

Date of Hearing: June 28, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 540 (Roth) – As Amended May 10, 2017

SENATE VOTE: 33-7

SUBJECT: Workforce Housing Opportunity Zone.

SUMMARY: Authorizes a city or county to establish a Workforce Housing Opportunity Zone by preparing an environmental impact report to identify and mitigate impacts from establishing a zone, and adopting a specific plan, and provides for expedited approvals of housing development projects within that zone. Specifically, **this bill:**

- 1) Defines the following terms for establishing a Workforce Housing Opportunity Zone (zone):
 - a) “Housing development” or “development” to mean new or substantially rehabilitated residential dwelling units constructed within a Workforce Housing Opportunity Zone. Allows a residential project to include commercial development limited to the first floor of the structure and occupying not more than 50% of the square foot area of the structure in which it is located. Requires development within a zone to be consistent with the general use designation, density, building intensity, and applicable policies specified for the area in either a sustainable communities strategy (SCS) or an alternative planning strategy (APS), for which the State Air Resources Board, pursuant to existing law, has accepted a metropolitan planning organization’s determination that the SCS or the APS would, if implemented, achieve the greenhouse gas emission reduction targets.
 - b) “Local government” to mean a city, county, or city and county, whether chartered or general.
 - c) “Workforce Housing Opportunity Zone” or “zone” to mean an area of contiguous or noncontiguous parcels identified on a city or county’s inventory of land suitable for residential development, as specified.
- 2) Allows a local government to establish a Workforce Housing Opportunity Zone (zone) by preparing an environment impact report (EIR) pursuant to the California Environmental Quality Act (CEQA) to identify and mitigate, to the extent feasible, environmental impacts resulting from the establishment of that zone, and by adopting a specific plan that shall include text and a diagram or diagrams that specify all of the following in detail:
 - a) The distribution and location of a minimum of 100 units to a maximum of 1,500 residential dwelling units. Prohibits a local government from including more than 50% of the number of units in its regional housing needs allocation in a zone. Provides, if a local government whose regional housing needs allocation is less than 100 units chooses to establish a zone, then it shall include its entire allocation in the zone;
 - b) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste, disposal, energy, and other essential facilities needed to support the construction of the residential dwelling

- units. Allows essential facilities to include improvement needed to K-12 schools that serve areas within the zone;
- c) The following mitigation measures that will apply to all development constructed within the zone in addition to any and all mitigation measures identified in the EIR prepared for the specific plan:
 - i) Traffic mitigation measures;
 - ii) Water quality and other public utility mitigation measures, including sewage, drainage, solid waste disposal, and energy; and,
 - iii) Natural resource protection mitigation measures;
 - d) Density ranges for multifamily housing for which the minimum densities shall not be less than those deemed appropriate to accommodate housing for lower-income households as set forth in existing law, and a density range for single-family attached or detached housing for which minimum densities shall not be less than 10 units to the acre. Requires a density range to provide the minimum dwelling units per acre and the maximum dwelling units per acres;
 - e) Uniformly applied development policies or standards that will apply to all development constructed within the zone, including, for example, parking ordinances, public access requirements, grading ordinances, hillside development ordinances, flood plain ordinances, habitat protection or conservation ordinances, view protection ordinances, and requirements for reducing greenhouse gas emissions;
 - f) The manner in which funding will be provided for the infrastructure and services necessary for the development within the zone, which may include an Enhanced Infrastructure Financing District (EIFD) or a Community Revitalization and Investment Authority (CRIA); and,
 - g) Design review standards.
- 3) Requires, before the formal environmental evaluation of the specific plan, the planning commission and the legislative body of the local government to each hold a public hearing to hear oral, and receive written, comments about a draft of the specific plan. Requires a minimum of 30 days between the public hearings. Allows the planning commission to recommend modifications of the draft to the legislative body. Requires, at the conclusion of the public hearing, the legislative body of the local government to direct that formal environmental evaluation of the specific plan proceed in accordance with the modified draft.
 - 4) Requires, if the local government has a planning commission authorized by local ordinance or resolution to review and recommend action on a proposed general plan, the commission to hold at least one public hearing before approving a recommendation on the adoption of a specific plan, as specified. Requires the local government to provide notice of the hearing, as specified.

