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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2019 - 2020 Regular Session

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### SB 50 (Wiener) - Planning and zoning: housing development: incentives

**Version:** May 1, 2019

**Policy Vote:** HOUSING 9 - 1, GOV. & F. 6  
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**Urgency:** No

**Mandate:** Yes

**Hearing Date:** May 13, 2019

**Consultant:** Mark McKenzie

**Bill Summary:** SB 50 would require local governments to provide a specified “equitable communities incentive” to developers that construct residential developments in “jobs-rich” and “transit-rich” areas, which may include certain exceptions to specified requirements for zoning, density, parking, height restrictions, and floor area ratios.

#### **Fiscal Impact:**

- The Department of Housing and Community Development (HCD) estimates first year costs of approximately \$325,000, including one-time contracting costs of \$100,000 for a mapping consultant, and ongoing costs of approximately \$207,000 for 1.2 PY of staff time to identify “jobs-rich areas” and “sensitive communities” and update those designations every five years. (General Fund)
- Unknown, but likely minor costs for the Governor’s Office of Planning and Research (OPR) to coordinate with HCD to identify “jobs rich areas” in the state. (General Fund)
- Unknown local mandated costs. While the bill could impose new costs on local agencies to revise planning requirements for certain developments, these costs are not state-reimbursable because affected local agencies have the authority to charge various permit, planning, and developer fees to offset any increased costs associated with the higher level of service imposed by the bill.

**Background:** Existing law requires a city or county to adopt an ordinance that specifies how it will implement state Density Bonus Law, which requires the grant of a specified density bonus when an applicant for a housing development of 5 or more units agrees to construct a project with at least any of the following: (1) 10% of housing units dedicated for lower income households; (2) 5% of units for very low-income households; (3) a senior citizen development or mobilehome park; or (4) 10% of units in a common interest development for moderate income households. The applicant must ensure the units remain affordable for at least 55 years. A density bonus generally allows the developer to increase density of by up to 20% over the otherwise maximum allowable residential density under the applicable zoning ordinance.

In addition to the density bonus, a local agency must also provide concessions and incentives based on the number of below market-rate units included in the project, as specified. Concessions may include a reduction in site development standards, modification of zoning or design requirements that exceed minimum building standards, approval of mixed-use zoning if such uses are compatible, or other regulatory incentives

or concessions proposed by the developer or the city or county that result in identifiable cost reductions.

Some local ordinances provide “ministerial” processes for approving projects that are permitted “by right”—the zoning ordinance clearly states that a particular use is allowable, and local government does not have any discretion regarding approval of the permit if the application is complete. Local governments have two options for providing landowners with relief from zoning ordinances that might otherwise prohibit or restrict a particular land use: variances and conditional use permits. A variance may be granted to alleviate a unique hardship on a property owner because of the way a generally-applicable zoning ordinance affects a particular parcel, and a conditional use permit allows a land use that is not authorized by right in a zoning ordinance, but may be authorized if the property owner takes certain steps, such as to mitigate the potential impacts of the land use. Both of these processes require hearings by the local zoning board and public notice.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review, including design review and appeals processes. Most housing projects that require discretionary review and approval are subject to California Environmental Quality Act (CEQA) review, while projects permitted ministerially are not.

Existing law, as enacted by SB 35 (Weiner, 2017), provides for a streamlined, ministerial process for approving certain housing developments that are in compliance with the applicable objective local planning standards, including the general plan, zoning ordinances, and objective design review standards, as long as a certain percentage of units in the development are affordable to lower-income households. Existing law, as enacted by AB 2923 (Chiu, 2018), requires ministerial approval of housing developments on BART-owned land if the project is no more than one story above the highest allowable zoning in the surrounding area and has a floor area ratio of no more 0.6 times the number of stories. AB 2923 explicitly authorized the addition of density bonus on top of these parameters.

**Proposed Law:** SB 50 would require local governments to provide an “equitable communities incentive” for certain residential developments that meet specified conditions.

#### Project requirements.

SB 50 requires a project to be either a “jobs-rich housing project” or a “transit-rich housing project” for residential development on a site zoned for housing in order to qualify for an equitable communities incentive. A jobs-rich housing project must be a residential development located in a jobs rich area. SB 50 requires HCD, in consultation with OPR, to designate and produce maps of jobs-rich areas based on a specified methodology by January 1, 2020, and to update the maps every five years thereafter. That designation must include tracts that are both high opportunity and jobs rich, based on specified factors that ensure that residents are proximate to their jobs

and reduce commute times. SB 50 defines a transit-rich housing project to be a residential development located within a one-half mile radius of a rail station or a ferry terminal that is a major transit stop, as defined in existing law, or a one-quarter mile radius of a stop on a high-quality bus corridor that has fixed routes and specified service intervals in each direction.

An equitable communities incentive cannot be granted for a development located in a city within the coastal zone that has a population of less than 50,000, in a very high fire hazard severity zone (unless excluded by a local agency or has applicable fire hazard mitigation measures), or on a parcel within a historic district established by a local ordinance, as specified.

In order to qualify for the incentive, a residential development in a county with a population of 600,000 or less must also be on a parcel in an urban area zoned for residential use or residential mixed-use development, must have a specified minimum density, must be located within a one-half mile radius of a major transit stop in a city with a population of over 50,000, and must not be located in an architecturally or historically significant district or a flood plain, as specified.

