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City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT PRO TEM DAN KALB

RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1279 (BLOOM) THAT WOULD REQUIRE DEVELOPMENT SITES IN HIGH RESOURCE AREAS TO ALLOW MORE DENSITY AND HEIGHT AND TO BE SUBJECT TO "USE BY-RIGHT" APPROVAL WITH VARIOUS PROTECTIONS AGAINST DISPLACEMENT

WHEREAS, California's housing crisis is attributed to housing production not meeting demand for decades; and

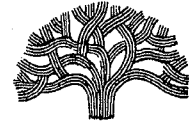
WHEREAS, the housing crisis has been particularly dire in the Bay Area, including Oakland, with housing rental costs amongst the highest in the nation; and

WHEREAS, Assembly Bill (AB) 1279 (Bloom) was introduced to facilitate mixed-income and affordable housing development in high-resource, lower-density communities that lack racial and economic diversity through local zoning overrides and other land use incentives; and

WHEREAS, AB 1279 would require the California Department of Housing and Community Development to designate "high-resource areas," require development sites in high resource areas to allow more density and height and to be subject to "use by-right" approval, and provide various safeguards against displacement; and

WHEREAS, AB 1279 would allow (1) projects of 2-4 units and up to 2 stories for moderate-income households in areas currently limited to single-family development, (2) projects of up to 40 units and 3 stories on lots over ¼ acre on arterial roads and in downtown areas, with required inclusion of affordable units for projects over 10 units, and (3) projects of up to 100 units and 5 stories on lots over ½ acre, including sites zoned for both residential and commercial use, on arterial roads or in downtown areas, if the project is 100% affordable to lower-income households or is mixed-income with a set-aside for very low and extremely low-income households; and

WHEREAS, to incentivize development without displacement, the bill would (1) provide for by-right development for housing projects that meet certain conditions in high-resource areas, (2) allow for waivers of development standards, such as setback and parking requirements, that can make dense projects infeasible, (3) provide for consistency with state Density Bonus Law, (4) require projects under 10 units and market-rate projects to pay an affordable housing fee, (5) protect existing local policies that



Councilmember Dan Kalb

CITY OF OAKLAND

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AGENDA MEMORANDUM

To: Rules & Legislation Committee
From: Council President Pro Tem Dan Kalb
Date: April 18, 2019
Subject: Resolution in Support of AB 1279 (High-Resource Area Housing Production)

Colleagues on the City Council and Members of the Public,

I respectfully urge your support for the attached Resolution, which we have submitted with the attached Fact Sheet, text of the bill, and bill analysis from the Assembly Committee on Housing and Community Development:

RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1279 (BLOOM) THAT WOULD REQUIRE DEVELOPMENT SITES IN HIGH RESOURCE AREAS TO ALLOW MORE DENSITY AND HEIGHT AND TO BE SUBJECT TO "USE BY-RIGHT" APPROVAL WITH VARIOUS PROTECTIONS AGAINST DISPLACEMENT

Respectfully submitted,

Dan Kalb, Council President Pro Tem



**California Rural
Legal Assistance
Foundation**

**PUBLIC
ADVOCATES**
MAKING RIGHTS REAL

**WESTERN
CENTER**
ON LAW & POVERTY

AB 1279

Promoting Housing Production in High-Resource Areas

Summary: This bill would facilitate mixed-income and affordable housing development in high-resource, lower-density communities that lack racial and economic diversity through local zoning overrides and other land use incentives.

Background: Removing land use barriers to equitable and inclusive development in high-resource areas is an essential part of addressing California's housing crisis and increasing choice and opportunity for low-income families. Many of the places with the most existing resources and amenities (e.g., good schools, jobs, parks, etc.) remain inaccessible to low-income people and people of color. The lack of dense multifamily housing is one of many barriers that impede access. High-resource areas may not be near existing high-quality transit, but they can support green infill development, which is crucial to support future transit expansion. If we are serious about addressing the state's housing needs and reducing auto dependence, we need to increase density and expand infill development in more parts of the state.

The Bill: Using data and mapping with input from academic experts, this bill would identify high-resource areas where housing development is predominantly low-density and screen out places that already demonstrate racial and economic diversity and places that are at high risk for gentrification and displacement. The remaining areas—areas where there are strong indicators of exclusionary patterns—would be subject to zoning overrides to encourage the production of both small-scale market-rate housing projects and larger-scale mixed-income and affordable projects. For example, the bill would allow:

- Projects of 2-4 units and up to 2 stories for moderate-income households in areas

currently limited to single-family development.

- Projects of up to 40 units and 3 stories on lots over ¼ acre on arterial roads and in downtown areas, with required inclusion of affordable units for projects over 10 units.
- Projects of up to 100 units and 5 stories on lots over ½ acre, including sites zoned for both residential and commercial use, on arterial roads or in downtown areas, if the project is 100% affordable to lower-income households or is mixed-income with a set-aside for very low and extremely low-income households.