- 5) Requires the legislative body of the local government to hold at least two public hearings to consider the planning commission's recommendation and any and all public testimony. Requires there to be a minimum of 30 days between the public hearings to allow sufficient time to modify the plan in response to the public testimony as directed by the legislative body. Requires the local government to provide notice of the hearing as specified.
- 6) Requires the local government to provide notice of the public hearings required by 3), and 4), above, as specified, including notice to owners of real property within the zone and each owner of real property within 300 feet of the real property within that zone.
- 7) Requires the legislative body of the local government, after adopting the plan, to impose a specific plan fee upon persons seeking government approvals within a zone. Specifies that the fees shall be established to defray the cost of preparation, adoption, and administration of the plan, including costs incurred pursuant to CEQA. Requires, as nearly as can be estimated, the fee charged to be a prorated amount in accordance with the applicant's relative benefit derived from the plan. Requires the local government to use the fees to offset its costs and to reimburse funds borrowed from the Department of Housing and Community Development (HCD), pursuant to 17), below.
- 8) Requires, before a date that is no later than five years from the date the local government has adopted the specified plan, the local government to complete the analysis required by Section 21166 of the Public Resources Code and to consider whether any amendments are required to the specific plan for the zone. Requires the local government to amend the specific plan to take into account new information about a physical condition on a parcel within the zone that affects the development capacity of the parcel pursuant to the specific plan.
- 9) Requires the local government to hold a public hearing noticed in accordance with specified requirements to consider amendments and re-adoption of the specific plan. Provides that the amendment or re-adoption of the specific plan to begin a new five-year period, as specified.
- 10) Requires, except as provided in 11), below, a local government to approve a development that satisfies all of the criteria listed in 2c) to 2g), above, inclusive, in effect at the time the application for the development is deemed complete, for a period of five years from the adoption of the specific plan pursuant to 2), above.
- 11) Specifies that if the local government finds, based upon substantial evidence in the record of the public hearing on the project, that a physical condition of the site of the development that was not known at the time the specific plan was prepared would have a specific, adverse impact upon the public health or safety, then the local government shall either:
 - a) Approve the project subject to a condition that satisfactorily mitigates or avoids the impact; or,
 - b) Deny the project if the cost of complying with the conditions renders the project unaffordable for the intended residents of low, moderate, or middle income and approval would cause more than 50% of the total units in the zone to be sold or rented to persons and families of above-moderate income in violation of 13c), below.

- 12) Defines “specific, adverse impact” to mean a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- 13) Specifies that after the adoption of the zone, a lead agency is not required to prepare an EIR or negative environmental declaration for a housing development that satisfies all of the following criteria:
 - a) The development is located on land within a zone;
 - b) The development is consistent with the plan adopted pursuant to 2), above, including the established density ranges. Provides that if a development is not consistent with the elements and standards in the plan, then the provisions of this section shall not apply and the city or county shall consider the application as it would an application for development that is not within the zone, including the preparation of an EIR or negative declaration for the housing development;
 - c) At least 30 % of the total units constructed or substantially rehabilitated in the zone will be sold or rented to persons and families of moderate income, or persons and families of middle income; at least 15% of the total units constructed or substantially rehabilitated in the zone will be sold or rented to lower income households; and at least 5% of the total units constructed or substantially rehabilitated in the zone will be restricted for a term of 55 years for very low income households. Provides that no more than 50% of the total units constructed or substantially rehabilitated in the zone shall be sold or rented to persons and families of above moderate income. Requires the developer to provide sufficient legal commitments to ensure continued availability of units for very low, low-, moderate-, or middle-income households in accordance with the provisions of this subdivision for 55 years for rental and 45 years for owner-occupied units;
 - d) The development has incorporated each of the mitigation measures adopted pursuant to 2c) to 2g), and deemed applicable by the city, county, or city and county;
 - e) The development has incorporated each of the uniformly applied development standards adopted pursuant to 2e), and deemed applicable by the city, county or city and county;
 - f) The development complies with the design review standards adopted pursuant to 2g), and deemed applicable by the city, county, or city and county;
 - g) The development has incorporated each of the mitigation measures adopted as part of the EIR for the specific plan and deemed applicable by the city, county, or city and county; and,
 - h) A development that is affordable to persons and families whose income exceeds the income limit for persons and families of moderate income shall include no less than 10% of the units for lower income households at affordable housing cost, as defined, unless the locality has adopted a local ordinance that requires greater than 10% of the units, in which case the ordinance applies.
- 14) Requires notice that a local government has received an application for a housing development within a zone to be posted on the local government’s Web site and mailed or

delivered within 10 days of receiving the application to any person who has filed a written request for notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests.

