

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

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

This bill:

- 1) Requires HCD, upon appropriation by the Legislature, to administer a program to provide incentives in the form of grants to local governments that rezone idle sites used for a big box commercial shopping center and instead allow the development of low and moderate income housing, as specified.
- 2) Requires HCD, for each calendar year in which funds are made available, to issue a notice of funding availability (NOFA) for the distribution of funds for the following 12-month period.
- 3) Requires a local government, in order to be eligible for funding, to do all of the following:
 - a) Rezone one or more idle sites used for a big box retailer or commercial shopping center to allow low and moderate income housing, as specified, as a use by right.
 - b) Approve and issue a certificate of occupancy for a housing development on each site rezoned for which the local government seeks a grant.
 - c) Require the development to be built utilizing specified labor standards, including a skilled and trained workforce that is paid prevailing wages.
 - d) Apply to HCD for an allocation of grant funds and provide documentation that it has complied with the requirements in this bill.
- 4) Provides that the amount granted to each eligible local government shall be as follows:
 - a) The grant amount shall be equal to seven times the average amount of annual sales and use tax revenue generated by each idle site identified in the

- local government's application over the seven years immediately preceding the date of the local government's application.
- b) For any idle big box retailer or commercial shopping center site rezoned to allow mixed uses, the amount of grant shall be reduced in proportion to the percentage of the square footage of the development that is used for a use other than low and moderate housing.
 - c) If, for any NOFA, the amount of funds made available for purposes of this chapter is insufficient to provide each eligible local government with the full amount specified in a) and b) above, based on the number of applications received, HCD shall reduce the amount of grant funds awarded to each eligible local government proportionally.
 - d) HCD shall allocate grant amounts to each eligible local government in one lump-sum following the date of the local government's application.
- 5) Defines "big box retailer" as a store of greater than 75,000 square feet of gross buildable area that generates or previously generated sales or use taxes.
 - 6) Defines "commercial shopping center" as a group of two or more stores that maintain a common parking lot for patrons of those stores.
 - 7) Defines "idle" as at least 80% of the leased or rentable square footage of the big box retailer or commercial shopping center site is not occupied for at least a 12-month period.
 - 8) Defines "sales and use tax revenue" as the cumulative amount of revenue generated by taxes imposed by a local government, as specified.
 - 9) Defines "housing" as an owner occupied or rental housing development in which 100% of the units are affordable to lower or moderate income households. The rent or sales price for a moderate income unit shall be at least 20% below the market rate for a unit of similar size and bedroom count in the same neighborhood in the jurisdiction where the development is located. All units shall be restricted to 55 years for rental units and 45 years for owner units.
 - 10) Provides that this bill shall take effect on January 1, 2023.

COMMENTS

- 1) *Author's statement.* "HCD estimates that the state needs upwards of 200,000 housing units per year in order to maintain a healthy housing sector. Currently, the industry is producing less than half of that amount. This scarcity has driven our housing costs to be the highest in the nation prohibiting occupations like

teachers, nurses, public safety officers, and younger professionals the ability to afford owning a home, essential for building a stronger and vibrant economy. It is imperative that we encourage creative solutions to build more housing to correct this imbalance. We see an opportunity through the growth of e-commerce and the idling of commercial retail sites. There's an opportunity to convert idle retail sites to workforce housing. We want to create a pilot program that encourages local governments to partner with the industry to build housing on these sites and reward the local government with a sales tax rebate when these projects are rezoned, completed, and occupied. These rebates will give local governments the resources to replace the sales tax revenues that came from these former retail sites to pay for the necessary civic safety and maintenance services needed for these new residential properties to operate in their local jurisdiction.”

- 2) *Housing needs and approvals.* Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its “fair share” of its region's housing needs, which is completed through the regional housing needs allocation process. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.
- 3) *Zoning ordinances.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. A zoning ordinance may be subject to CEQA if it will have a significant impact upon the environment. The adoption of accessory dwelling unit (ADU) ordinances, however, are explicitly exempt from CEQA. In addition, several statutory exemptions provide limited environmental review for projects that are

consistent with a previously adopted general plan, community plan, specific plan, or zoning ordinance.

- 4) *Streamlined Approval Processes.* Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under CEQA while projects permitted ministerially generally are not.
- 5) *Commercial zoning prevails.* The concept of the “fiscalization of land use” is familiar to many. Ever since the passage of Proposition 13 in 1978, property taxes have constituted a diminishing source of revenue for governments. This situation was exacerbated in the early 1990s when the state effectively commandeered local property tax revenues to meet its obligation to the public schools through the Education Revenue Augmentation Fund. In many cases, the additional revenues a local government now earns from each new housing unit are insufficient to cover the added expense of providing services to the new residents of that home. Some of the fixed costs of infrastructure can be recouped through fees, but the ongoing service costs remain at issue. Thus, a city council deciding the fate of a new housing development faces the unenviable dilemma of denying needed housing or reducing services to existing constituents. As one might expect, new housing developments tend to be the loser.