To incentivize development without displacement, the bill would:

- Provide for by-right development for housing projects that meet certain conditions in high-resource areas.
- Allow for waivers of development standards, such as setback and parking requirements, that can make dense projects infeasible.
- Provide for consistency with state Density Bonus Law.
- Require projects under 10 units and market-rate projects to pay an affordable housing fee.
- Protect existing local policies that require greater levels of affordability and/or that have higher labor standards.
- Prohibit the bill's incentives from being used on sites that have been occupied by tenants in the last 10 years.

Support:

- California Rural Legal Assistance Foundation (co-sponsor)
- Public Advocates (co-sponsor)
- Western Center on Law and Poverty (co-sponsor)

ASSEMBLY BILL

No. 1279

Introduced by Assembly Member Bloom

February 21, 2019

An act to add Section 65913.6 to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1279, as introduced, Bloom. Planning and zoning: housing development: high-resource areas.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development, and the development of certain lands outside its boundaries, that includes, among other mandatory elements, a housing element. That law allows a development proponent to submit an application for a development that is subject to a specified streamlined, ministerial approval process not subject to a conditional use permit if the development satisfies certain objective planning standards, including that the development is (1) located in a locality determined by the Department of Housing and Community Development to have not met its share of the regional housing needs for the reporting period, and (2) subject to a requirement mandating a minimum percentage of below-market rate housing, as provided.

This bill would require the department to designate areas in this state as high-resource areas, as provided, by January 1, 2021, and every 5 years thereafter. The bill would authorize a city or county to appeal the designation of an area within its jurisdiction as a high-resource area during that 5-year period. In any area designated as a high-resource area, the bill would require that a housing development project be a use

by right, upon the request of a developer, in any high-resource area designated pursuant to a use by right in certain parts of the high-resource area if those projects meet specified requirements, including specified affordability requirements. For certain development projects where the initial sales price or initial rent exceeds the affordable housing cost or affordable rent to households with incomes equal to or less than 100% of the area median income, the bill would require the applicant agree to pay a fee equal to 10% of the difference between the actual initial sales price or initial rent and the sales price or rent that would be affordable, as provided. The bill would require the city or county to deposit the fee into a separate fund reserved for the construction or preservation of housing with an affordable housing cost or affordable rent to households with a household income less than 50% of the area median income.

This bill would require that the applicant agree to, and the city and county ensure, the continued affordability of units affordable to lower income and very low income households for 45 years, for rented units, or 55 years, for owner-occupied years. The bill would provide that a development housing is ineligible as a use by right under these provisions if it would require the demolition of rental housing that is currently occupied by tenants, or has been occupied by tenants within the past 10 years, or is located in certain areas. The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA does not apply to the ministerial approval of projects.

This bill, by requiring approval of certain development projects as a use by right, would expand the exemption for ministerial approval of projects under CEQA.

By adding to the duties of local planning officials with respect to approving certain development projects, 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 65913.6 is added to the Government
2 Code, to read:
3 65913.6. (a) For purposes of this section:
4 (1) "Department" means the Department of Housing and
5 Community Development.
6 (2) "High-resource area" means an area of high opportunity and
7 low residential density that is not currently experiencing
8 gentrification and displacement, and that is not at a high risk of
9 future gentrification and displacement, designated by the
10 department pursuant to subdivision (b).
11 (3) "Infill site" means a site in which at least 75 percent of the
12 perimeter of the site adjoins parcels that are developed with urban
13 uses. For the purposes of this section, parcels that are only
14 separated by a street or highway shall be considered to be adjoined.
15 (4) (A) "Use by right" means that the local government's review
16 of the development project under this section may not require a
17 conditional use permit, planned unit development permit, or other
18 discretionary local government review or approval that would
19 constitute a "project" for purposes of Division 13 (commencing
20 with Section 21000) of the Public Resources Code. Any subdivision
21 of the sites shall be subject to all laws, including, but not limited
22 to, the local government ordinance implementing the Subdivision
23 Map Act (Division 2 (commencing with Section 66410)).
24 (B) A local ordinance may provide that "use by right" does not
25 exempt the development project from design review. However,
26 that design review shall not constitute a "project" for purposes of
27 Division 13 (commencing with Section 21000) of the Public
28 Resources Code.
29 (b) (1) No later than January 1, 2021, and every five years
30 thereafter, the department shall designate areas in this state as

1 high-resource areas in accordance with this section. In designating
2 areas of the state as high-resource areas, the department shall
3 collaborate with the California Fair Housing Task Force, convened
4 by the department and the California Tax Credit Allocation
5 Committee, and shall solicit input from members of the public and
6 ensure participation from all economic segments of the community
7 as well as members of those classes protected pursuant to Section
8 12955. Except as provided in paragraph (2), the designation of an
9 area as a high-resource area shall remain valid for five years.

