

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1304 (Santiago) – As Amended April 5, 2021

SUBJECT: Affirmatively further fair housing: housing element: inventory of land.

SUMMARY: Expands the ways in which local agencies must affirmatively further fair housing in their housing elements. Specifically, **this bill:**

- 1) Requires local agencies to affirmatively further fair housing in their housing element’s statement of the community’s goals, quantified objectives, and policies.
- 2) Requires local agencies to include, in their housing element’s site inventory of land suitable and available for residential development, the following:
 - a) An analysis of the relationship of the sites identified in the sites inventory to the jurisdiction’s duty to affirmatively further fair housing; and,
 - b) A determination of whether the sites inventory affirmatively furthers fair housing.
- 3) Requires local agencies, in their housing element’s program of actions during the planning period, to include:
 - a) That their actions taken to make sites available during the planning period will affirmatively further fair housing;
 - b) That their analysis of available federal, state, and local data and knowledge to identify racial integration and segregation patterns and trends does the following:
 - i) Examines racial integration and segregation patterns;
 - ii) Examines trends both within the jurisdiction and regionally; and,
 - c) That their assessment of the contributing factors to fair housing issues includes local and regional historical origins and current policies and practices.
- 4) Provides that no reimbursement is required by this bill, pursuant to Section 6 of Article XIII B of the California Constitution, because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.

EXISTING LAW:

- 1) Defines “affirmatively furthering fair housing” to mean taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and

balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development.

- 2) Requires that public agencies, as specified, must administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.
- 3) Declares it unlawful, pursuant to the California Fair Employment and Housing Act (FEHA), for any housing accommodation owner to inquire about, make known any preference or limitation, discriminate, or harass a person based on the person's race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.
- 4) Establishes Housing Element law which requires cities and counties to prepare a housing element that contains at least the following:
 - a) An assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs;
 - b) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing;
 - c) A program that sets forth a schedule of actions during the planning period that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element. This program must:
 - i) Identify actions that will be taken during the planning period to ensure that adequate sites are zoned to meet the city or county's share of the regional housing need for each income level, and ensure that these sites encourage the development of a variety of types of housing for all income levels;
 - ii) Promote housing throughout the community for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, as specified; and
 - iii) Affirmatively further fair housing, and include an assessment of fair housing in the jurisdiction that must include all of the following components:
 - (1) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity;
 - (2) 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, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk;
 - (3) An assessment of the contributing factors for the fair housing issues;

- (4) An identification of the jurisdiction’s fair housing priorities and goals, giving highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved; and
- (5) Strategies and actions to implement those priorities and goals.

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

COMMENTS:

- 1) **Author’s Statement.** According to the author, “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 their housing plans and projects with the intent to affirmatively further fair housing. This means local jurisdictions must address how they combat discrimination and segregation in their communities and foster integration within their housing plans. Now, local governments are in the process of implementing these requirements. However, recent incidents have revealed jurisdictions across the state are either in non-compliance or superficial compliance with the original law. AB 1304 will ensure local governments have no excuses—they must affirmatively further fair housing in their jurisdictions.”
- 2) **Background.** The principles of Affirmatively Furthering Fair Housing (AFFH) manifests in meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency’s activities and programs relating to housing and community development.
- 3) **Unfair Housing.** Prior to the 1968 enactment of the federal Fair Housing Act (FHA), governments disproportionately invested in the schools, parks, and other public amenities in white neighborhoods, while communities of color were left marginalized. Not coincidentally, the property values of homes in white communities grew far more quickly than those in other neighborhoods, meaning that white homeowners built greater equity than their counterparts. The built-in economic advantage these white homeowners received, coupled with the ongoing access to better schools and other public amenities, led to entrenched cycles of wealth and opportunity for white households. The inverse effect drove cycles of poverty in many communities of color.

Upon enactment of the FHA, housing discrimination was no longer legal. However, the effect of decades of financial, social, and geographic disparities persist independent of the law. According to multiple academic studies, housing disparities are as bad or worse as they were 50 years ago, as well as their concomitant negative outcomes. For example, according to a 2020 study from the Federal Reserve, White households have a median wealth of \$188,200, whereas for Black households that figure is \$24,100, and for Latino households it is \$36,100.

- 4) **Affirmatively Furthering Fair Housing at the Federal Level.** Recognizing the entrenched nature of the problem, the drafters of the FHA did not just outlaw housing discrimination, but also recognized that “where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.” To rectify existing disparities, the FHA obligated federal government agencies involved in housing and urban development to administer their programs and activities “in a manner that affirmatively furthers fair housing.”

