups.

Regional housing needs assessment (RHNA) for each city and county constitute a fundamental basis for housing element updates. The state projects new RHNA numbers every eight years, or in some rural areas every five years. RHNA for each city and county is a projection of additional

housing units needed to accommodate existing households and projected household growth of all income levels by the end of the housing element planning period.

RHNAs establish minimum housing development capacity that cities and counties are to make available via their land use powers to accommodate growth within a planning period. 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. The process is also known as "fair share" planning, as shares of the regional housing need are determined for constituent cities and counties of the affected region of the housing element update cycle. Regions are represented by COGs or counties, which are charged with preparing RHNA plans.

In consultation with each COG, HCD determines the housing needs for each region using a demographic method based on Department of Financing (DOF) population projections. While HCD forwards projections for the region, the distribution of the need within the region to individual cities and counties is subject to determination by the COG. Two years prior to a housing element revision, the COG develops a methodology for distributing the RNHA to jurisdictions within the region. The methodology must consider certain factors spelled out in statute. Local jurisdictions provide data to the COG that is used in the methodology to determine the distribution of housing need within the region. COGs allocate the RHNA to their city and county members in a draft allocation plan and each city and county has an opportunity to request revision of their needs allocation by the COG. The COG may revise the initial allocations, subject to maintaining the total regional need.

The methodology is required to consider the existing and projected jobs housing relationship; the opportunities and constraints to building housing in a jurisdiction; a comparison between household growth and regional transportation plans; market demand for housing; agreements to direct growth to unincorporated areas; the loss of assisted housing units due to expiring covenants or contracts; the housing needs of farmworkers; and housing generated by universities. In addition, the COG can consider any other factors it chooses.

The RNHA process has been criticized as being a political rather than a data driven process. COGs distribute the allocation by both the supporting data but also in some cases based on which jurisdictions are willing accept housing units. A component of the methodology used to determine the allocation of RNHA is a jurisdiction's willingness to accept a higher share of the proposed share of the RNHA. The Haas Institute at UC Berkeley published a study, "*Unfair Share*" *Racial Disparities and Regional Housing Needs Allocation in the Bay Area*," which found a relationship between the number of units allocated, adjusted for population size, and the racial composition of the city. Local governments with higher percentages of white residents were more likely to have received lower allocations of moderate and lower income housing.

SB 35 (Wiener), Chapter 366, Statutes of 2017, required that cities and counties streamline housing developments that include either 10% of units at or below 80% of AMI or 50% units at or below 80% of AMI. This new requirement has added additional weight to the RNHA process because the trigger for whether or not a jurisdiction must streamline is based on whether or not they have met their RNHA numbers for above moderate income (120% of AMI or above) or lower income (80% of AMI or below). Most jurisdictions have not met their lower income RNHA and are subject to streamlining if the developer meets the requirements of the bill, including that 50% of the units are restricted to lower income households. To staff's knowledge,



two developments have requested streamlining in the state since the law went into effect on January 1, 2018.

Additional objectives: The regional housing needs plan is required to be consistent with several objectives including that each jurisdiction takes a share of the housing need for all income levels or their "fair share;" that the distribution promotes infill development and social equity; the promotion of an interregional relationship between jobs and housing; and where a jurisdiction has a high percentage of existing housing in an income level allocating a smaller amount in that income category. This bill would add additional objectives to the list including, increasing access to high opportunity for lower-income residents, avoiding displacement and affirmatively furthering fair housing.

In 2017, the Tax Credit Allocation Committee (TCAC) and HCD convened a group of independent organizations and research centers with the purpose of establishing a state fair housing taskforce. The first task for the task force was to assist TCAC and HCD in creating evidence-based approaches to increase access to opportunity for families with children living in housing subsidized by the Low-Income Housing Tax credit (LIHTC) program. TCAC and HCD asked the taskforce to create a statewide opportunity mapping tool that could be adopted to accompany the regulations to incentive development of large-family, new construction of developments with 9% LIHTC in neighborhoods whose characteristics have been shown by research to support childhood development and economic mobility for low-income families. The intent is to use this new mapping tool to direct and inform state policies to increase access for low-income families to high-resource neighborhoods. The committee may wish to consider whether there are other opportunities to integrate the data developed through the opportunity-maps into the RNHA methodology to achieve this goal and further the existing goal for social equity.

Additional transparency and state oversight: Public participation and access is required in developing the methodology and drafting and adopting the RNHA allocation. COGs are required to distribute the methodology and any underlying data and assumptions to cities, counties, and members of the public who request it. COGs are also required to hold at least one public hearing to receive comments on the proposed methodology. This bill would increase that to at least two public hearings.