10 (2) (A) A city or county that includes within its jurisdictional
11 boundaries an area designated as a high-resource area pursuant to
12 this section may appeal to the department to remove that
13 designation at any point during the five-year period specified in
14 paragraph (1) by submitting an appeal in a form and manner
15 prescribed by the department.

16 (B) The department may remove the designation of a city or
17 county that submits an appeal pursuant to subparagraph (A) if it
18 finds, based on substantial evidence, that the city or county has
19 adopted policies after the area was designated as a high-resource
20 area that meet the following requirements:

21 (i) The policies permit development of higher density housing
22 in the high-resource area, in a manner substantially similar to
23 subdivision (c), than were allowed under the city's or county's
24 policies in effect at the time the area was designated as a
25 high-resource area.

26 (ii) The policies are sufficient to accommodate a similar number
27 of housing units within the area and at similar levels of affordability
28 as would be allowed under subdivision (c).

29 (iii) The policies are consistent with the city's or county's
30 obligation to affirmatively further fair housing pursuant to Section
31 8899.50.

32 (C) In considering an appeal of a city or county submitted
33 pursuant to this subparagraph (A), the department shall consult
34 with the California Fair Housing Task Force and shall issue a
35 decision within 90 days of receiving the appeal.

36 (D) The decision of the department regarding an appeal pursuant
37 to this paragraph shall be final.

38 (c) Notwithstanding any inconsistent provision of a city's or
39 county's general plan, specific plan, zoning ordinance, or
40 regulation, upon the request of a developer a housing development

1 project shall be a use by right in any high-resource area designated
2 pursuant to this section if the development satisfies the following
3 criteria:

4 (1) If the development project is located in any portion of the
5 high-resource area where allowable uses are limited to
6 single-family residential development:

7 (A) The development project consists of no more than four
8 residential units and has a height of no more than 20 feet.

9 (B) Either of the following apply:

10 (i) The initial sales price or initial rent for units in the
11 development project does not exceed the amount of affordable
12 housing cost or affordable rent, as specified in Sections 50052.5
13 and 50053, respectively, of the Health and Safety Code, to
14 households with a household income equal to or less than 100
15 percent of the area median income, as determined by the
16 department pursuant to Section 50093 of the Health and Safety
17 Code.

18 (ii) If the initial sales price or initial rent exceeds the limit
19 specified in clause (i), the developer agrees to pay a fee to the
20 county or city equal to 10 percent of the difference between the
21 actual initial sales price or initial rent and the sales price or rent
22 that would be affordable to households making up to 100 percent
23 of the area median income, as provided in this subparagraph. The
24 city or county shall deposit any fee received pursuant to this clause
25 into a separate fund reserved for the construction or preservation
26 of housing with an affordable housing cost or affordable rent, as
27 specified in Sections 50052.5 and 50053, respectively, of the Health
28 and Safety Code, to households with a household income less than
29 50 percent of the area median income, as determined by the
30 department pursuant to Section 50093 of the Health and Safety
31 Code.

32 (C) The development project complies with all objective design
33 standard of the city or county. However, the city or county shall
34 not require the development project to comply with an objective
35 design standard that would preclude the development from
36 including up to four units or impose a maximum height limitation
37 of less than 20 feet.

38 (2) If the development project is located in any portion of the
39 high-resource area where residential use is an allowable use:

1 (A) The development project consists of no more than 40
2 residential units and has a height of no more than 30 feet.

3 (B) The development project is located on a site that is
4 one-quarter acre in size or greater and is either adjacent to an
5 arterial road or located within a central business district.

6 (C) (i) For development projects consisting of 10 or fewer units,
7 either of the following apply:

8 (I) The initial sales price or initial rent for units in the
9 development project does not exceed the amount of affordable
10 housing cost or affordable rent, as specified in Sections 50052.5
11 and 50053, respectively, of the Health and Safety Code, to
12 households with a household income equal to or less than 100
13 percent of the area median income, as determined by the
14 department pursuant to Section 50093 of the Health and Safety
15 Code.

16 (II) If the initial sales price or initial rent exceeds the limit
17 specified in subclause (I), the developer agrees to pay a fee to the
18 county or city equal to 10 percent of the difference between the
19 actual initial sales price or initial rent and the sales price or rent
20 that would be affordable to households making up to 100 percent
21 of the area median income, as provided in this subparagraph. The
22 city or county shall deposit any fee received pursuant to this
23 subparagraph into a separate fund reserved for the construction or
24 preservation of housing with an affordable housing cost or
25 affordable rent, as specified in Sections 50052.5 and 50053,
26 respectively, of the Health and Safety Code, to households with a
27 household income less than 50 percent of the area median income,
28 as determined by the department pursuant to Section 50093 of the
29 Health and Safety Code.

