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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2019 - 2020 Regular**

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**Bill No:** AB 3040 **Hearing Date:** 8/6/2020  
**Author:** Chiu  
**Version:** 7/28/2020 Amended  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Erin Riches

**SUBJECT:** Local planning: regional housing need assessment

**DIGEST:** This bill allows cities and counties to receive a specified credit toward meeting their regional housing needs allocation (RHNA) for rezoning single-family sites to allow four units per parcel.

**ANALYSIS:**

*Existing law:*

- 1) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.
- 2) Requires the housing element to identify adequate sites for housing and to make adequate provision for the existing and projected needs of all economic segments of the community.
- 3) Requires each jurisdiction to submit an annual progress report to HCD regarding its progress in meeting its RHNA allocation.
- 4) Establishes, within the Davis-Stirling Common Interest Development (CID) Act, rules and regulations governing the operation of a CID and the respective rights and duties of a homeowners association (HOA) and its members. Requires the governing documents of a CID, and any amendments to the governing documents, to be adopted through HOA elections in accordance with specified procedures
- 5) Deems void and unenforceable any covenant, condition, or restriction (CC&R) contained in any deed, contract, security instrument, or other instrument

affecting the transfer of, or any interest in, real property, and any provision of the CID governing documents, that effectively prohibits or restricts:

- a) Installation of a solar energy system.
- b) Installation or use of a video or television antenna.
- c) Installation of low-water using plants, artificial turf, and other synthetic surface that resembles grass.
- d) Installation or use of an electric vehicle charging station within the owner's unit or designated parking space.
- e) Display or affixation of one or more religious items on any entry door frame to a dwelling.
- f) Construction or use of an accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) on a lot zoned for single-family residential use that meets the requirements of existing law regarding ADUs and JADUs.

**This bill:**

- 1) Authorizes a city or county to include in its inventory of sites suitable for residential development, a site that contains an existing single-family dwelling unit but that the city or county has permitted, or is proposing to permit, to contain four dwelling units, if the site meets all of the following criteria:
  - a) The site allows the new residential dwellings as a use by right.
  - b) The development standards applicable to the site would not impede the development of four dwelling units.
  - c) The site has an existing dwelling unit that received its first certificate of occupancy at least 15 years prior to being included in the site inventory.
  - d) The site is identified in the inventory to satisfy either the moderate- or above moderate-income RHNA level.
- 2) Prohibits, if SB 1120 (Atkins, 2020) is enacted, the zoning capacity authorized under SB 1120 from being considered as enabling a development of four dwelling units.
- 3) Requires HCD, for every 10 sites included in the inventory, to provide, at minimum, a credit of one unit toward the city's or county's RHNA allocation. Any fraction of a unit shall be rounded to the nearest whole unit.
- 4) Requires a city or county including sites in its inventory under this bill to include in its housing element both of the following:

- a) A description of the development standards that enable the identified sites to be redeveloped at a higher density, including but not limited to height limits, parking requirements, setback requirements, and historic resource designation.
  - b) A description of the policies, programs, and incentives that will be used to facilitate the development.
- 5) Requires a city or county that proposes to permit a site that contains an existing single-family dwelling, to contain four dwelling units pursuant to this bill, to do so in accordance with the deadline to rezone an inventory that does not identify adequate sites.
- 6) Provides that the cumulative credit received by a city or county from the sites identified pursuant to this bill shall not exceed either of the following:
- a) 50% of the units needed to meet its moderate-income RHNA allocation.
  - b) 10% of the units needed to meet its above moderate-income RHNA allocation.
- 7) Authorizes a city or county, in lieu of listing sites individually in its inventory, to include a summary of the credit received pursuant to this bill, if the housing element includes a separate list of sites including the following information:
- a) A listing of properties by assessor parcel number.
  - b) The general plan designation.
  - c) The zoning of each property.
  - d) A description of how the sites meet the requirements of this bill.
- 8) Requires a city or county to include in its annual progress report a summary of the units developed on sites identified pursuant to this bill.
- 9) Deems void and unenforceable any CC&R contained in any deed, contract, security instrument, other instrument affecting the transfer or sale of any interest in a planned CID, and any provision of a CID governing document, that effectively prohibits or unreasonably restricts the construction or use of up to four primary dwelling units on a lot zoned for at least four dwelling units. Exempts from this prohibition, provisions that impose reasonable restrictions on dwelling units, as specified.

