

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2667 (Santiago) – As Amended April 9, 2024

**SUBJECT:** Affirmatively furthering fair housing: housing element: reporting

**SUMMARY:** Makes changes to the housing element and Annual Progress Report (APR) related to the requirement to affirmatively further fair housing (AFFH). Specifically, **this bill:**

- 1) Requires the number of units approved and disapproved that must be reported by a local government in the APR to also include a subcategory of the number of those units located within an “opportunity zone,” defined to mean a highest or high resource area pursuant to the most recent “CTCAC/HCD Opportunity Map” published by the California Tax Credit Allocation Committee (CTCAC) and the Department of Housing and Community Development (HCD).
- 2) Requires the assessment of fair housing in a jurisdiction to be completed before the planning agency makes its first draft revision of a housing element available for public comment, as specified.
- 3) Requires HCD to develop a standardized reporting format for programs and actions taken to AFFH in the housing element, and requires the format to enable the reporting of specified existing AFFH assessment components, and at a minimum include the following fields:
  - a) Timelines for implementation;
  - b) Responsible party or parties;
  - c) Resources committed from the local budget to AFFH;
  - d) Action areas; and
  - e) Potential impacts of the program.
- 4) Requires local governments to utilize the standardized report format in 3) for the seventh and each subsequent revision of the housing element.
- 5) Requires a local government to make a draft of its inventory of sites available to HCD and the public and post the draft inventory on its website at least 90 days prior to the adoption of a revision of its housing element for the seventh and each subsequent revision.

**EXISTING LAW:**

- 1) Requires each city and county to adopt a housing element, which must contain specified information, programs, and objectives, including:
  - a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality’s existing and projected housing needs for all income levels; an inventory of land suitable and available

- for residential development with an analysis of the relationship of the sites to the duty to AFFH; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need, among other items;
- b) A statement of the community's goals, quantified objectives, and policies relative to AFFH and to the maintenance, preservation, improvement, and development of housing; and
  - c) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element, including actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the local government's share of the regional housing need for each income level that could not be accommodated on sites identified in the sites inventory without rezoning, among other things. (Government Code (GC) Section 65583(a)-(c))
- 2) Requires the housing element to AFFH in accordance with specified law, and to include an assessment of fair housing in the jurisdiction that must include all of the following components:
- a) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and fair housing capacity;
  - b) An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty and affluence, disparities in access to opportunity, and disproportionate housing needs, including displacement risk. Requires the analysis to identify and examine such patterns, trends, areas, disparities, and needs, both within the jurisdiction and comparing the jurisdiction to the region, based on race and other characteristics protected by the California Fair Employment and Housing Act;
  - c) An assessment of the contributing factors, including the local and regional historical origins and current policies and practices, for the fair housing issues identified under 2)a) and 2)b); and
  - d) An identification of the jurisdiction's fair housing priorities and goals, which may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement. (GC 65583(c)(10)(A))
- 3) Requires a planning agency to submit a draft housing element revision to HCD at least 90 days prior to adoption of a revision of its housing element pursuant to statutory deadlines, or at least 60 days prior for a draft amendment. Requires the local government to make the first draft revision of the housing element available for public comment for at least 30 days and, if any comments are received, requires the local government to take at least 10 business days

after the 30-day public comment period to consider and incorporate public comments into the draft revision prior to submitting it to HCD. For any subsequent draft revision, the local government must post the draft on its website and email a link to all individuals and organizations that have previously requested notices related to the housing element at least seven days before submitting the draft revision to HCD. (GC 65585(b)(1))

- 4) Requires HCD to review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision or within 60 days of receipt of a subsequent draft amendment or an adopted revision or adopted amendment to a housing element. Prohibits HCD from reviewing the first draft submitted for each housing element revision until the local government has made the draft available for public comment for at least 30 days and, if comments were received, has taken at least 10 business days to consider and incorporate public comments. (GC 65585(b)(3))
- 5) Requires HCD, in its written findings, to determine whether the draft element or draft amendment substantially complies with housing element law. (GC 65585(d))
- 6) Requires HCD to review adopted housing elements or amendments and report its findings to the planning agency within 60 days. (GC 65585(h))
- 7) Requires a planning agency to provide an APR to the legislative body, the Office of Planning and Research, and HCD by April 1 of each year that includes certain information, including:
  - a) The progress in meeting its share of the regional housing needs, including the need for extremely low-income households, and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing included in the housing element;
  - b) The number of housing development applications received in the prior year, including whether each housing development application is subject to a ministerial or discretionary approval process;
  - c) The number of units included in all development applications in the prior year;
  - d) The number of units approved and disapproved in the prior year;
  - e) A listing of sites rezoned to accommodate that portion of the city or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the housing element's site inventory and any sites that may have been required to be identified under the No Net Loss Zoning law;
  - f) The number of housing units demolished and new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category by area median income that each housing unit satisfies;
  - g) Specified information related to density bonus applications; and
  - h) Specified information related to Affordable Housing and High Road Jobs Act of 2022 applications. (GC 65400(a)(2)(A)-(M))