30 (ii) For development projects consisting of more than 10 units,
31 at least 10 percent of the units in the development project have an
32 affordable housing cost or affordable rent, as specified in Sections
33 50052.5 and 50053, respectively, of the Health and Safety Code,
34 to lower income households and at least 5 percent have an
35 affordable housing cost or affordable rent to very low income
36 households. However, if the city or county requires that the
37 development project include a greater percentage of units that are
38 affordable to lower income and very low income households, the
39 development project shall comply with that greater requirement.

1 (D) The development project complies with all objective design
2 standards of the city or county. However, the city or county shall
3 not require the development project to comply with an objective
4 design standard that would preclude the development from
5 including up to 40 units or impose a maximum height limitation
6 of less than 30 feet.

7 (3) (A) If the development project is located in any portion of
8 the high-resource area where residential or commercial uses are
9 an allowable use:

10 (i) The development project consists of no more than 100
11 residential units and has a height of no more than 55 feet.

12 (ii) The development project is located on a site that is one-half
13 acre in size or greater and is either adjacent to an arterial road or
14 located within a central business district.

15 (iii) At least 25 percent of the units in the development project
16 have an affordable housing cost or affordable rent, as specified in
17 Sections 50052.5 and 50053, respectively, of the Health and Safety
18 Code, to lower income households and at least 25 percent have an
19 affordable housing cost or affordable rent to very low income
20 households.

21 (iv) The development project complies with all objective design
22 standards of the city or county. However, the city or county shall
23 not require the development project to comply with an objective
24 design standard that would preclude the development from
25 including up to 100 units or impose a maximum height limitation
26 of less than 55 feet.

27 (B) A development project that is a use by right pursuant to this
28 paragraph shall be eligible for a density bonus or other incentives
29 or concessions if it includes units within an affordable housing
30 cost or affordable rent, as specified in Sections 50052.5 and 50053,
31 respectively, of the Health and Safety Code, to lower income and
32 very low income households in excess of the minimum amount
33 required by clause (ii) of subparagraph (A).

34 (4) An applicant for a development project that is a use by right
35 pursuant to paragraph (1), (2), or (3) shall agree to, and the city or
36 county shall ensure, the continued affordability of units included
37 in the development project that are affordable to lower income and
38 very low income households in accordance with the applicable
39 affordability requirement under this subdivision for at least the
40 following periods of time:

- 1 (A) Fifty-five years for units that are rented.
2 (B) Forty-five years for units that are owner occupied.
3 (d) A development project shall not be eligible for approval as
4 a use by right pursuant to subdivision (c) if any of the following
5 apply:
6 (1) The development project would require the demolition of
7 rental housing that is currently occupied by tenants or has been
8 occupied by tenants within the past 10 years.
9 (2) The development project is proposed to be located on a site
10 that is any of the following:
11 (A) A coastal zone, as defined in Division 20 (commencing
12 with Section 30000) of the Public Resources Code.
13 (B) Either prime farmland or farmland of statewide importance,
14 as defined pursuant to United States Department of Agriculture
15 land inventory and monitoring criteria, as modified for California,
16 and designated on the maps prepared by the Farmland Mapping
17 and Monitoring Program of the Department of Conservation, or
18 land zoned or designated for agricultural protection or preservation
19 by a local ballot measure that was approved by the voters of that
20 jurisdiction.
21 (C) Wetlands, as defined in the United States Fish and Wildlife
22 Service Manual, Part 660 FW 2 (June 21, 1993).
23 (D) Within a very high fire hazard severity zone, as determined
24 by the Department of Forestry and Fire Protection pursuant to
25 Section 51178, or within a high- or very high fire hazard severity
26 zone as indicated on maps adopted by the Department of Forestry
27 and Fire Protection pursuant to Section 4202 of the Public
28 Resources Code. This subparagraph does not apply to sites
29 excluded from the specified hazard zones by a local agency,
30 pursuant to subdivision (b) of Section 51179, or sites that have
31 adopted fire hazard mitigation measures pursuant to existing
32 building standards or state fire mitigation measures applicable to
33 the development.
34 (E) A hazardous waste site that is listed pursuant to Section
35 65962.5 or a hazardous waste site designated by the Department
36 of Toxic Substances Control pursuant to Section 25356 of the
37 Health and Safety Code, unless the Department of Toxic
38 Substances Control has cleared the site for residential use or
39 residential mixed uses.

1 (F) Within a delineated earthquake fault zone as determined by
2 the State Geologist in any official maps published by the State
3 Geologist, unless the development complies with applicable seismic
4 protection building code standards adopted by the California
5 Building Standards Commission under the California Building
6 Standards Law (Part 2.5 (commencing with Section 18901) of
7 Division 13 of the Health and Safety Code), and by any local
8 building department under Chapter 12.2 (commencing with Section
9 8875) of Division 1 of Title 2.