Once the methodology is complete, COGs distribute a draft allocation to cities and counties in the region. Within 60 days of receiving the draft allocation, local governments may request a revision to the allocation based on comparable data. If the COG does not accept the proposed change, the local government can appeal the COGs decision; the COG then must review the appeal and explain how the allocation is consistent with the objectives and methodology for the RNHA. This bill would allow a housing organization, which is a non-profit whose mission is serving low-income households to also challenge the RNHA allocation. The bill also creates a process for local government, or housing organizations to appeal a COG's decision to HCD.

Purpose of this bill: According to the author, "AB 1771 provides for a more equitable, data-driven distribution of the housing need within regions, ensures greater transparency in the distribution process, and provides additional oversight to ensure that the process furthers statutory objectives. The bill would improve the RNHA distribution process by:

- Adding avoiding displacement, increasing access to opportunity, and affirmatively furthering fair housing to the list of statutory objectives.
- Adding additional data points to the distribution methodology, including overcrowding rates.
- Restricting a COG's ability to use other factors beyond those listed in statute.
- Requiring HCD to determine whether a COG's distribution methodology is consistent with the law.
- Allowing non-profit housing organizations to challenge the RHNA share assigned to one or more jurisdictions.
- Requiring HCD, rather than the COG, to hear appeals if a COG denies an initial challenge to one or more jurisdictions' RHNA allocations. "

Arguments in support: According to the sponsors, California Rural Legal Assistance Foundation and Western Center on Law and Poverty, "while the RHNA distribution is supposed to be data-driven and founded in principals of fair housing and equity, unfortunately it can be influenced heavily by politics, resulting in low allocations to wealthier and often job-rich jurisdictions that could accommodate far more housing, particularly multifamily housing. The state has a number of laws on the books designed to ensure that housing gets built, but these laws generally only protect projects proposed on sites zoned for housing. When a jurisdiction gets a low RHNA number and thus has to zone very little land for housing, it frustrates the application of these laws and effectively allows that jurisdiction to remain off limits to housing construction."

Arguments in opposition: According to the California Building Industry Association, "while we appreciate the intent of this bill, and agree that the process of RNHA should be updated, the bill as currently drafted could result in a distinctively unbalanced approach to housing. There is a need for all types of housing projects across the state in order to keep pace with the demand. By favoring the production of below market rate housing, this proposal would ultimately result in fewer houses being built overall."

Committee amendments:

- Add a definition for "areas of high opportunity for lower-income residents" to mean areas that provide pathways to better lives, including through health, education, and employment.
- Revise the definition of housing organization as follows: (j) For purposes of this section, "housing organization" means a ~~nonproject~~ nonprofit organization whose primary mission includes providing or advocating for increased access to housing for low-income households.
- Delete the requirement that the regional housing allocation plan "not undermine the intent of" the objectives and methodology.

Technical amendment:

On page 6, line 11, delete "and not undermine the intent of"

On page 12, line 29 delete reference to subsection (d) of Section 65594 and change to subsection (d) of Section 65584.

*Double-Deferred:* If AB 1771 passes out of this committee, the bill will be referred to the Committee on Local Government.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Rural Legal Assistance Foundation (co-sponsor)  
Western Center on Law and Poverty (co-sponsor)  
California Bicycle Coalition  
California Housing Consortium  
Disability Rights California  
American Planning Association (support if amended)

**Opposition**

California Association of Councils of Government  
California Building Industry Association

**Analysis Prepared by:** Lisa Engel / H. & C.D. / (916) 319-2085

AMENDED IN ASSEMBLY APRIL 17, 2018

AMENDED IN ASSEMBLY MARCH 19, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1771

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Introduced by Assembly Member Bloom

January 4, 2018

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An act to amend Sections 65584, 65584.04, and 65584.05 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1771, as amended, Bloom. Planning and zoning: regional housing needs assessment.

(1) The Planning and Zoning Law requires counties and cities to adopt a comprehensive, long-term plan for the physical development of the county or city and certain land outside its boundaries that includes, among other specified mandatory elements, a housing element. That law, for the fourth and subsequent revisions of the housing element, requires the Department of Housing and Community Development to determine the existing and projected need for housing for each region in accordance with specified requirements. That law requires the appropriate council of governments, or, for cities and counties without a council of governments, the department, to adopt a final regional housing need allocation plan that allocates a share of the regional housing need to each city, county, or city and county and is consistent with specified objectives, including that the plan increase the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner. *Existing*

law defines the term “household income levels” for purposes of these provisions.

