

realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level.

- 5) Requires the housing element to contain a program that sets forth a schedule of actions during the planning period that will be taken to make sites available with appropriate zoning and development standards to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory of sites without rezoning.
- 6) Requires that, where the inventory of sites (pursuant to (5) above), does not identify adequate sites to accommodate the need for groups of all household income levels, rezoning of those sites, including adoption of minimum density and development standards, shall be completed no later than three years after either the date the housing element is adopted or the date that is 90 days after receipt of comments from the state department of Housing and Community Development (HCD), whichever is earlier, unless the deadline is extended, as specified.
- 7) Requires the housing element to contain the identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or discretionary permit. Shelters may be subject to development and management standards that apply to residential and commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:
 - a) The maximum number of beds or persons permitted to be served nightly by the facility.
 - b) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.
 - c) The size and location of exterior and interior onsite waiting and client intake areas.
 - d) The provision of onsite management.
 - e) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.
 - f) The length of stay.
 - g) Lighting.
 - h) Security during hours that the emergency shelter is in operation.

This bill:

- 1) Requires emergency shelter zones, which are required under existing housing element law to be permitted without a conditional use or other discretionary permit, to be located within zones that allow residential use, including mixed-use areas.
 - a) Provides that, if a zoning district or designation is not possible where residential use is a permitted use, a local government may instead designate emergency shelter zones in a nonresidential zone if the local government demonstrates that the zone is connected to amenities and services that serve people experiencing homelessness.
 - b) Defines “connected to amenities and services” as including but not limited to, offering free transportation to services or offering services onsite. Shelters shall include other interim interventions, including but not limited to, navigation centers, bridge housing, and respite or recuperative care.
- 2) Requires that shelters only be subject to the following written and objective standards:
 - a) The maximum number of beds or persons permitted to be served nightly by the facility.
 - b) Sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone.
 - c) The size and location of exterior and interior onsite waiting and client intake areas.
 - d) The provision of onsite management.
 - e) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.
 - f) The length of stay.
 - g) Lighting.
 - h) Security during hours that the emergency shelter is in operation.
- 3) Requires that, if a local government applies the written, objective standards in (2) above, the local government shall attach and analyze the standards in its housing element.
- 4) Specifies that a zone or zones where emergency shelters are permitted without a conditional use or other discretionary permit shall include sites that meet at least one of the following standards:
 - a) Vacant sites zoned for residential use.

- b) Vacant sites zoned for nonresidential use that allows residential development. Vacant sites in a nonresidential zoning designation may be included if the local government can demonstrate how the zone is connected to amenities and services that serve people experiencing homelessness.
 - c) A nonvacant site, provided that a description is provided regarding the current use of each property at the time it is identified and an analysis is provided indicating how the site is adequate and available for use as a shelter in the current planning period, while meeting all of the state and local health, safety, habitability, and building requirements necessary for any other residential development. If a nonvacant site is identified, the analysis required by this clause shall indicate the current existing use of the site and what factors indicate that the existing use will be terminated during the planning period.
- 5) Provides that, the number of people experiencing homelessness that can be accommodated on each identified site shall be demonstrated by calculating a minimum 200 square feet per person.
- 6) Provides that for the sixth housing element cycle and beyond, if a local government has not adopted a housing element that HCD deems substantially compliant with state law within 120 days of the applicable statutory deadline, it shall be required to complete its rezoning program within one year, instead of three.

COMMENTS

- 1) *Author's statement.* According to the author, "Our growing homelessness crisis is a diverse problem, but one glaring aspect is the number of unsheltered homeless in our state – that is, folks who are literally living on the streets. Of the 150,000 homeless people living in California, 72% are unsheltered. While some California localities provide a sufficient number of shelter beds, in others, there are either no shelter beds or only a small number, only seasonally available shelter, or no shelters specific to youth. SB 1138 expands shelter access and complements California's ultimate priority: to transition people experiencing homelessness into permanent housing. SB 1138 also clarifies that local governments must adopt a legally compliant housing element by the statutory deadline or face a penalty (completing a rezone program in one year rather than three). This critical incentive recognizes that adequate planning for housing is necessary to the successful approval and construction of desperately needed housing at all income levels."