10 (G) Within a special flood hazard area subject to inundation by
11 the 1 percent annual chance flood (100-year flood) as determined
12 by the Federal Emergency Management Agency in any official
13 maps published by the Federal Emergency Management Agency.
14 If a development proponent is able to satisfy all applicable federal
15 qualifying criteria in order to provide that the site satisfies this
16 subparagraph and is otherwise eligible for streamlined approval
17 under this section, a local government shall not deny the application
18 on the basis that the development proponent did not comply with
19 any additional permit requirement, standard, or action adopted by
20 that local government that is applicable to that site. A development
21 may be located on a site described in this subparagraph if either
22 of the following are met:

23 (i) The site has been subject to a Letter of Map Revision
24 prepared by the Federal Emergency Management Agency and
25 issued to the local jurisdiction.

26 (ii) The site meets Federal Emergency Management Agency
27 requirements necessary to meet minimum flood plain management
28 criteria of the National Flood Insurance Program pursuant to Part
29 59 (commencing with Section 59.1) and Part 60 (commencing
30 with Section 60.1) of Subchapter B of Chapter I of Title 44 of the
31 Code of Federal Regulations.

32 (H) Within a regulatory floodway as determined by the Federal
33 Emergency Management Agency in any official maps published
34 by the Federal Emergency Management Agency, unless the
35 development has received a no-rise certification in accordance
36 with Section 60.3(d)(3) of Title 44 of the Code of Federal
37 Regulations. If a development proponent is able to satisfy all
38 applicable federal qualifying criteria in order to provide that the
39 site satisfies this subparagraph and is otherwise eligible for
40 streamlined approval under this section, a local government shall

1 not deny the application on the basis that the development
2 proponent did not comply with any additional permit requirement,
3 standard, or action adopted by that local government that is
4 applicable to that site.

5 (I) Lands identified for conservation in an adopted natural
6 community conservation plan pursuant to the Natural Community
7 Conservation Planning Act (Chapter 10 (commencing with Section
8 2800) of Division 3 of the Fish and Game Code), habitat
9 conservation plan pursuant to the federal Endangered Species Act
10 of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural
11 resource protection plan.

12 (J) Habitat for protected species identified as candidate,
13 sensitive, or species of special status by state or federal agencies,
14 fully protected species, or species protected by the federal
15 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.),
16 the California Endangered Species Act (Chapter 1.5 (commencing
17 with Section 2050) of Division 3 of the Fish and Game Code), or
18 the Native Plant Protection Act (Chapter 10 (commencing with
19 Section 1900) of Division 2 of the Fish and Game Code).

20 (K) Lands under conservation easement.

21 (3) The development project is proposed to be located on a site
22 that is not an infill site.

23 (e) This section shall not be construed to prevent a developer
24 from submitting an application for a development permit in a
25 high-resource area under the county's or city's general plan,
26 specific plan, zoning ordinance, or regulation for a project that
27 does not meet the criteria specified in subdivisions (c) and (d).

28 (f) The Legislature finds and declares that ensuring residential
29 development at greater density in high-resource areas of this state
30 is a matter of statewide concern and is not a municipal affair as
31 that term is used in Section 5 of Article XI of the California
32 Constitution. Therefore, this section applies to all cities, including
33 charter cities.

34 SEC. 2. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 a local agency or school district has the authority to levy service
37 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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Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1279 (Bloom) – As Introduced February 21, 2019

SUBJECT: Planning and zoning: housing development: high-resource areas

SUMMARY: Requires certain development sites in high resource areas to allow for more density and height and makes these sites subject to “use by-right” approval. Specifically, **this bill:**

- 1) Requires the Department of Housing and Community Development (HCD) to designate areas in this state as “high-resource areas,” as follows:
 - a) Specifies the definition of a “high-resource area” to mean an area of high opportunity and low residential density that is not currently experiencing gentrification and displacement, and that is not at a high risk of future gentrification and displacement;
 - b) Requires HCD, in creating these designations, to collaborate with the California Fair Housing Task Force, convened by the department and the California Tax Credit Allocation Committee, and shall solicit input from members of the public and ensure participation from all economic segments of the community as well as members of protected classes;
 - c) Requires that this designation must occur no later than January 1, 2021, and every five years thereafter;
 - d) Requires the designation of an area as a high-resource area remains valid for five years, unless successfully appealed by a city or county. Specifies the appeal process as follows:
 - i. A city or county that includes within its jurisdictional boundaries an area designated as a high-resource area may appeal to HCD to remove that designation at any point during the five-year period by submitting an appeal in a form and manner prescribed HCD.
 - ii. HCD may remove the designation of a city or county that submits an appeal if HCD finds, based on substantial evidence, that the city or county has adopted policies after the area was designated as a high-resource area that meet the following requirements:
 - a. The policies permit development of higher density housing in the high-resource area than were allowed under the city’s or county’s policies in effect at the time the area was designated as a high-resource area;
 - b. The policies are sufficient to accommodate a similar number of housing units within the area and at similar levels of affordability as would be required by being in a high-resource area; and,