This bill would revise the objectives required to be addressed in the regional housing needs allocation plan and additionally require the plan to include an objective to increase access to areas of high opportunity for lower-income residents, while avoiding displacement and affirmatively furthering fair housing. *The bill would also define the term “areas of high opportunity for lower-income residents” for purposes of these provisions.*

(2) Existing law requires actions by local agencies related to the regional housing needs allocation plan to be consistent with those specified objectives.

The bill would instead require various actions by local agencies related to the regional housing needs allocation plan to ~~further, and not undermine, the intent of the~~ *further the* objectives required to be addressed by the plan.

(3) Existing law requires the council of governments, or delegate subregion as applicable, to develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or subregion, as applicable, that is consistent with specified objectives. Existing law requires the council of governments, or delegate subregion, as applicable, to conduct at least one public hearing on the proposed methodology. Existing law requires the council of governments or delegate subregion as applicable, to provide the proposed methodology, along with any relevant underlying data and assumptions, an explanation of how information about local government conditions gathered has been used to develop the proposed methodology, and how each of the factors required to be addressed by the regional housing needs allocation plan is incorporated into the methodology, to all cities, counties, any subregions, and members of the public who have made a written request for the proposed methodology.

This bill would require the council of governments or delegate subregion as applicable, to hold at least two public hearings. The bill would also require the council of governments or delegate subregion as applicable, to additionally provide, along with the proposed methodology, an explanation of how the proposed methodology ~~further, and does not undermine, the intent of the~~ *further the* objectives required to be addressed by the regional housing needs allocation plan. The bill would eliminate the requirement that members of the public make a

written request for the proposed methodology and accompanying materials.

(4) Existing law requires each council of governments or delegate subregion as applicable, to include specified factors to develop the methodology that allocates regional housing needs, including, among others, each member jurisdiction's existing and projected jobs and housing relationship, the market demand for housing, and high housing cost burdens, as specified.

This bill would revise these factors, and additionally require the council of governments or delegate subregion, as applicable, to consider the rate of overcrowding, the existing and projected demand for housing at various income levels, and the percentage of existing households at each specified income levels that are paying more than 30% and more than 50% of their income in rent.

(5) Existing law requires the council of governments, or delegate subregions, as applicable, to identify any existing local, regional, or state incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation, as specified.

This bill would repeal this provision.

(6) Existing law requires the council of governments, or delegate subregion, as applicable, following the 60-day public comment period, to adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregions, as applicable, and to the department.

This bill would instead require the council of governments, or delegate subregion, as applicable, following the public comment period, to submit the draft allocation methodology to the department. The bill would require the department to determine whether the methodology ~~further~~ ~~and does not undermine~~ *further*s the objectives described above. The bill would require the council of governments, or delegate subregion, as applicable, following the receipt of the department's determination, to make any necessary changes and adopt the final regional, or subregional, housing need allocation methodology, as specified.

(7) Existing law requires each council of governments or delegate subregion, as applicable, to distribute a draft allocation of regional housing needs to each local government within the region or subregion, as provided, at least 1.5 years prior to the scheduled revision of its housing element. Existing law authorizes a local government to request from the council of governments or delegate subregion, as applicable,

a revision of its share of the regional housing need, in accordance with specified factors, within 60 days following receipt of the draft allocation. Under existing law, if the council of governments or delegate subregion, as applicable, does not accept the proposed revised share or modify the revised share to the satisfaction of the requesting party, the local government may appeal its draft allocation based on specified criteria.

This bill would additionally authorize a housing organization, as defined, to request from the council of governments or the delegate subregion, as applicable, a revision of the share of the regional housing need allocated to one or more local government. This bill would authorize the local government or the housing organization, if the council of governments or delegate subregion, as applicable, does not accept the proposed revised share or modify the revised share to the satisfaction of the requesting party, to appeal the draft allocation to the Department of Housing and Community Development, as specified.

(8) By adding to the duties of councils of governments and delegate subregions with respect to the distribution of regional housing need, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 65584 of the Government Code is  
2 amended to read:

3 65584. (a) (1) For the fourth and subsequent revisions of the  
4 housing element pursuant to Section 65588, the department shall  
5 determine the existing and projected need for housing for each  
6 region pursuant to this article. For purposes of subdivision (a) of  
7 Section 65583, the share of a city or county of the regional housing  
8 need shall include that share of the housing need of persons at all  
9 income levels within the area significantly affected by the general  
10 plan of the city or county.

11 (2) While it is the intent of the Legislature that cities, counties,  
12 and cities and counties should undertake all necessary actions to

1 encourage, promote, and facilitate the development of housing to  
2 accommodate the entire regional housing need, it is recognized,  
3 however, that future housing production may not equal the regional  
4 housing need established for planning purposes.

