



January 8, 2020

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500

Facsimile
916.441.5507

To: Housing, Land Use, and Transportation Policy Committee
County Planning Directors
County Legislative Coordinators

From: Chris Lee, Legislative Representative
Marina Espinoza, Legislative Analyst

Re: Amendments to SB 50 (Wiener): Housing “Upzoning” Bill – CSAC Analysis

The Legislature reconvened from interim recess on Monday, January 6, and the deadline for two-year bills to move out of the house in which they were introduced is January 31. CSAC currently holds an [Oppose Unless Amended](#) position on SB 50 (Wiener), which is a two-year housing “upzoning” bill that was amended on the evening of Monday, January 6. SB 50 is currently in the Senate Appropriations Committee and must move out of the Senate by the end of the month in order for it to continue to move through the legislative process during the current legislative session.

Below is a summary of the bill in [tracked changes](#), illustrating differences between the bill as amended on January 6 and the prior version, as amended on June 4. This memo also includes an overview of CSAC’s key requested amendments and CSAC staff’s comments on whether the recent amendments address previously stated concerns.

SB 50 (Wiener) – Summary of Key Provisions with [January 6 Amendments](#)

Housing Streamlining Provisions

- Authorizes streamlined approval of a “neighborhood multifamily project” (fourplexes) located on an “eligible parcel,” as defined in the bill.
- Limits the authority of a local agency to impose parking standards or requirements on a streamlined development.
- Allows local agencies to exempt a project from streamlined approval if the project will cause a specific adverse impact to public health and safety and there is no way to satisfactorily mitigate that impact.

Equitable Communities Incentive Provisions

- Requires jurisdictions to grant developers, upon request, an equitable communities incentive, [by January 1, 2023](#), when a developer constructs a “job-rich” or “transit-rich” housing project.
- Requires that a residential development within a county with a population greater than 600,000 that is eligible for an equitable communities incentive receive, upon request, waivers from maximum controls on density and minimum parking requirements greater than 0.5 parking spots per unit.

- Requires that a residential development also receive additional waivers if the residential development is located within a 1/2-mile or 1/4-mile radius of a major transit stop. For a residential development within a county with a population of 600,000 or less, the bill would instead require that the incentive provide waivers from:
 - Maximum controls on density, subject to certain limitations
 - Maximum height limitations less than or equal to one story, or 15 feet, above the highest allowable height for mixed use or residential use
 - Certain requirements governing the size of the parcel and the area that the building may occupy
 - Minimum parking requirements
- *Requires that residents living within one-half mile of the development be given priority for at least 40 percent of any units required to be reserved for low-, very low-, or extremely low-income households.*
- Delays implementation of these provisions in “potentially sensitive communities” until ~~July 2020~~ *July 2023* and further delays implementation of these provisions in “sensitive communities” until January 2026. Allows local governments of these communities to develop alternative local plans that meet specified criteria.
- *Allows local governments to modify or expand the terms of an equitable communities incentive provided pursuant to the bill, provided that the equitable communities incentive is consistent with, and meets the minimum standards specified in, the bill.*

Local Flexibility Provisions

- *Exempts a local government from the equitable communities incentive provisions of the bill if it has a local flexibility plan that has been reviewed and certified by the Department of Housing and Community Development (HCD).*
- *By July 2021, requires the Governor’s Office of Planning and Research, in consultation with HCD, to develop and publish rules, regulations, or guidelines online for the submission and approval of a local flexibility plan, which must:*
 - *Affirmatively further fair housing to an extent as great or greater than if the local government were to grant equitable communities incentives*
 - *Achieve a standard of transportation efficiency to an extent as great or greater than if the local government were to grant equitable communities incentives*
 - *Increase overall feasible housing capacity for households of lower, moderate, and above moderate incomes, considering economic factors such as cost of likely construction types, affordable housing requirements, and the impact of local development fees*
- *Authorizes a local government to submit a local flexibility plan for review and approval by HCD pursuant to those rules, regulations, or guidelines.*

Key Requested Amendments to SB 50 (Wiener)

- **Statutory definition of “jobs-rich” areas.** The bill should define these areas rather than providing discretion to the Department of Housing Community Development and

the Office of Planning and Research. Definitions should not include unincorporated areas where intensified residential uses are inappropriate, including agriculturally zoned areas that allow limited residential uses.

