

2019-2020

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January 14, 2020

The Honorable Anthony Portantino  
Chair, Senate Committee on Appropriations  
State Capitol Building, Room 2206  
Sacramento, CA 95814

**RE: SB 50 (Wiener) Planning and Zoning. Housing Development Incentives  
Oppose Unless Amended (as amended 01/06/2020)**

Dear Senator Portantino:

The League of California Cities must continue to oppose SB 50 unless the measure is further amended to address our key concerns. The amendments taken on January 6, 2020 do not take into account our primary objections to SB 50. However, the League of California Cities is pleased to see that recent amendments attempt to create an alternative planning process for jurisdictions to develop a “local flexibility plan” that, if approved by the California Department of Housing and Community Development (HCD), would exempt cities from nearly all aspects of SB 50 with the exception of requiring fourplexes in single-family zones. Unfortunately we can’t evaluate whether the “local flexibility plan” is a viable alternative because the amendments do not clearly identify the elements of the plan.

**Specific Concerns with the January 6, 2020 Amendments**

It appears that the intent of the amendments are to provide local governments with an opportunity to develop their own plan to meet the goals and objectives of SB 50. Although the goal of increased density around transit is clear; the goal of the bill regarding a jobs-rich housing project is not. The amendments, as drafted, raise the following concerns:

- **Without clearly identified criteria, we are unable to evaluate** whether the “local flexibility plan” is actually viable alternative planning option.
- **Office of Planning and Research (OPR) and HCD are tasked with developing “rules, regulations, or guidelines”** for the submission and approval of a “local flexibility plan” without sufficient direction from the Legislature. This rulemaking process is exempt from the Administrative Procedures Act, thus allowing OPR and HCD to craft rules, regulations, or guidelines with little to no public input or oversight.
- **Further legislative direction is required, the elements of the plan are not clear:**
  - “Achieve a standard of transportation efficiency as great or greater than if the local government were to grant equitable communities incentives.” SB 50 does not contain any language regarding “transportation efficiency.” Therefore, it is not possible to determine how HCD, OPR or a local government will determine how to meet this standard or how a “local flexibility plan” is expected to comply with this standard.

- “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.” The override provisions of SB 50 do not contain any language regarding “feasible housing capacity for households of lower, moderate, and above moderate incomes,” nor does it address “economic factors such as cost of likely construction types, affordable housing requirements, and the impact of local development fees.” Therefore, it is not possible to determine how HCD, OPR or a local government will determine how to meet this standard or how a “local flexibility plan” is expected to comply with this standard.
- SB 50’s “community plan” for sensitive communities provides a much clearer alternative and should be considered as a possible alternative planning process for all jurisdictions.

#### **Remaining Objections to SB 50**

If a city elects not to develop a “local flexibility plan” or if HCD does not approve a submitted “local flexibility plan” by January 1, 2023, a city is required to give a developer an “equitable communities incentive”, which overrides locally developed and adopted height limitations, housing densities, and parking requirements. Many statewide standards, enacted by the Legislature, are included in the State’s Planning law. Standards should be established by the Legislature, not by individual developers.

Developers of certain housing projects should not be allowed to override locally developed (and HCD-approved) housing elements which identify adequate sites with sufficient density to accommodate a city’s share of the regional housing need. Specifically, the League has significant concerns with the following:

- **Wasting time and money.** SB 50 would greatly undermine locally adopted General Plans, Housing Elements (which are certified by the HCD, and Sustainable Community Strategies (SCS). By allowing developers to override state approved housing plans, SB 50 seriously calls to question the need for cities to develop these community based plans and the justification for spending millions of state and local funds on the planning process. HCD spends a significant amount of money and staff time to review and certify housing elements for 482 cities. In 2019 alone, HCD allocated nearly \$130 million to local governments to update their housing plans and approval processes. The 2019/2020 State Budget allocated an additional \$250 million on local plans. Why would the Legislature pass a bill that encourages developers to defy these plans and essentially waste millions of taxpayer dollars?
- **Gives housing developers and transit agencies, who are unaccountable to local voters, the power to determine** housing densities, heights up to 55 feet, parking requirements, and design review standards for “transit-rich housing projects” within one-half mile of a major transit stop. For those “transit-rich housing projects” within one-quarter mile radius of a stop on a high-quality bus corridor, developers would be able to determine housing density, and parking requirements above .5 spots per unit.

- **What is the full scope of SB 50?** As presently drafted, it is very difficult to determine what constitutes a “jobs-rich area” since the HCD and OPR are largely tasked with making that determination. It is hard to understand why the Legislature would want the Executive Branch to define essential terms that have broad implications for how SB 50 would be implemented. Additionally, by not defining “jobs-rich area” in statute, there is no way of knowing if SB 50 will actually accomplish its stated goal.
- **Greater density but no public transit?** SB 50 would require cities to allow greater density in communities that are high opportunity and jobs rich, but may lack access to public transit. This seems at odds with many state policies that encourage and incentivize more dense housing near transit so that individuals may become less dependent on automobiles. It’s only been a few years since the Legislature determined that the impact on the transportation environment from a housing project should be measured in vehicle miles traveled.
- **Two-tiered process that exempts** cities with a population of less than 50,000 that are in a county with a population of less than 600,000, from the most extreme provisions of the measure. It is unclear why these cities should be treated differently than a similar size city in a county with a population over 600,000. Instead of arbitrarily establishing a population metric, it would be much more appropriate to consider the full range of community characteristics when determining which areas of the state SB 50 should apply.

For these reasons, the League of California Cities must continue to oppose SB 50 unless it is further amended to address the above concerns. We continue to be committed to finding solutions to the housing supply and affordability crisis gripping many regions of the state and look forward to working with you and all other stakeholders in the coming Legislative Session. If you have any questions, please feel free to contact me at (916) 658-8264.

Sincerely,



Jason Rhine  
Assistant Legislative Director

cc. Senator Scott Wiener  
Members, Senate Committee on Appropriations  
Mark McKenzie, Chief Consultant, Senate Committee on Appropriations  
Ryan Eisberg, Consultant, Senate Republican Caucus