5 (3) The Legislature finds and declares that insufficient housing  
6 in job centers hinders the state's environmental quality and runs  
7 counter to the state's environmental goals. In particular, when  
8 Californians seeking affordable housing are forced to drive longer  
9 distances to work, an increased amount of greenhouse gases and  
10 other pollutants is released and puts in jeopardy the achievement  
11 of the state's climate goals, as established pursuant to Section  
12 38566 of the Health and Safety Code, and clean air goals.

13 (b) The department, in consultation with each council of  
14 governments, shall determine each region's existing and projected  
15 housing need pursuant to Section 65584.01 at least two years prior  
16 to the scheduled revision required pursuant to Section 65588. The  
17 appropriate council of governments, or for cities and counties  
18 without a council of governments, the department, shall adopt a  
19 final regional housing need plan that allocates a share of the  
20 regional housing need to each city, county, or city and county at  
21 least one year prior to the scheduled revision for the region required  
22 by Section 65588. The allocation plan prepared by a council of  
23 governments shall be prepared pursuant to Sections 65584.04 and  
24 65584.05.

25 (c) Notwithstanding any other provision of law, the due dates  
26 for the determinations of the department or for the council of  
27 governments, respectively, regarding the regional housing need  
28 may be extended by the department by not more than 60 days if  
29 the extension will enable access to more recent critical population  
30 or housing data from a pending or recent release of the United  
31 States Census Bureau or the Department of Finance. If the due  
32 date for the determination of the department or the council of  
33 governments is extended for this reason, the department shall  
34 extend the corresponding housing element revision deadline  
35 pursuant to Section 65588 by not more than 60 days.

36 (d) The regional housing needs allocation plan shall ~~further,~~  
37 ~~and not undermine the intent of,~~ *further* all of the following  
38 objectives:

39 (1) Increasing the housing supply and the mix of housing types,  
40 tenure, and affordability in all cities and counties within the region



1 in an equitable manner, which shall result in each jurisdiction  
2 receiving an allocation of units for low- and very low income  
3 households.

4 (2) Promoting infill development and socioeconomic equity,  
5 the protection of environmental and agricultural resources, and  
6 the encouragement of efficient development patterns.

7 (3) Promoting an improved intraregional relationship between  
8 jobs and housing, including an improved balance between the  
9 number of low-wage jobs and the number of housing units  
10 affordable to low-wage workers in each jurisdiction.

11 (4) Allocating a lower proportion of housing need to an income  
12 category when a jurisdiction already has a disproportionately high  
13 share of households in that income category, and allocating a higher  
14 proportion of housing need to an income category when a  
15 jurisdiction already has a disproportionately low share of  
16 households in that income category, as compared to the countywide  
17 distribution of households in that category from the most recent  
18 decennial United States census.

19 (5) Increasing access to areas of high opportunity for  
20 lower-income residents, avoiding displacement and affirmatively  
21 furthering fair housing.

22 (e) *For purposes of this section, "areas of high opportunity for*  
23 *lower-income residents" means areas that provide pathways to*  
24 *better lives, including through health, education, and employment.*

25 (e)

26 (f) For purposes of this section, "household income levels" are  
27 as determined by the department as of the most recent decennial  
28 census pursuant to the following code sections:

29 (1) Very low incomes as defined by Section 50105 of the Health  
30 and Safety Code.

31 (2) Lower incomes, as defined by Section 50079.5 of the Health  
32 and Safety Code.

33 (3) Moderate incomes, as defined by Section 50093 of the Health  
34 and Safety Code.

35 (4) Above moderate incomes are those exceeding the  
36 moderate-income level of Section 50093 of the Health and Safety  
37 Code.

38 (f)

39 (g) Notwithstanding any other provision of law, determinations  
40 made by the department, a council of governments, or a city or

1 county pursuant to this section or Section 65584.01, 65584.02,  
2 65584.03, 65584.04, 65584.05, 65584.06, 65584.07, or 65584.08  
3 are exempt from the California Environmental Quality Act  
4 (Division 13 (commencing with Section 21000) of the Public  
5 Resources Code).

6 SEC. 2. Section 65584.04 of the Government Code is amended  
7 to read:

8 65584.04. (a) At least two years prior to a scheduled revision  
9 required by Section 65588, each council of governments, or  
10 delegate subregion as applicable, shall develop a proposed  
11 methodology for distributing the existing and projected regional  
12 housing need to cities, counties, and cities and counties within the  
13 region or within the subregion, where applicable pursuant to this  
14 section. The methodology shall ~~further, and not undermine the~~  
15 ~~intent of, further~~ the objectives listed in subdivision (d) of Section  
16 65584.