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

**COMMENTS:**

- 1) **Bill Summary.** This bill would require the AFFH assessment to be completed before the planning agency makes its first draft housing element available for public comment, and would require HCD to develop a standardized reporting format for programs and actions taken to AFFH. The reporting format must include a variety of fields, including timelines for implementation, responsible parties, local budgetary resources committed to AFFH, and potential impacts of the program. Local governments would be required to use this reporting format for the seventh cycle and beyond.

This bill would also require the local government to post a draft of the inventory of sites on its website and provide the draft inventory to HCD and the public at least 90 days prior to adopting the housing element for the seventh cycle. This would match the current law timeline that requires local governments to submit a draft of the housing element itself to HCD, the public, and interested stakeholders at least 90 days before adoption.

This bill would expand the requirement related to the number of units approved and disapproved, to also include a subcategory of the number of those units located within an opportunity zone, as identified by the CTCAC/HCD Opportunity Map.

This bill is sponsored by Inner City Law Center and Abundant Housing LA.

- 2) **Author's Statement.** "Californians continue to live through a serious housing crisis, and for our most vulnerable communities, the crisis is even greater. In 2018, I authored AB 686 to ensure local governments develop and implement their housing plans in a manner that affirmatively furthers fair housing. In 2021, I authored AB 1304 to strengthen fair housing law by clarifying enforcement provisions and requiring historical and regional analyses of AFFH issues. Despite these important changes in state law, during the sixth housing element update cycle many cities proposed AFFH programs that, while well-intentioned, were unlikely to enable mobility into higher opportunity neighborhoods or result in meaningful investment in historically disinvested neighborhoods. This bill will further empower the state and members of the public to hold local governments accountable to their obligations and expand housing access in high opportunity communities by providing stakeholders with more tools and timely information to ensure local governments are taking meaningful action to affirmatively further fair housing."
- 3) **Federal AFFH Rule.** Since its enactment in 1968, the federal Fair Housing Act has directed the Department of Housing and Urban Development (HUD), other federal agencies, and program participants to affirmatively further the Act's goals of promoting fair housing and equal opportunity. In 2015, the Obama Administration issued the AFFH Rule to clarify what it means to "affirmatively further fair housing." The Rule incorporated an "Assessment of Fair Housing" process into broader existing planning processes to help HUD grantees identify issues such as fair housing issues pertaining to patterns of integration and segregation; racially and ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs. HUD grantees were required to submit their Assessments to HUD or potentially lose HUD funding.

On January 5, 2018, under President Trump, HUD largely suspended the obligation to submit

an Assessment, effectively postponing implementation of the AFFH Rule until 2025. In July 2020, the 2015 AFFH Rule was repealed.

On January 26, 2021, President Biden issued a memorandum directing HUD to examine the effect of the previous Administration's actions against the AFFH Rule and the effect that it has had on HUD's statutory duty to both ensure compliance with the Fair Housing Act and to affirmatively further fair housing. The memo also ordered HUD to take the necessary steps to implement the Fair Housing Act's AFFH requirements and to prevent practices that have a disparate impact. On June 10, 2021, HUD published an interim final rule, which went into effect on July 31, 2021, to restore implementation of the AFFH Rule.

- 4) **AFFH in California.** California's Fair Employment and Housing Act (FEHA) prohibits employment and housing discrimination based on protected classes. FEHA further provides that it is a civil right to be able to pursue and maintain housing or employment without facing discrimination. If a dispute is not resolved, the Civil Rights Department may take legal action if evidence supports a finding of discrimination. In housing discrimination cases, an individual also has the right to file a lawsuit on their own behalf. While FEHA does not explicitly include an AFFH obligation, it does prohibit discrimination through public or private land use practices, decisions, and authorizations due to membership in a protected class. Discrimination includes restrictive covenants, zoning laws, details of use permits, and other actions authorized under the Planning and Zoning Law that make housing opportunities unavailable.