SB 50 requires a project receiving an incentive to contain specified percentages of affordable housing units in the development, depending on the size of the project and at the choice of the developer, as specified. The developer may also be authorized to make a comparable affordability contribution (either through a dedication of land or in-lieu fee payment) toward lower-income housing offsite, instead of including affordable units within the development. If the local government has adopted an inclusionary housing ordinance and that ordinance requires that a new development include levels of affordability in excess of what is required in this bill, the requirements in that ordinance apply. Affordable housing units under the bill must remain affordable under a deed restriction for 55 and 45 years for rental units and units offered for sale, respectively. The bill also places other specified requirements and restrictions on projects as a condition of eligibility.

#### Equitable communities incentive benefits.

SB 50 requires local governments to grant transit-rich and jobs-rich housing projects certain benefits and waivers of local development regulations based on their location.

In a county with a population that is greater than 600,000, the following incentives apply:

- Any transit-rich or jobs-rich housing project that meets the eligibility criteria above shall receive waivers from maximum controls on density and minimum automobile parking requirements greater than 0.5 parking spots per unit.
- An eligible applicant proposing a residential development that is located within one-half mile radius, but outside one-quarter mile radius, of a major transit stop shall also receive waivers from maximum height requirements less than 45 feet, maximum FAR requirements less than 2.5, and any minimum automobile parking requirements.
- An eligible applicant proposing a residential development that is located within one-quarter mile radius of a major transit stop shall also receive waivers from maximum

height requirements less than 55 feet, maximum FAR requirements less than 3.25, and any minimum automobile parking requirements.

A residential development within a county with a population that is 600,000 or less that meets the specified eligibility requirements shall receive the following incentives:

- A waiver from maximum controls on density, subject to specified requirements.
- A waiver from maximum height limitations less than or equal to one story, or 15 feet, above the highest allowable height for mixed use or residential use, as specified.
- Maximum FAR requirements less than 0.6 times the number of stories proposed for the project.
- A waiver from all minimum parking requirements if the development is located within a one-quarter mile radius of a rail transit station in a city of over 100,000 people, or from parking requirements of less than 0.5 parking spaces per unit for all other developments, as specified.

SB 50 authorizes a project receiving an equitable communities incentive to also apply for a density bonus, incentives or concessions, and parking ratios in accordance with other specified provisions. The bill authorizes a local agency to deny an incentive requested by an eligible applicant if it makes a written finding that the incentive would have an adverse impact on any property or historic district listed on a federal or state registry of historical resources and for which there is no feasible way to mitigate the adverse impacts without rendering the project infeasible.

#### Sensitive communities.

SB 50 requires the council of governments (COGs), or board of supervisors in a county without a COG, to establish a working group comprised of residents of potentially sensitive areas within the county to develop a map of sensitive communities within the county, as specified. The bill includes disadvantaged communities within the definition of “potentially sensitive community” as well as those in areas designated as high segregation and poverty, or low resource, as specified. For specified Bay Area counties, a sensitive community is one at the intersection of disadvantaged and vulnerable communities, which must be updated at least every five years by HCD, as specified.

SB 50 delays the requirement for local governments to grant equitable communities incentives in potentially sensitive communities until July 1, 2020. If a potentially sensitive community is designated as a sensitive community through the process noted above, the requirements are delayed until January 1, 2026. At that time a local government would be required to grant incentives unless the city or county in which the sensitive community is located has adopted a specified community plan for an area that includes the sensitive community that is aimed toward increasing residential density and multifamily housing choices near transit stops.

Notwithstanding these special considerations for sensitive communities, a local government must grant equitable communities incentives if all of the following apply:

- At least 20% of adult residents in the sensitive community sign a petition attesting that the community desires the local government to grant the incentives, as specified.

- The local government has verified the petition to ensure compliance with specified requirements.
- The local government provides a public notice and comment period, and holds a minimum of three public hearings, as specified.
- The governing body for the city or county in which the sensitive community is located determines by a majority vote to apply the bill's provisions to the affected area.

#### Neighborhood Multifamily Projects.

SB 50 would also provide for a specified streamlined ministerial approval process of specified "neighborhood multifamily projects" that would either construct a multifamily structure on vacant land, or to convert an existing structure that does not require substantial exterior alteration into a multifamily structure. A neighborhood multifamily project must consist of up to 4 residential dwelling units and that meets local height, setback, and lot coverage zoning requirements as they existed on July 1, 2019.

**Staff Comments:** Regarding state fiscal impacts, this bill would require HCD to coordinate with the Governor's Office of Planning and Research (OPR) to identify "jobs rich areas," publish a map of those areas by January 1, 2020, and update the map every five years. The bill would also require HCD to review local designations of "sensitive communities" that are identified by councils of government or counties, as specified. HCD indicates that it would need 1.2 PY of staff related to the additional workload at a cost of approximately \$207,000 annually, and contract with a mapping consultant at an additional estimated cost of \$100,000.

The bill's mandated local costs would not be subject to state reimbursement because local agencies have the general authority to charge and adjust planning and permitting fees as necessary to cover administrative costs.

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