- 2) *Inadequate housing and shelter for California's homeless.* Homelessness in California is no longer confined to urban corridors; it pervades both urban and rural communities across the state and puts stress on local resources, from emergency rooms to mental health and social services programs to jails. The homelessness crisis is driven in part by the lack of affordable rental housing for lower income people. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units. Of the 6 million renter households in the state, 1.7 million are paying more than 50% of their income towards rent. The National Low Income Housing Coalition estimates that the state needs an additional 1.5 million housing units affordable to very-low income Californians.
- 3) *Housing elements and approvals generally.* 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. General plans are comprised of several elements that address various land use topics. 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. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. State law requires cities and counties to update their housing elements every five or eight years.

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. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially, or by-right, 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 the California Environmental Quality Act (CEQA), while projects permitted ministerially generally are not.

- 4) *By-right for shelters in the housing element.* SB 2 (Cedillo, Chapter 633, Statutes of 2007) requires a local government, in its housing element, to

accommodate its need for emergency shelters on sites by right, or ministerially and without a conditional use permit, and requires cities and counties to treat transitional and supportive housing projects as a residential use of property. Local governments must treat supportive housing the same as other multifamily residential housing for zoning purposes, and may only apply the same restrictions as multifamily housing in the same zone to supportive housing. Current law is silent as to where these shelters may be located, and as a result, local governments often identify shelters in industrial areas far from services designed to move people experiencing homelessness from the streets and into permanent housing. Additionally, current law does not require a local government to identify zones with sufficient capacity to accommodate emergency shelters. As a result, some emergency shelter zones are not actually capable of accommodating a shelter on any of the identified sites.

This bill clarifies housing element law with regards to where by-right zones for emergency shelters may be identified. Current law is not clear as to the types of standards that a jurisdiction may apply to a shelter project in an identified by right zone. This bill makes it clear that a local government shall only be subject to those development and management standards that apply to residential or commercial development within the same zone, except that a local government may apply the specified objective standards. Additionally, this bill requires local governments to identify by-right shelters in zones that allow residential uses, including mixed-use. A local government may identify zones in industrial areas, but only if it demonstrates how the zone is appropriate and connected to necessary amenities and services. Lastly, this bill requires that an emergency shelter zone must include vacant sites or sites that are adequate for a shelter.

- 5) *Timely approval of compliant housing elements.* Housing element law requires a locality to adopt a housing element within 120 days of the statutory deadline; if it fails to do so, it must revise its housing element every four years (rather than eight) until the jurisdiction has adopted at least two consecutive revisions. It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment locally for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will not be built. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need,

the law nevertheless mandates that the community do all that it can and that it not engage in exclusionary zoning practices.

Some jurisdictions, however, do not meet the existing deadline to adopt a legally compliant housing element, or instead adopt a draft housing element (rather than one that is legally compliant) to avoid having to revise within four years. This bill clarifies that moving forward (starting with the 6th housing element cycle), jurisdictions must adopt a legally compliant housing element within 120 days of the statutory deadline. Failure to do so will result in a need to complete a rezone program within one year instead of the current three year requirement. The goal is to clarify and incentivize locals to meet the existing requirements.

RELATED LEGISLATION:

AB 101 (Budget and Fiscal Review, Chapter 159, Statutes of 2019) — among other things, required “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.

SB 48 (Wiener, 2019) — would have established a streamlined approval process for a “low-barrier navigation center” that connect people experiencing homelessness to services and permanent housing solutions until January 1, 2027, if it meet specified requirements. This bill would also have made changes to housing element law with regards to zoning for emergency shelters, as specified. *This bill was held in the Senate Appropriations Committee.*

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

POSITIONS: (Communicated to the committee before noon on Wednesday, May 20, 2020.)

SUPPORT:

California Rural Legal Assistance Foundation (Co-Sponsor)
 Public Interest Law Project (Co-Sponsor)
 Western Center on Law & Poverty, INC. (Co-Sponsor)
 TODGO
 1 Individual

OPPOSITION:

None received.

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