- c. The policies are consistent with the city's or county's obligation to affirmatively further fair housing pursuant.
 - iii. In considering an appeal of a city or county submitted, HCD shall consult with the California Fair Housing Task Force and shall issue a decision within 90 days of receiving the appeal; and,
 - iv. The decision of the HCD regarding an appeal pursuant to this paragraph shall be final.
- 2) Defines "Use by right" to mean that the local government's review of the development project under this section may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" under the California Environmental Quality Act (CEQA), and that any required design review may not trigger review under CEQA.
 - 3) Requires that a housing development project must be a use by right in any high-resource area if the development satisfies the following criteria:
 - a) If the development project is located in any portion of the high-resource area where allowable uses are limited to single-family residential development:
 - i. The development project may consist of no more than four residential units and have a height of no more than 20 feet.
 - ii. Either of the following must apply:
 - a. The initial sales price or initial rent for units in the development project does not exceed the amount of affordable housing cost or affordable rent to households with a household income equal to or less than 100 percent of the area median income; or
 - b. The initial sales price or initial rent exceeds these limits, and the developer agrees to pay a fee to the county or city equal to 10 percent of the difference between the actual initial sales price or initial rent and the sales price or rent that would be affordable to households making up to 100 percent of the area median income. In such an instance, the city or county must deposit this fee into a separate fund reserved for the construction or preservation of housing with an affordable housing cost or affordable rent to households with a household income less than 50 percent of the area median income, with a term of affordability of at least 55 years for units that are rented and 45 years for units that are for sale.
 - iii. The development project must comply with all objective design standards of the city or county. However, the city or county may not require the development project to comply with an objective design standard that would preclude the development from including up to four units or impose a maximum height limitation of less than 20 feet.

- b) If the development project is located in any portion of the high-resource area where residential use is an allowable use, is located on a site that is at least one-quarter acre in size, and is either adjacent to an arterial road or located within a central business district:
- i. The development project may consist of no more than 40 residential units and has a height of no more than 30 feet;
 - ii. For development projects consisting of 10 or fewer units, either of the following must apply:
 - a. The initial sales price or initial rent for units in the development project does not exceed the amount of affordable housing cost or affordable rent to households with a household income equal to or less than 100 percent of the area median income; or
 - b. The initial sales price or initial rent exceeds these limits, and the developer agrees to pay a fee to the county or city equal to 10 percent of the difference between the actual initial sales price or initial rent and the sales price or rent that would be affordable to households making up to 100 percent of the area median income, as provided in this subparagraph. The city or county shall deposit any fee received pursuant to this subparagraph into a separate fund reserved for the construction or preservation of housing with an affordable housing cost or affordable rent to households with a household income less than 50 percent of the area median income, with a term of affordability of at least 55 years for units that are rented and 45 years for units that are for sale.
 - iii. For development projects consisting of more than 10 units, at least 10 percent of the units in the development project must have an affordable housing cost or affordable rent to lower income households and at least five percent must have an affordable housing cost or affordable rent to very low income households, with a term of affordability of at least 55 years for units that are rented and 45 years for units that are for sale. However, if the city or county requires that the development project include a greater percentage of units that are affordable to lower income and very low income households, the development project shall comply with that greater requirement; and
 - iv. The development project must comply with all objective design standards of the city or county. However, the city or county may not require the development project to comply with an objective design standard that would preclude the development from including up to 40 units or impose a maximum height limitation of less than 30 feet.
- c) If the development project is located in any portion of the high-resource area where residential or commercial uses are allowed use, is located on a site that is one-half acre in size or greater, and is either adjacent to an arterial road or located within a central business district:

- i. The development project may consist of no more than 100 residential units and has a height of no more than 55 feet, and would be eligible for a density bonus or other incentives or concessions if it includes more affordable units than described below;
 - ii. At least 25 percent of the units in the development project must have an affordable housing cost or affordable rent to lower income households and at least 25 percent have an affordable housing cost or affordable rent to very low income households, with a term of affordability of at least 55 years for units that are rented and 45 years for units that are for sale;
 - iii. The development project must comply with all objective design standards of the city or county. However, the city or county may not require the development project to comply with an objective design standard that would preclude the development from including up to 100 units or impose a maximum height limitation of less than 55 feet.
- d) None of the following circumstances apply:
- i. The development project would require the demolition of rental housing that is currently occupied by tenants or has been occupied by tenants within the past 10 years.
 - ii. The development project is proposed to be located on a site that is any of the following:
 - a. A coastal zone;
 - b. Either prime farmland, farmland of statewide importance, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction;
 - c. Wetlands;
 - d. Within a high- or very high-fire hazard severity zone, unless the site has an adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development;
 - e. A hazardous waste site, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses;
 - f. Within a delineated earthquake fault zone, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission and by any local building department;
 - g. Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood), unless the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management