17 (b) (1) No more than six months prior to the development of a  
18 proposed methodology for distributing the existing and projected  
19 housing need, each council of governments shall survey each of  
20 its member jurisdictions to request, at a minimum, information  
21 regarding the factors listed in subdivision (d) that will allow the  
22 development of a methodology based upon the factors established  
23 in subdivision (d).

24 (2) The council of governments shall seek to obtain the  
25 information in a manner and format that is comparable throughout  
26 the region and utilize readily available data to the extent possible.

27 (3) The information provided by a local government pursuant  
28 to this section shall be used, to the extent possible, by the council  
29 of governments, or delegate subregion as applicable, as source  
30 information for the methodology developed pursuant to this section.  
31 The survey shall state that none of the information received may  
32 be used as a basis for reducing the total housing need established  
33 for the region pursuant to Section 65584.01.

34 (4) If the council of governments fails to conduct a survey  
35 pursuant to this subdivision, a city, county, or city and county may  
36 submit information related to the items listed in subdivision (d)  
37 prior to the public comment period provided for in subdivision  
38 (c).

39 (c) Public participation and access shall be required in the  
40 development of the methodology and in the process of drafting

1 and adoption of the allocation of the regional housing needs.  
2 Participation by organizations other than local jurisdictions and  
3 councils of governments shall be solicited in a diligent effort to  
4 achieve public participation of all economic segments of the  
5 community. The proposed methodology, along with any relevant  
6 underlying data and assumptions, an explanation of how  
7 information about local government conditions gathered pursuant  
8 to subdivision (b) has been used to develop the proposed  
9 methodology, how each of the factors listed in subdivision (d) is  
10 incorporated into the methodology, and how the proposed  
11 methodology ~~further, and does not undermine, the intent of~~  
12 *further* the objectives listed in subdivision (d) of Section 65584,  
13 shall be distributed to all cities, counties, any subregions, and  
14 members of the public who have made a request for the proposed  
15 methodology. The council of governments, or delegate subregion,  
16 as applicable, shall conduct at least two public hearings to receive  
17 oral and written comments on the proposed methodology.

18 (d) To the extent that sufficient data is available from local  
19 governments pursuant to subdivision (b) or other sources, each  
20 council of governments, or delegate subregion as applicable, shall  
21 include the following factors to develop the methodology that  
22 allocates regional housing needs:

23 (1) Each member jurisdiction's existing and projected jobs and  
24 housing relationship. This shall include data on the number of  
25 low-wage jobs within the jurisdiction and how many housing units  
26 within the jurisdiction are affordable to workers at those wage  
27 levels, as well as how many jobs were added and at what wage  
28 levels compared to how many housing units were added and at  
29 what income levels in the last planning period.

30 (2) The opportunities and constraints to development of  
31 additional housing in each member jurisdiction, including all of  
32 the following:

33 (A) Lack of capacity for sewer or water service due to federal  
34 or state laws, regulations or regulatory actions, or supply and  
35 distribution decisions made by a sewer or water service provider  
36 other than the local jurisdiction that preclude the jurisdiction from  
37 providing necessary infrastructure for additional development  
38 during the planning period.

39 (B) The availability of land suitable for urban development or  
40 for conversion to residential use, the availability of underutilized

1 land, and opportunities for infill development and increased  
2 residential densities. The council of governments may not limit  
3 its consideration of suitable housing sites or land suitable for urban  
4 development to existing zoning ordinances and land use restrictions  
5 of a locality, but shall consider the potential for increased  
6 residential development under alternative zoning ordinances and  
7 land use restrictions. The determination of available land suitable  
8 for urban development may exclude lands where the Federal  
9 Emergency Management Agency (FEMA) or the Department of  
10 Water Resources has determined that the flood management  
11 infrastructure designed to protect that land is not adequate to avoid  
12 the risk of flooding.

13 (C) Lands preserved or protected from urban development under  
14 existing federal or state programs, or both, designed to protect  
15 open space, farmland, environmental habitats, and natural resources  
16 on a long-term basis.

17 (D) County policies to preserve prime agricultural land, as  
18 defined pursuant to Section 56064, within an unincorporated area.

19 (3) The distribution of household growth assumed for purposes  
20 of a comparable period of regional transportation plans and  
21 opportunities to maximize the use of public transportation and  
22 existing transportation infrastructure.

23 (4) The existing and projected demand for housing at each of  
24 the income levels listed in subdivision (e) of Section 65584.

25 (5) Agreements between a county and cities in a county to direct  
26 growth toward incorporated areas of the county.

27 (6) The loss of units contained in assisted housing developments,  
28 as defined in paragraph (9) of subdivision (a) of Section 65583,  
29 that changed to non-low-income use through mortgage prepayment,  
30 subsidy contract expirations, or termination of use restrictions.