**COMMENTS**

- 1) *Author's statement.* "AB 3040 is an important tool to address California's housing crisis in a manner that is contextual, expedient, and meaningful. AB 3040 will spur desperately needed housing production by giving local governments additional RHNA credits when they up-zone single-family parcels to allow four housing units per parcel. By specifying up front the amount of credit received, it avoids the uncertainty that cities otherwise experience when adding zoning capacity to areas with existing housing."
- 2) *Background: housing elements and RHNA.* 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. State law mandates seven elements: land use, circulation (*e.g.* traffic), 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. Following a staggered schedule, cities and counties located within the territory of a metropolitan planning organization (MPO) must revise their housing elements every eight years, and cities and counties in rural non-MPO regions must revise their housing elements every five years. These five- and eight-year periods are known as the housing element planning period.

Before each revision, each community is assigned its fair share of the region's housing need for four separate income categories (very low-, low-, moderate-, and above-moderate income households) through a two-step process known as the RHNA. In the first step, the Department of Housing and Community Development (HCD) determines the aggregate housing need for the region during the planning period the housing element will cover. In the second step, the council of governments (COG) for the region allocates the regional housing need to each city and county within the region.

In general, a housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet its share of the RHNA, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development. Among other things, the

element specifically must include an analysis of existing subsidized housing developments that are eligible to convert to market-rate rental housing upon the expiration of affordability restrictions, and identify all public resources.

As part of the process to identify adequate sites, a city or county first prepares an inventory of existing sites zoned for housing. When the inventory of existing sites is insufficient to accommodate the need for one or more income categories, the housing element must contain a program to rezone sites within the first three years of the planning period.

- 3) *Most of the state is zoned for single-family.* California's high — and rising — land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density. In a 2016 analysis, the Legislative Analyst's Office (LAO) found that the housing density of a typical neighborhood in California's coastal metropolitan areas increased only by four percent during the 2000s. In addition, the pattern of development in California has changed in ways that limit new housing opportunities. A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores surrounded by vast swaths of low-density single-family housing. Specifically, construction of moderately-dense housing (2 to 49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades.

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. Some jurisdictions in the US have taken steps to increase density in single-family zones. For example, Minneapolis will become the first major U.S. city to end single-family home zoning; in December, the City Council passed a comprehensive plan to permit three-family homes in the city's residential neighborhoods, abolish parking minimums for all new construction, and allow high-density buildings along transit corridors. According to the 2016 McKinsey Report, California has the capacity to build between 341,000 and 793,000 new units by adding units to existing single-family homes.

A 2019 Zillow report found that even modest densification, such as duplexes and fourplexes could result in millions more homes. Across 17 metro areas analyzed nationwide, allowing 10% of single-family lots to house two units instead of one could yield almost 3.3 million additional housing units to the

existing housing stock. In the L.A. region, if one in five single-family lots were re-zoned to hold two homes, the local housing stock could be boosted by 775,000 homes. Allowing four homes instead of two on those same 20% of single-family lots could yield a housing stock increase of more than 2.3 million homes, or a 53.4% boost over the current stock when combined with homes already expected to be built.