At the same time, when a city council considers an alternate proposal to develop a parcel of land as a retail center, the fiscal incentives strongly support approval. Local governments receive a large portion of all sales tax revenue generated within their borders. The additional revenue received from a large retail facility—such as a big-box retailer, online distribution center, or a car dealer—easily outweighs the costs of providing services to the facility. A local government can use these surplus revenues to enhance services to its constituents. As a result, housing is subject to a double whammy. Not only can it be difficult to get approval for a new housing development on residentially-zoned land, but more land is zoned commercial in the hope that retail establishments can be attracted. The only real fiscal incentive local governments have to approve housing is to ensure there are enough residents to support the retailers.

- 6) *Opening up commercial zones to housing.* According to a UC Berkeley Turner Center report, *Residential Redevelopment of Commercially Zoned Land in California* (December 2020), about 41% of commercial zones in California's 50 largest cities currently prohibit residential development. Of the commercial zones that do allow residential development, the entitlement process is inconsistent across cities and in many cases is delayed or stymied by onerous approval processes. The Turner Center's analysis found that in the state's 50 largest cities, single-family housing is potentially allowed in 35.8%, multifamily housing is potentially allowed in 53.5%, and mixed-use development is potentially allowed in 29.8%, of commercial zones. The Turner Center notes that allowing residential development on commercially zoned land could achieve the multiple policy goals of stimulating economic growth, providing much needed additional housing units, and reducing greenhouse gas emissions from automobile use by advancing infill development.

This bill seeks to incentivize local governments to convert idle retail sites into affordable housing by requiring HCD to issue grants to cities that rezone commercial sites to make residential an allowable use. In order to receive a grant, a city must rezone the site as a use by right, approve a housing development project affordable to households earning up to 120% AMI, impose certain labor standards, and issue a certificate of occupancy. The grant will be proportionate to the amount of housing available for those households if the development also includes a commercial component. The grant is equal to the average amount of annual sales and use tax revenue generated by each idle site over the seven years immediately preceding the date of the local government's application. The goal is to offset the lost sales tax revenue that would have been generated from a commercial property.

- 11) *Opposition concerns.* The Plumbing-Heating-Cooling Contractors Association of California states that this bill eschews fair and open competition; skews the general statutory requirement that contractors employ a skilled and trained workforce; prohibits the State Labor Commissioner from enforcing the labor code on project labor agreement (PLA) projects and allows contractors under a PLA to hide their wages and benefits by precluding the completion of certified payroll records.
- 12) *SB 1299 redux.* This bill is virtually identical to SB 1299 of 2020, except that the term "workforce housing" has been changed to "housing" and a delayed implementation date of January 1, 2023 has been added.

RELATED LEGISLATION:

SB 6 (Caballero, 2021) — enacts the Neighborhood Homes Act, which establishes housing as an allowable use on any parcel zoned for office or retail uses. *This bill passed out of the Governance and Finance Committee on a 5-0 vote and will be heard in Housing Committee in April.*

SB 1299 (Portantino, 2020) — would have required HCD to administer a program to provide grants to local governments that rezone idle sites used for a big box commercial shopping center to instead allow the development of workforce housing, as defined. *This bill died on the Assembly Floor.*

SB 1385 (Caballero, 2020) — would have enacted the Neighborhood Homes Act, establishing housing as an allowable use on any parcel zoned for office or retail uses. *This bill failed passage in the Assembly Local Government Committee.*

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

POSITIONS: (Communicated to the committee before noon on Friday, March 12, 2021.)

SUPPORT:

Los Angeles County Business Federation (BizFed) (Co-Sponsor)
Los Angeles County Division, League of California Cities (Co-Sponsor)
State Building and Construction Trades Council of California, AFL-CIO (Co-Sponsor)
A Better Way Forward to House California
Association of California Cities - Orange County (ACC-OC)
California Cities for Local Control
California State Council of Laborers
City of Pleasanton
City of Santa Monica
International Union of Operating Engineers, Cal-Nevada Conference
Latino Alliance for Community Engagement
Livable California
Pacific Palisades Community Council
Riviera Homeowners Association
San Gabriel Valley Council of Governments
Sherman Oaks Homeowners Association
South Bay Cities Council of Governments
13 Individuals

OPPOSITION:

Plumbing-Heating-Hooling Contractors Association of California

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