CSAC Staff Comments: The amendments do not include a statutory definition for “jobs-rich” areas and continue to provide HCD and OPR with discretion to define these areas. In draft maps that the author’s office provided to CSAC last year ([available online here](#)), many low-density unincorporated areas on the periphery of cities, including agricultural areas with limited residential uses, were deemed “jobs-rich.”

- **Baseline definition of “sensitive communities” and consistency with local environmental justice planning.** A consistent baseline definition of sensitive communities should be developed, which should be expanded to include environmental justice communities identified in a county general plan.

CSAC Staff Comments: The amendments do not provide a baseline definition for “sensitive communities” (a baseline definition for the nine-county Bay Area region was included in the prior version of the bill). Additional amendments are needed to better clarify the relationship between its sensitive communities provisions and environmental justice elements and related local plans and policies adopted pursuant to SB 1000 (Leyva, 2016).

- **Funding needed to support locally-driven plans in sensitive communities.** Many counties, especially urban counties, have significant numbers of potentially “sensitive” communities. It is unlikely that counties will be able to take advantage of SB 50’s provisions granting an alternative community-driven planning process within the bill’s timeframes without fiscal support from the state.

CSAC Staff Comments: The amendments do not provide funding for local governments to work on community plans for sensitive communities or local flexibility plans.

- **Flexibility to achieve desired outcomes.** The alternative process for sensitive communities should not be overly prescriptive and should instead provide a flexible framework based on increasing residential development capacity and the availability of affordable housing near transit.

- *CSAC Staff Comments: The amendments add local flexibility provisions to the bill, which would exempt jurisdictions from SB 50’s equitable communities and jobs-rich incentive provisions if the jurisdiction has a local flexibility plan that has been reviewed and certified by HCD. The amendments offer a two-year delayed implementation for all communities and a five-year delayed implementation for sensitive communities. Additional amendments should consider both the timing for plan development and availability of resources to complete local flexibility plans. Moreover, the pathway to an approved local flexibility plan must be explicitly defined in statute rather than deferred to regulatory processes.*

- **Interaction with Density Bonus.** Any waivers and concessions of development standards and density bonuses available pursuant to the bill should not undermine local density bonus ordinances and should be designed to maximize the production of affordable housing.

CSAC Staff Comments: The amendments create a framework by which communities can be exempt from the equitable communities incentive provisions of the bill if they

have local flexibility plans certified by HCD. The amendments also add a “local preference” requirement for existing nearby residents for 40% of any affordable units required to be made available within a housing project pursuant to SB 50.

While SB 50’s equitable communities incentive provisions defer to any locally-adopted inclusionary housing requirements, in some circumstances, the proportion of affordable units required pursuant to SB 50’s permitted increases in density over existing zoning could be lower than what would be required under existing density bonus law.

- **Housing Element Adequate Sites.** Local governments should be able to consider the capacity of development offered by an SB 50 “equitable communities incentive” when creating their inventory of sites adequate to accommodate the jurisdiction’s share of the regional housing need.

CSAC Staff Comments: Through the local flexibility provisions of the bill, local governments have some flexibility to develop a new plan or use an existing plan that sets a density bonus program that fits the community need and allows the jurisdiction to be exempt from the default equitable communities incentive program included in SB 50. The bill should be amended to align more closely with upcoming updates to local housing elements—both in terms of timing for implementation and total housing planning capacity required within each jurisdiction. Finally, the bill should be amended to help local agencies achieve housing element compliance by offering a streamlined pathway to meeting adequate sites inventory requirements.

- **Definitions.** Further revisions to define major transit stop are required. Specifically, SB 50 should include a service standard for rail transit service.

CSAC Staff Comments: Recent amendments to the bill do not change the definition of “major transit stop,” which is defined as “a rail transit station or a ferry terminal that is a major transit stop pursuant to subdivision (b) of Section 21155 of the Public Resources Code,” whether or not frequent services is provided. As noted above, the definition of jobs-rich communities should be codified rather than developed through regulation and should not apply to low-density unincorporated areas that may be inappropriate for intensified residential uses, including agriculture and open space zones.

- **Consistency with Other Legislation.** To the greatest extent possible, we encourage the Legislature to be consistent with recently passed legislation and to avoid creating multiple types of remedies that apply in various scenarios.

CSAC Staff Comments: The Legislature should consider interactions with other recently passed legislation, especially legislation updating and adding additional housing element requirements, changing density bonus law, and imposing new standards for accessory dwelling units.