

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

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

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

**SUMMARY:** Requires by right approval of certain housing development projects in high-resource areas. Specifically, **this bill:**

- 1) Defines the following terms:
  - a) “Department” to mean the Department of Housing and Community Development (HCD);
  - b) “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 for future gentrification and displacement, designated by HCD;
  - c) “Infill site” to mean a site in which at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses, including parcels that are only separated by a street or highway; and,
  - d) “Use by right” to mean that the local government’s review of the development project may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of the California Environmental Quality Act (CEQA). Provides that any subdivision of sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. Declares that design review shall not constitute a “project” for purposes of CEQA.
- 2) Requires, no later than January 1, 2021, and every five years thereafter, HCD to designate areas as high-resource areas, in collaboration with the California Fair Housing Task Force (Task Force), convened by HCD, and the California Tax Credit Allocation Committee. Requires HCD to solicit input from members of the public and ensure participation from all economic segments of the community as well as members of protected classes, as specified.
- 3) Provides that the designation of an area as a high-resource area shall remain valid for five years. Allows a city or county with an area designated as a high-resource area to 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 by HCD.
- 4) Allows HCD to remove the designation of a city or county, if it 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 specified requirements. Requires HCD to consult with the Task Force and issue a decision within 90 days.
- 5) Provides that, upon the request of a developer, a housing development project shall be a use by right in any high-resource area, in spite of any inconsistent provision of a city or county’s

general plan, specific plan, zoning ordinance, or regulation, 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 consists of no more than four residential units and has a height of no more than 20 feet;
  - ii) Either of the following apply:
    - (1) 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, as specified, to households with a household income equal to or less than 100% of the area median income (AMI); or,
    - (2) If the initial sales price or initial rent exceeds the limit in (1), above, the developer agrees to pay a fee to the county or city 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 to households making up to 100% of the AMI. Requires 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, as specified, to households with a household income less than 50% of the AMI;
  - iii) The development project complies with all objective design standards of the city or county. Prohibits the city or county from requiring 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:
  - i) The development project consists of no more than 40 residential units and has a height of no more than 30 feet;
  - ii) The development project is located on a site that is one-quarter acre in size or greater and is either adjacent to an arterial road or located within a central business district;
  - iii) For development projects consisting of 10 or fewer units, see 5)a)ii);
  - iv) For development projects consisting of more than 10 units, at least 10% of the units in the development project have an affordable housing cost or affordable rent, as specified, to lower income households and at least 5% have an affordable housing cost or affordable rent to very low income households. Provides that if the city or county requires that the 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;
  - v) The development project complies with all objective design standards of the city or county. Prohibits the city or county from requiring the project to comply with a

standard that would preclude 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 an allowable use:
  - i) The development project consists of no more than 100 residential units and has a height of no more than 55 feet;
  - ii) The development project is located on a site that in one-half acre is size or greater and is either adjacent to an arterial road or located within a central business district;
  - iii) At least 25% of the units in the development project have an affordable housing cost or affordable rent, as specified, to lower income households and at least 25% have an affordable housing cost or affordable rent to very low income households; and,
  - iv) The development project complies with all objective design standards of the city or county. Prohibits a city or county from requiring the development project to comply with a standard that would preclude the development from including up to 100 units or impose a maximum height limitation of less than 55 feet.
- 6) Allows a development project that is a use by right pursuant to 5c), above, to be eligible for a density bonus or other incentives or concessions if it includes units with an affordable housing cost, or affordable rent, as specified to lower income and very low income households in excess of the minimum amount.
- 7) Requires an applicant for a development project that is a use by right, pursuant to the bill's provisions to agree to, and the city or county to ensure that the continued affordability of units is included in the project for at least 55 units for units that are rented, and 45 years for units that are owner-occupied.
- 8) Prohibits a development project from being eligible as a use by right if any of the following apply:
  - a) The development project would require the demolition of rental housing, as specified;
  - b) The development project is proposed to be located on a site that is any of the following: a coastal zone; prime farmland or farmland of statewide importance; wetlands; within a very high or high fire hazard severity zone; a hazardous waste site; within a delineated earthquake fault zone; within a special flood hazard area, as specified; within a regulatory floodway; lands identified for conservation in an adopted natural community conservation plan; habitat for protected species, as specified; or lands under conservation easement; or,
  - c) The development project is proposed to be located on a site that is not an infill site.
- 9) Applies the bill's provisions to all cities, including charter cities.
- 10) States that no reimbursement is necessary because a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **Bill Summary.** This bill would streamline 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:
  - a) 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;
  - b) 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); and,
  - c) 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.