After the 2015 AFFH Rule was enacted, concerns arose about whether it would be preserved going forward. To address these concerns, the Legislature passed and the Governor signed AB 686 (Santiago), Chapter 958, Statutes of 2018, which established an AFFH framework at the state level. This framework remained in place when the Trump Administration repealed the AFFH Rule in 2020.

- 5) **Adoption and Implementation of Housing Elements:** One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan for new housing. Such planning is required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most highly populated parts of the state, and five years in areas with smaller populations. Cities must adopt a legally valid housing element by their statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including exposure to the "builder's remedy" as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or court receivership.

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 be slow to build.

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 or perpetuate housing discrimination patterns or impediments to fair housing.

- 6) **Housing Element AFFH Obligations.** Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region's housing needs and to AFFH. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share, after performing an AFFH analysis of those sites. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element. The requirement to AFFH also contains a mandate to perform an assessment of fair housing in the jurisdiction that has to include several components, including an identification of the jurisdiction's fair housing priorities and goals, metrics and milestones for determining what fair housing results will be achieved via the housing element, and strategies and actions to implement those priorities and goals. The goals may include items like enhancing mobility strategies, encouraging development of new affordable housing in opportunity areas, preserving existing affordable housing, protecting residents from displacement, and place-based strategies to encourage community revitalization.
- 7) **Annual Progress Reports.** Current law requires all local jurisdictions to provide housing information annually to HCD via the APR, including the following information from the prior year and/or for the current eight-year housing element cycle:
  - a) The number of housing development applications received, and whether those applications are subject to ministerial or discretionary approval;
  - b) The number of units included in all development applications;
  - c) The number of units approved and disapproved;
  - d) For each income category, the number of net new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, a building permit, or a certificate of occupancy;
  - e) A unique site identifier (such as assessor's parcel number) for each entitlement, building permit, or certificate of occupancy;
  - f) The number of applications submitted under the Affordable Housing and High Road Jobs Act of 2022; and
  - g) The overall progress in meeting its share of RHNA.
- 8) **Arguments in Support.** According to the Inner City Law Center, the bill's cosponsor, "Since the enactment of AB 686 (Chapter 958, Statutes of 2018) and AB 1304 (Chapter 357, Statutes of 2021), local governments across the state have developed a myriad of new housing programs, however, analysis of the proposed programs suggests that most of them will likely have minimal impact. Proposed programs often had long or unclear timelines, vague objectives, and in many cases represent minimal commitments of staff time or resources. Many proposed AFFH programs do not focus on the land use and zoning policy changes that would make progress towards the spirit of fair housing law, despite local governments' wielding greater control in these areas. Most cities continue to identify potential sites for low-income housing in their less affluent neighborhoods, near existing multifamily zones, thus exacerbating the status quo of segregation rather than facilitating integration. The way in which local governments present their AFFH programs in housing

plans is also inconsistent and incomplete, making evaluation of potential impact challenging.”

9) **Arguments in Opposition:** None on file.

10) **Previous Legislation:**

- a) AB 1304 (Santiago), Chapter 357, Statutes of 2021: Reaffirmed that the state, local jurisdictions, and public agencies involved in housing-related matters have a mandatory duty to take meaningful affirmative steps to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. The bill also provided additional details regarding what these entities must take into account when carrying out that duty to AFFH.
- b) AB 686 (Santiago), Chapter 958, Statutes of 2018: Required state departments and agencies, cities, counties, public housing authorities, and other public entities to AFFH in all of their housing and community development-related activities. In addition, the bill required cities and counties to undertake an AFFH analysis and meet other related requirements as part of the development of their housing elements.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Abundant Housing LA [Sponsor]  
Inner City Law Center [Sponsor]  
California Association of Realtors  
California Yimby  
East Bay Yimby  
Grow the Richmond  
Housing Action Coalition  
Mountain View Yimby  
Napa-Solano for Everyone  
Northern Neighbors  
Peninsula for Everyone  
Progress Noe Valley  
San Francisco Yimby  
San Luis Obispo Yimby  
Santa Cruz Yimby  
Santa Rosa Yimby  
South Bay Yimby  
Southside Forward  
Streets for People  
Urban Environmentalists  
Ventura County Yimby  
Yimby Action

**Opposition**

None on file.

**Analysis Prepared by:** Linda Rios / L. GOV. / (916) 319-3958