31 (7) The percentage of existing households at each of the income  
32 levels listed in subdivision (e) of Section 65584 that are paying  
33 more than ~~30%~~ *30 percent* and more than ~~50%~~ *50 percent* of their  
34 income in rent.

35 (8) The rate of overcrowding.

36 (9) The housing needs of farmworkers.

37 (10) The housing needs generated by the presence of a private  
38 university or a campus of the California State University or the  
39 University of California within any member jurisdiction.

1 (11) Any other factors adopted by the council of governments,  
2 provided that the council of governments specifies which of the  
3 objectives listed in subdivision (d) of Section 65594 that each  
4 additional factor is necessary to further.

5 (e) The council of governments, or delegate subregion, as  
6 applicable, shall explain in writing how each of the factors  
7 described in subdivision (d) was incorporated into the methodology  
8 and how the methodology ~~further, and does not undermine, the~~  
9 ~~intent of furthers the objectives listed in~~ subdivision (d) of Section  
10 65584. The methodology may include numerical weighting.

11 (f) Any ordinance, policy, voter-approved measure, or standard  
12 of a city or county that directly or indirectly limits the number of  
13 residential building permits issued by a city or county shall not be  
14 a justification for a determination or a reduction in the share of a  
15 city or county of the regional housing need.

16 (g) Following the conclusion of the public comment period  
17 described in subdivision (c) on the proposed allocation  
18 methodology, and after making any revisions deemed appropriate  
19 by the council of governments, or delegate subregion, as applicable,  
20 as a result of comments received during the public comment period,  
21 each council of governments, or delegate subregion, as applicable,  
22 shall submit the draft allocation methodology to the department.  
23 Within 60 days, the department shall determine whether or not the  
24 methodology furthers, and does not undermine, the objectives  
25 listed in subdivision (d) of Section 65584.

26 (h) Following the receipt of the department's determination, the  
27 council of governments or delegate subregion, as applicable, shall  
28 make any necessary changes and adopt a final regional, or  
29 subregional, housing need allocation methodology and provide  
30 notice of the adoption of the methodology to the jurisdictions  
31 within the region, or delegate subregion as applicable, and to the  
32 department.

33 (i) (1) It is the intent of the Legislature that housing planning  
34 be coordinated and integrated with the regional transportation plan.  
35 To achieve this goal, the allocation plan shall allocate housing  
36 units within the region consistent with the development pattern  
37 included in the sustainable communities strategy. Nothing in this  
38 consistency requirement shall limit the application of subparagraph  
39 (B) of paragraph (2) of subdivision (d).

1 (2) The final allocation plan shall ensure that the total regional  
2 housing need, by income category, as determined under Section  
3 65584, is maintained, and that each jurisdiction in the region  
4 receive an allocation of units for low- and very low income  
5 households.

6 (3) The resolution approving the final housing need allocation  
7 plan shall demonstrate that the plan is consistent with the  
8 sustainable communities strategy in the regional transportation  
9 plan and ~~further, and does not undermine, the intent of~~ *further*  
10 the objectives listed in subdivision (d) of Section 65584.

11 SEC. 3. Section 65584.05 of the Government Code is amended  
12 to read:

13 65584.05. (a) At least one and one-half years prior to the  
14 scheduled revision required by Section 65588, each council of  
15 governments and delegate subregion, as applicable, shall distribute  
16 a draft allocation of regional housing needs to each local  
17 government in the region or subregion, where applicable, based  
18 on the methodology adopted pursuant to Section 65584.04. The  
19 draft allocation shall include the underlying data and methodology  
20 on which the allocation is based, and a statement as to how it  
21 ~~further, and does not undermine, the intent of~~ *further* the  
22 objectives listed in subdivision (d) of Section 65584. It is the intent  
23 of the Legislature that the draft allocation should be distributed  
24 prior to the completion of the update of the applicable regional  
25 transportation plan. The draft allocation shall distribute to localities  
26 and subregions, if any, within the region the entire regional housing  
27 need determined pursuant to Section 65584.01 or within  
28 subregions, as applicable, the subregion's entire share of the  
29 regional housing need determined pursuant to Section 65584.03.