The bill specifies that a qualifying project cannot 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 stakeholders, and with an appeal process for jurisdictions that disagree with designations within their borders. This bill is sponsored by the California Rural Legal Assistance Foundation, Public Advocates, and Western Center on Law & Poverty.

- 2) **Author's Statement.** According to the author, "California's housing shortage is well-documented, and it is primarily a shortage of units affordable to households at the lower end of the income spectrum. Facilitating the production of affordable housing units requires increasing allowable residential densities in many communities and creating more opportunities for multifamily development. Allowing these types of projects to be developed by right in the most exclusionary places is crucial to ensuring that they are able to proceed.

“In addition to an overall shortage of housing, California remains highly segregated in many areas of the state, and low-income people and people of color continue to lack access to many high resource areas. It is particularly important for the state to encourage multifamily affordable development in these areas to address the historic and present barriers to entry and to allow more people to enjoy the resources that these communities offer.”

- 3) **Policy Considerations.** The California State Association of Counties and Urban Counties of California have a “concerns” position on the bill, stating that they “are concerned with the bill’s delegation of legislative prerogative to the executive branch to develop definitions that will dictate the communities or neighborhoods where AB 1279’s provisions overriding local zoning will apply....[we would] strongly prefer to develop a specific definition in statute.” They are also concerned with the appeals process in the bill, and suggest that instead of the prescriptive approach, that the bill require local plans to allow for similar number of units at similar levels of affordability as would be possible under AB 1279’s by-right provisions.
- 4) **Arguments in Support.** Supporters argue that this bill addresses exclusionary zoning practices in high-resource areas, which exacerbate racial and economic segregation and reduce opportunities for lower-wage workers to live close to where they work, and will facilitate mixed-income and affordable housing in high-resource, lower-density communities.
- 5) **Arguments in Opposition.** None on file.
- 6) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on April 10, 2019, and passed with a 6-1 vote.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Rural Legal Assistance Foundation [SPONSOR]  
Western Center On Law & Poverty, Inc. [SPONSOR]  
Dan Kalb, City Councilmember, City of Oakland  
Public Advocates Inc.  
Techequity Collaborative

##### **Concerns**

California State Association of Counties  
Urban Counties of California

##### **Opposition**

None on file

**Analysis Prepared by:** Debbie Michel / L. GOV. / (916) 319-3958

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

19 APR 25 PM 2:32

Approved as to Form and Legality

  
City Attorney's Office

## OAKLAND CITY COUNCIL

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

INTRODUCED BY COUNCIL PRESIDENT PRO TEM DAN KALB

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**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 through local zoning overrides and other land use incentives in high-resource, lower-density communities not experiencing displacement or gentrification; 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 gentrification and displacement; and

**WHEREAS**, AB 1279 would allow the following types of projects in high resource areas, as defined by Housing and Community Development: (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 also serve to provide the following in designated high resource areas: (1) by-right development for housing projects that meet certain conditions, (2) waivers of development standards, such as setback and parking requirements, that can make dense projects infeasible, (3) consistency with state Density Bonus Law, (4) a requirement that projects under 10 units and market-rate projects pay an affordable housing fee, (5) protection of existing local policies that require greater levels of affordability and/or that have higher labor standards, and (6) a prohibition on the bill's incentives from being used on sites that have been occupied by tenants in the last 10 years; and

**WHEREAS**, AB 1279 is supported by Public Advocates and the Western Center on Law and Poverty; now, therefore, be it

**RESOLVED:** That the Oakland City Council hereby endorses AB 1279 and urges the California State Legislature and Governor Gavin Newsom to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND  
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California

**DRAFT**

City Attorney's Office

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ABSENT -

ABSTENTION -

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