Agency and issued to the local jurisdiction or the site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program;

- h. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification;
 - i. Lands identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan;
 - j. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act; or
 - k. Lands under conservation easement.
- iii. The development project is proposed to be located on a site that is not an infill site, defined to mean a site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.
- 4) Specifies that this law shall not be construed to prevent a developer from submitting an application for a development permit in a high-resource area under the county's or city's general plan, specific plan, zoning ordinance, or regulation for a project that does not meet the criteria specified herein;

EXISTING LAW:

- 1) Provides for owner-occupied housing "affordable housing cost" may not exceed the following:
- a) For extremely low income households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit;
 - b) For very low income households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit;
 - c) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit; and

- d) For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.
- 2) Defines "affirmatively furthering fair housing" as taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, AFFH means taking meaningful actions that together address segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to AFFH extends to all of a public agency's activities and programs relating to housing and community development.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the Bill: According to the author, "This bill would facilitate mixed-income and affordable housing development in high-resource, lower-density communities through local zoning overrides and other land use incentives. The bill is aimed at addressing the housing shortage in a way that also addresses exclusionary zoning practices that exacerbate racial and economic segregation and that provide few opportunities for lower-wage workers to live close to where they work in many areas of the state."

Background: The cost of housing in California is the highest of any state in the nation. Additionally, the pace of change has far outstripped that in other parts of the county. Whereas in 1970 housing in California was 30% more expensive than the U.S. average, now it is 250% more expensive. While incomes have increased over that period, they have done so at a much slower pace. The result is that housing has become much more expensive. Only 28% of households can buy the median priced home. Over half of renters and 80% of low-income renters are rent-burdened, meaning they pay over 30% of their income towards rent. According to a 2016 McKinsey Global Institute, every year Californians pay \$50 billion more for housing than they are able to afford.

Building Additional Housing: According to the Legislative Analyst's Office, "a collection of factors drive California's high cost of housing. First and foremost, far less housing has been built in California's coastal areas than people demand. As a result, households bid up the cost of housing in coastal regions. In addition, some of the unmet demand to live in coastal areas spills over into inland California, driving up prices there too. Second, land in California's coastal areas is expensive. Homebuilders typically respond to high land costs by building more housing units on each plot of land they develop, effectively spreading the high land costs among more units. In California's coastal metros, however, this response has been limited, meaning higher land costs have translated more directly into higher housing costs. Finally, builders' costs—for labor, required building materials, and government fees—are higher in California than in other states. While these higher building costs contribute to higher prices throughout the state, building costs appear to play a smaller role in explaining high housing costs in coastal areas."

According to Up for Growth's 2018 analysis, housing underproduction is rampant throughout the United States, but California's underproduction is greater than the other 49 states combined.

According to the 2016 McKinsey study, California's housing deficit is over 2 million units, and that it would require production of 500,000 units a year (3.5 million units total) over a seven year period to normalize the state's housing prices. According to HCD, there needs to be 180,000 units built per year to maintain housing costs. By contrast, housing production averaged less than 80,000 new homes annually over the last 10 years.

Facilitating the necessary growth will require building at higher densities than are currently allowed in much of the state. The UC Berkeley Turner Center conducted a residential land use survey in California from August 2017 to October 2018. The survey found that most jurisdictions devote the majority of their land to single family zoning and in two-thirds of jurisdictions, multifamily housing is allowed on less than 25% of land. The LAO's 2016 analysis found that the housing density of a typical neighborhood in California's coastal metropolitan areas increased only by four percent during the 2000s. The prevailing development pattern continues to be single-family sprawl, with increasing pockets of high density housing in or near the downtown of large cities.

Increasing housing density has the risk of demonstrably changing the character of a neighborhood, potentially for the worse. A strategy for building more densely in a way that can be more in character is through "missing middle" construction types. This includes duplexes, triplexes, fourplexes, townhomes, courtyard apartments, and bungalow courts. According to SACOG's 2018 Housing Toolkit, this type of housing is cheaper to produce than larger apartment buildings, tends to become naturally affordable rental housing as it ages, provides sufficient density to support the shops, restaurants, and transit that are associated with walkable neighborhoods, and usually fits in with the look and feel of a single-family neighborhood.

Facilitating Access to Housing in High-Resource Areas: Multiple studies have shown that life outcomes improve for those living in "high-resource 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, historically low-income people have been excluded from high-resource areas through a number of means. According to a 2018 paper by Nancy Walsh, JD, "racially restrictive covenants were widespread tools of discrimination during the first half of the 20th century. By the time the Supreme Court ruled them to be unenforceable in 1948, it is estimated that more than half of all residential properties built in the intervening decades were constrained by racially restrictive covenants. This also includes the "redlining" practices that came into place after the adoption of the federal National Housing Act of 1934. This act made mortgages more affordable and stopped bank foreclosures during the Great Depression. However, these loans were distributed in a manner to purposefully exclude "high risk" neighborhoods composed of minority groups, and to limited access to these loans by minority groups. This practice led to underdevelopment and lack of progress in these segregated communities while neighborhoods surrounding them flourished due to increased development and investment.