30 (b) Within 60 days following receipt of the draft allocation, a  
31 local government may request from the council of governments  
32 or the delegate subregion, as applicable, a revision of its share of  
33 the regional housing need. In addition, a housing organization may  
34 request from the council of governments or the delegate subregion,  
35 as applicable, a revision of the share of the regional housing need  
36 allocated to one or more local government. These requests shall  
37 be in accordance with the objectives listed in subdivision (d) of  
38 Section 65584 and with the factors described in paragraphs (1) to  
39 (9), inclusive, of subdivision (d) of Section 65584.04, including  
40 any information submitted by the local government or governments

1 to the council of governments pursuant to subdivision (b) of that  
2 section. The request for a revised share shall be based upon  
3 comparable data available for all affected jurisdictions and accepted  
4 planning methodology, and supported by adequate documentation,  
5 and shall include a statement as to how it furthers, and does not  
6 undermine, the intent of the objectives listed in subdivision (d) of  
7 Section ~~65594~~. 65584. A request for a revised share pursuant to  
8 this subdivision shall be consistent with, and not to the detriment  
9 of, the development pattern in an applicable sustainable  
10 communities strategy developed pursuant to paragraph (2) of  
11 subdivision (b) of Section 65080.

12 (c) Within 60 days after the request submitted pursuant to  
13 subdivision (b), the council of governments or delegate subregion,  
14 as applicable, shall accept the proposed revision, modify its earlier  
15 determination, or indicate, based upon the information and  
16 methodology described in Section 65584.04, why the proposed  
17 revision is inconsistent with the regional housing need and does  
18 not further the objectives listed in subdivision (d) of Section 65584.

19 (d) If the council of governments or delegate subregion, as  
20 applicable, does not accept the proposed revised share or modify  
21 the revised share to the satisfaction of the requesting party, the  
22 local government or the housing organization may appeal the draft  
23 allocation to the department based upon either or both of the  
24 following criteria:

25 (1) The council of governments or delegate subregion, as  
26 applicable, failed to adequately consider the information submitted  
27 pursuant to subdivision (b) of Section 65584.04, or a significant  
28 and unforeseen change in circumstances has occurred in the local  
29 jurisdiction or jurisdictions that merits a revision of the information  
30 submitted pursuant to that subdivision.

31 (2) The council of governments or delegate subregion, as  
32 applicable, failed to determine the share of the regional housing  
33 need in accordance with the information described in, and the  
34 methodology established pursuant to, Section 65584.04, and in a  
35 manner that furthers, and does not undermine, the intent of the  
36 objectives listed in subdivision (d) of Section 65584.

37 (e) The department shall conduct public hearings to hear all  
38 appeals within 60 days after the date established to file appeals.  
39 The local government or housing organization shall be notified  
40 within 10 days by certified mail, return receipt requested, of at

1 least one public hearing on its appeal. The date of the hearing shall  
2 be at least 30 days and not more than 35 days after the date of the  
3 notification. Before taking action on an appeal, the department  
4 shall consider all comments, recommendations, and available data  
5 based on accepted planning methodologies submitted by the  
6 appellant. The final action of the department on an appeal shall be  
7 in writing and shall include written findings, supported by a  
8 preponderance of the evidence on the record, as to how its action  
9 is consistent with this article. The final action on an appeal may  
10 require the council of governments or delegate subregion, as  
11 applicable, to adjust the allocation of one or more local  
12 governments that are not the subject of an appeal.

13 (f) The council of governments or delegate subregion, as  
14 applicable, shall issue a proposed final allocation within 45 days  
15 after the completion of the 60-day period for hearing appeals,  
16 taking into account the department's actions on all appeals. The  
17 proposed final allocation plan shall include responses to all  
18 comments received on the proposed draft allocation and reasons  
19 for any significant revisions included in the final allocation.

20 (g) In the proposed final allocation plan, the council of  
21 governments or delegate subregion, as applicable, shall adjust  
22 allocations to local governments based upon the results of the  
23 revision request process and the appeals process specified in this  
24 section. If the adjustments total 7 percent or less of the regional  
25 housing need determined pursuant to Section 65584.01, or, as  
26 applicable, total 7 percent or less of the subregion's share of the  
27 regional housing need as determined pursuant to Section 65584.03,  
28 then the council of governments or delegate subregion, as  
29 applicable, shall distribute the adjustments proportionally to all  
30 local governments. If the adjustments total more than 7 percent of  
31 the regional housing need, then the council of governments or  
32 delegate subregion, as applicable, shall develop a methodology to  
33 distribute the amount greater than the 7 percent to local  
34 governments. In no event shall the total distribution of housing  
35 need equal less than the regional housing need, as determined  
36 pursuant to Section 65584.01, nor shall the subregional distribution  
37 of housing need equal less than its share of the regional housing  
38 need as determined pursuant to Section 65584.03. Two or more  
39 local governments may agree to an alternate distribution of  
40 appealed housing allocations between the affected local



1 governments. If two or more local governments agree to an  
2 alternative distribution of appealed housing allocations that  
3 maintains the total housing need originally assigned to these  
4 communities, then the council of governments shall include the  
5 alternative distribution in the final allocation plan.