Specifically, the FHA requires that “All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of” the Fair Housing Act. The US Department of Housing and Urban Development (HUD) is empowered to administer this provision. According to HUD, “The Fair Housing Act not only prohibits discrimination but, in conjunction with other statutes, directs HUD’s program participants to take significant actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from discrimination.”

In 2015, the Obama Administration promulgated the Affirmatively Furthering Fair Housing Rule. According to HUD, the purpose of the AFFH rule is to “set out a framework for local governments, States and Insular Areas, and public housing agencies to take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.” The AFFH rule required HUD grantees to examine barriers to fair housing choices and access to opportunity within their jurisdictions, and submit this examination to HUD for review and acceptance. Completion of this process became a prerequisite to receiving funding for housing development from HUD.

In 2018, the Trump Administration suspended the AFFH rule, and rescinded it in 2020, citing that the rule was unworkable, and that it would facilitate the construction of housing for low-income households in suburban communities. As of the writing of this analysis, the Biden Administration has taken preliminary steps to reinstate the AFFH rule.

- 5) **Affirmatively Furthering Fair Housing at the State Level.** Anticipating the suspension and rescindment of federal AFFH rules, California enacted a statewide version (AB 686, Santiago, Chapter 958, Statutes of 2018). AB 686 required public agencies to “administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.” It also required cities and counties to consider AFFH in their housing element’s implementation plan. By placing AFFH provisions into housing element law, the California law expanded its reach to all cities and counties, rather than just those that receive federal funding for housing developments.

Currently, many local governments are in the process of implementing the new AFFH analysis requirements in their 6th cycle housing elements. In reviewing new housing elements, both advocates and HCD have noticed deficiencies that could be addressed through more explicit statutory language. For example, some local governments have neglected to perform a historical analysis that quantifies the damage done by decades of land use discrimination and exclusion. In addition, some local governments have not examined

regional context in their analysis and others have not looked at race in examining patterns of segregation. The result could be a failure to identify appropriate strategies to address fair housing issues within the jurisdiction.

- 6) **Enforcement of AFFH.** In a recent trial court case, Comunidades Unidas Por Un Cambio, a community organization sued Fresno County for failing to complete its housing element rezoning obligations, claiming that the County's failure to act was a violation of its AFFH duty. In that case, the judge did not entertain the AFFH claim based on an interpretation that AFFH statute does not provide a private right of action to enforce the AFFH duty. This interpretation runs counter to the intent of the author and sponsor of AB 686, who believe that the law provides for a private right of action. This bill would clarify current law to ensure that there is no future confusion that the general AFFH duty is mandatory and enforceable in the courts.
- 7) **Bill Summary.** This bill would clarify AFFH analysis obligations in housing elements by ensuring that affirmatively furthering fair housing is considered in the housing element's assessment of housing needs, resources and constraints, as well as its statement of goals, objectives, and policies. In addition the AFFH analysis must include racial, geographic, and historic dimensions. These changes are intended to encourage a deeper analysis of AFFH issues and promote an implementation strategy that is more reflective of the state's policy goal.

This bill is sponsored by the California Rural Legal Assistance Foundation, National Housing Law Project, Public Advocates, Public Interest Law Project, and the Western Center on Law and Poverty.

- 8) **Arguments in Support.** The California Rural Legal Assistance Foundation writes in support, "AFFH policy is designed to address these ongoing housing challenges that limit choice and opportunity for low-income families and members of protected classes. However, since the enactment of AB 686, it has become clear that there is a need for more explicit language related to AFFH requirements in Housing Element Law to ensure that the requirements are meaningfully implemented.

"AB 1304 clarifies these requirements in a number of ways, including explicitly requiring that a jurisdiction's inventory of housing sites be consistent with the AFFH obligation, requiring jurisdictions to look at fair housing issues through both a local and regional lens, requiring jurisdictions to take into account historical context when assessing contributing factors for fair housing issues, and requiring jurisdictions to state explicit goals, objectives, and policies related to AFFH. These changes will help ensure that all local governments are thoroughly examining fair housing issues and committing to concrete actions to remedy them."

- 9) **Arguments in Opposition.** None on file.
- 10) **Double-Referral.** This bill was double-referred to the Housing and Community Development Committee, where it passed on a 6-0 vote on April 15, 2021.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation (Co-Sponsor)
National Housing Law Project (Co-Sponsor)
Public Advocates (Co-Sponsor)
The Public Interest Law Project (Co-Sponsor)
Western Center on Law & Poverty (Co-Sponsor)
Bay Area Regional Health Inequities Initiative
California Housing Consortium
California Housing Partnership Corporation
Housing California
Inner City Law Center
San Diego Housing Federation

Support if Amended

Abundant Housing LA

Opposition

None on file.

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