The rapidly rising cost of housing in California has only exacerbated these historic trends. A 2019 study by UC Berkeley's Urban Displacement Project showed that rising housing prices in the Bay Area has led to "new concentrations of poverty and racial segregation in the region and the perpetuation of racial disparities in access to high-resource neighborhoods."

To address these historic disparities, the state has prioritizing allocation of its tax credits into “high opportunity areas.” The defining and mapping of these areas has been undertaken by the California Tax Credit Allocation Committee (TCAC) in the State Treasurer’s Office and HCD. TCAC and HCD convened a group of independent organizations and researchers called the California Fair Housing Taskforce (Taskforce). The Taskforce released a detailed opportunity mapping methodology document that identifies specific policy goals and purposes, as well as detailed indicators to identify areas that further the policy goals and purposes.

Increasing Development in High Resource Areas: As stated by the author, the bill would facilitate mixed-income and affordable housing in high-resource areas that are not experiencing nor at risk of gentrification and displacement. The bill would make certain kinds of housing development a use by-right in these areas, as follows:

- In areas zoned only for single-family residential development, the development project could consist of up to four residential units with a height of up to 20 feet. The units would have to be either affordable to households making 100% of the area median income (AMI), or sold or rented at a higher AMI if the developer pays 10% of the difference to the local jurisdiction, who would be required to use it to build deed-restricted units for households at 50% AMI or less;
- In areas zoned for residential use that are in more prime development locations (i.e., at least one-quarter acre in size and located on a major street and/or the central business district), the development project could consist of up to 40 residential units with a height of up to 30 feet. Projects with 10 or fewer units would need to meet the same affordability parameters as the projects in single-family zones discussed above. Projects of more than 10 units would need to dedicate at least 10% of the units to households with low incomes (typically 50%-80% AMI) and 5% to very low incomes (typically under 50% AMI);
- If the parcel exceeded one-half acre in these prime locations, the development would have an extra incentive to have higher affordability requirements. A project that had at least 25% of its units dedicated to low-income households and 25% to very-low income households would be allowed to have up to 100 residential units with a height of up to 55 feet. Such a project could receive a density bonus if it were to include additional affordable units; and,
- No qualifying project must require the demolition of housing that is currently for rent or has been in the past ten years, or be located in an environmentally unsafe or sensitive area.

To facilitate the implementation of these requirements, the bill requires HCD to undergo a process to define “high-resource areas,” based on consultation with a diversity of stakeholders, and with an appeal process for jurisdictions that disagree with designations within their borders.

Staff Comments: Were this bill to pass out of the committee, the author should consider several refinements to further clarify and fulfill the intent of the bill. Potential refinements include:

- For qualifying projects not limited to single-family zoning, the proposed unit cap does not account for the variations in parcel size and allowed height. As such, projects might under-develop relative to preferable densities in order to utilize the bill’s by-right approval process. Instead, the author may consider applying a density-based unit cap that is responsive to the parcel size and allowed height.

- For qualifying projects to be allowed up to 55 feet they must meet a 50% affordability target. Such a target requires that the project receive public funding and/or be subsidized by a large commercial development on the same site. This enticement of large commercial developments may be counterproductive to reducing the jobs/housing mismatch that has exacerbated our current housing crisis. To better meet the intent of increased affordable development and decreased upward pressure on rents, the author may consider increasing the affordability requirement for qualifying projects to 100%. By contrast, if the author would like to see more market rate development in these communities, and commensurately more affordable housing that could come from a market-based solution, the author may consider reducing the affordable housing requirement to the maximum amount that would still facilitate housing development that would not require subsidization.
- This bill makes a development eligible for a density bonus or other incentives or concessions if it includes affordable units “in excess” than otherwise required to be a qualified project. This would allow projects providing one additional unit of affordable housing to get the density bonus. If that is not the intent, the author might consider specifically defining how much “in excess” a project should be to qualify.
- The bill relies on the terms “arterial road” and “central business district.” The author should consider defining these terms to ensure clarity of application.

Related Legislation:

- SB 50 (Wiener) (2019): Would requires a local government to grant increased development capacity in transit-rich and high-resource areas when a development proponent meets specified requirements. This bill is pending hearing in Senate Governance and Finance Committee.
- AB 686 (Santiago, Chapter 958, Statutes of 2018): Requires a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Status: Chapter 958, Statutes of 2018

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation (co-sponsor)

Public Advocates (co-sponsor)

Western Center on Law and Poverty (co-sponsor)

Opposition

None on file.

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