6 (h) Within 45 days after the issuance of the proposed final  
7 allocation plan by the council of governments and each delegate  
8 subregion, as applicable, the council of governments shall hold a  
9 public hearing to adopt a final allocation plan. To the extent that  
10 the final allocation plan fully allocates the regional share of  
11 statewide housing need, as determined pursuant to Section  
12 65584.01 and has taken into account the department's actions on  
13 all appeals, the council of governments shall have final authority  
14 to determine the distribution of the region's existing and projected  
15 housing need as determined pursuant to Section 65584.01. The  
16 council of governments shall submit its final allocation plan to the  
17 department within three days of adoption. Within 60 days after  
18 the department's receipt of the final allocation plan adopted by the  
19 council of governments, the department shall determine whether  
20 or not the final allocation plan is consistent with the existing and  
21 projected housing need for the region, as determined pursuant to  
22 Section 65584.01. The department may revise the determination  
23 of the council of governments if necessary to obtain this  
24 consistency.

25 (i) Any authority of the council of governments to review and  
26 revise the share of a city or county of the regional housing need  
27 under this section shall not constitute authority to revise, approve,  
28 or disapprove the manner in which the share of the city or county  
29 of the regional housing need is implemented through its housing  
30 program:

31 (j) For purposes of this section, "housing organization" means  
32 a ~~nonproject~~ *nonprofit* organization whose *primary* mission  
33 includes providing or advocating for increased access to housing  
34 for low-income households.

35 SEC. 4. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 a local agency or school district has the authority to levy service  
38 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

18 APR 25 PM 3:56

Approved as to Form and Legality

**DRAFT**

City Attorney's Office

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

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**RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1771 (BLOOM) THAT WOULD AMEND THE COUNCIL OF GOVERNMENTS METHODOLOGY FOR DISTRIBUTING REGIONAL HOUSING NEED, INCLUDING REQUIRING FURTHERANCE OF EXISTING STATUTORY GOALS, SUCH AS PROMOTING SOCIOECONOMIC EQUITY AND ADDRESSING JOBS-HOUSING IMBALANCES**

**WHEREAS**, since 1969, California has required that cities and counties adequately plan to meet the housing needs of everyone in the community by adopting housing plans as part of their "general plan," which serves as the local government's "blueprint" for how it will grow and develop and include seven elements: land use, transportation, conservation, noise, open space, safety, and housing. The law mandating that housing be included as an element of each jurisdiction's general plan is known as "housing-element law"; and

**WHEREAS**, California's housing-element law acknowledges that, in order for the private market to adequately address the housing needs and demand of Californians, local governments must adopt plans and regulatory systems that provide opportunities for and do not unduly constrain housing development. As a result, housing policy in California rests largely on the effective implementation of local general plans and, in particular, local housing elements; and

**WHEREAS**, every eight years (or five in some rural areas), the state uses the regional housing needs assessment (RHNA) process to project the number of additional housing units a region needs at all income levels to address both existing shortfalls and anticipated population growth. A council of governments (COG) then takes that regional number and assigns a share to every jurisdiction within the region by income category. The RHNA plays a critical role in setting the stage for housing production. In adopting their housing elements, jurisdictions must be able to show that they have enough sites zoned for housing to accommodate their RHNA share at every income level. To show that they can accommodate their lower-income housing needs, jurisdictions must be able to point to densely zoned sites that allow for the production of multifamily housing; and

**WHEREAS**, while the RHNA distribution process is supposed to be data-driven, it is unfortunately often influenced heavily by regional politics, resulting in low allocations to wealthier and often job-rich jurisdictions that could accommodate far more housing, particularly multifamily housing; and

**WHEREAS**, Assembly Bill (AB) 1771 (Bloom) would revise the RHNA distribution process, including by (1) changing the requirement that RHNA plan “be consistent” with specified objectives to “shall further and not undermine the intent of” the objectives, (2) adding to the list of RHNA statutory objectives, including increasing access to areas of high opportunity for lower-income residents, while avoiding displacement and affirmatively furthering fair housing, (3) adding additional factors to the distribution methodology, (4) restricting a COG’s ability to use other factors beyond the RHNA objectives, (5) requiring the California Department of Housing and Community Development (HCD) to determine whether a COG’s methodology is consistent with law, (6) allowing a non-profit housing organization to appeal a decision by a COG regarding the assigned RHNA share, and (7) requiring HCD rather than a COG to hear appeals; and

**WHEREAS**, AB 1771 is endorsed by Western Center on Law and Poverty, California Bicycle Coalition, Disability Rights California, and other groups; now, therefore be it

**RESOLVED:** That the Oakland City Council hereby endorses AB 1771 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California