- 4) *Incentive to upzone.* This bill aims to incentivize local governments to upzone single-family sites by allowing them to count toward their moderate- and above-moderate RHNA obligation, a site with an existing single-family dwelling that has been zoned for four dwelling units. The site must be zoned by-right for new dwelling units; must not be subject to development standards that would impede additional units being developed on it; must have an existing unit that is at least 15 years old; and must be identified as meeting either the moderate- or above moderate-income RHNA obligation. This bill helps provide certainty to cities and counties, since they would otherwise need to provide ample evidence to HCD that such development on non-vacant sites would occur. To ensure that this new authority is not abused, this bill provides that a locality can only use this upzoning to account for 50% of its moderate income RHNA or 10% of its above moderate income RHNA. It also requires cities and counties to provide annual updates to HCD on the status of development on these sites.
- 5) *Interaction with SB 1120.* SB 1120 (Atkins, 2020) requires cities and counties to ministerially permit a housing development of up to two units (a duplex), the subdivision of a parcel into two equal parcels (urban lot split), or both, under specified conditions. SB 1120 is intended to help increase the number of units that can be permitted in residential areas.

This bill authorizes a city or county to include in its housing element inventory of sites suitable for residential development, a site that contains an existing single-family dwelling but that the city or county has permitted, or is proposing to permit, to contain four dwelling units, if the site meets specified criteria. To address concerns that a locality might simply point to the ministerial approval provisions of SB 1120 rather than actively permitting a parcel for up to four units, the author recently amended this bill to prohibit zoning capacity under SB 1120 from being considered as enabling a development of four units.

- 6) *CIDs.* A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall

under the umbrella of CIDs. There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or approximately one-quarter of the state's housing stock. CIDs are governed by HOAs. The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the association, collectively referred to as the governing documents.

Legislation last year (AB 670, Friedman) prohibited CIDs from banning construction of ADUs and JADUs. This bill prohibits CIDs from banning or unreasonably restricting, as specified, up to four primary dwelling units on a lot zoned for at least four dwelling units.

- 7) *Opposition concerns.* A number of homeowner associations and other neighborhood groups oppose this bill, primarily based on concerns about its impact on existing residential neighborhoods. In addition, Livable California states that this bill boosts market-rate housing without requiring any affordable housing, and will result in gentrification and displacement in middle-class and working-class neighborhoods, “particularly in highly diverse Southern California.”

#### **RELATED LEGISLATION:**

**SB 1120 (Atkins)** — requires ministerial approval of duplexes and specified parcel maps. *This bill is pending in the Assembly Local Government Committee.*

**AB 670 (Friedman, Chapter 178, Statutes of 2019)** — prohibits CIDs from banning construction of an ADU or JADU but allows HOAs to impose reasonable restrictions on constructions of ADUs or JADUs, as specified.

**AB 1397 (Low, Chapter 375, Statutes of 2017)** — strengthens state Housing Element Law by limiting the reliance of local governments on sites that do not have a realistic capacity for the development of housing.

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

**POSITIONS:** (Communicated to the committee before noon on Friday, July 24, 2020.)

**SUPPORT:**

All Home  
American Planning Association, California Chapter  
Association of Bay Area Governments (ABAG)  
Bay Area Housing Action Coalition  
California Apartment Association  
California State Association of Counties  
California YIMBY  
Council of Infill Builders  
Facebook  
Habitat for Humanity California  
League of California Cities  
Metropolitan Transportation Commission  
Non-profit Housing Association of Northern California  
Rural County Representatives of California  
San Francisco Housing Action Coalition  
Silicon Valley at Home  
The Two Hundred  
Urban Counties of California  
Zillow Group

**OPPOSITION:**

City of Redondo Beach  
Comstock Hills Homeowners Association  
Franklin Corridor Coalition  
Friends of Sunset Park  
Grayburn Avenue Block Club  
Livable California  
Noe Neighborhood Council  
Protecting Our Foothill Community  
Shadow Hills Property Owners Association  
Sherman Oaks Homeowners Association  
Southeast Torrance Homeowners' Association  
Tamalpais Design Review Board  
United Neighborhoods for Los Angeles (UN4LA)  
Western Quadrant of North Leimert Park  
17 Individuals