- 15) Requires a local government to approve a housing development proposed within the zone that is consistent with the plan and satisfied each of the criteria in 13), above, within 60 days of the date the application is deemed complete pursuant to the Permit Streamlining Act.
- 16) Specifies that the approval of a development that does not include a majority of the units that will be sold or rented to persons and families of lower income, as defined, shall expire three years from the date of the approval, if construction has not begun on the housing units in the development. Allows a local government to grant one extension for an additional three-year period upon a determination that good cause exists for the delay in commencing construction. Prohibits a local government from considering the same or substantially similar project on the same parcel of property if the development expires, as specified.
- 17) Allows a local government to submit an application to HCD for a no-interest loan to support the local government's efforts to develop a specific plan and accompanying EIR within a zone established pursuant to the bill's provisions. Requires, upon appropriation by the Legislature, moneys to be disbursed from the Controller to HCD for the purpose of issuing loans.
- 18) Requires a local government to explain as part of its application, to the satisfaction of HCD, the source of funding that will be used to repay the loan. Allows a local government to include as one source of funding a fee imposed upon a developer within the zone as provided in 7), above.
- 19) Requires a local government to include within its annual progress report the number of housing units approved within a zone that comply with the criteria in 13), above during the previous fiscal year.
- 20) Makes a number of findings and declarations about increasing the supply of affordable housing and creating incentives for local agencies.
- 21) Finds and declares that ensuring access to affordable housing is a matter of statewide concern, and not a municipal affair.

EXISTING LAW:

- 1) Requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element.
- 2) Requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an EIR on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. Requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill contains:

- 1) Unknown, significant costs for the HCD to establish and administer a new loan program. Actual costs would depend upon program demand and availability of funding, but would be at least in the mid-hundreds of thousands annually for a small program. (General Fund)
- 2) Unknown costs, potentially over \$10 million, to capitalize a new loan program that provides funding for city and county EIRs and specific plans. (General Fund)

COMMENTS:

- 1) **Bill Summary.** This bill permits a locality to establish a zone by preparing an EIR pursuant to CEQA and adopting a specific plan that is required to include specified information. For the next five years, absent unforeseen environmental conditions, a locality may not deny a development that meets the mitigation requirements under this bill, and is located within the zone. In effect, this bill eliminates project-specific environmental review, which could allow for housing developments within the zone to proceed in an expedited manner. This bill permits local jurisdictions to apply for a no-interest loan from HCD to support efforts to develop the specific plan and EIR within a zone. The application to HCD must state the repayment source. This bill is sponsored by the League of California Cities.
- 2) **Author's Statement.** According to the author, "As the state and local governments have fought to recover from the Great Recession, we are now to some extent victims of our own success; with growing economic stability, California's already tight housing market has become increasingly competitive. There are a number of factors that have contributed to the housing shortage. Local governments have been unable to ensure there is enough new affordable housing stock. Furthermore, the CEQA process has reportedly been used to slow or stop housing projects even after they have been subject to lengthy public discussion and scrutiny."

"This bill streamlines the approval process to spur housing construction by having cities identify where housing needs to be built and adopting a specific, up-front plan; and, conducting all important and necessary environmental reviews and public engagement. Under this proposal, because the local government has fully conducted the necessary environmental reviews, no project-specific additional environmental reviews would be needed, allowing for housing developments within these planned areas to proceed in an expedited manner. A project must be approved or rejected within 60 days of a submitted application."
- 3) **Arguments in Support.** Supporters argue that the bill's approach to appropriately simplify the permit approval process, require up-front planning and environmental review, and clearly identify all project specific mitigation measures will assist both local government and the development community in promoting much needed housing construction.
- 4) **Arguments in Opposition.** Sierra Club California is concerned about the potential for SB 540 to be used to encourage sprawl, and believes that development should be focused on dense urban areas that are transit-oriented, which already receive streamlining and some exemptions under SB 375.

5) **Double-referral.** This bill is double-referred to the Natural Resources Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

League of California Cities [SPONSOR]

California Apartment Association

California Association of Realtors

Cities of: Adelanto, Alameda, Chino Hills, Cloverdale, Dublin, Duarte, Eureka, Fremont,
Goleta, Hesperia, Hillsborough, Indio, Indian Wells, Lake Elsinore, Lakeport, Livermore,
Lodi, Montclair, Palmdale, Pismo Beach, Rancho Cucamonga, San Leandro, Thousand
Oaks, Vallejo, and Walnut Creek

Greater Coachella Valley Chamber of Commerce

Marin County Council of Mayors and Councilmembers

Mayors' & Councilmembers' Association of Sonoma County

Los Angeles County Division, League of California Cities

Riverside County Division, League of California Cities

Opposition

Sierra Club California (unless amended)

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958