

January 21, 2020

Senate Bill 50 (Wiener) Update

Subject: Status Update on SB 50 (Wiener)

Overview: **SB 50 Status Update and Amendment Summary**

Senate Bill 50 (Wiener)—which would provide a new “equitable communities incentive” (EQI) that would mandate upzoning near certain job-rich and high-quality transit areas—was amended on January 6, 2020 to include new flexibility to allow a city or a county to use a locally-developed plan as an alternative to SB 50’s default upzoning. This memo provides an update on the bill’s schedule and an overview of the amendments.

Timing Update

As a two-year bill residing in the house of origin, SB 50 must pass the Senate by January 31. Last Friday, Senate Pro Tempore Toni Atkins pulled the bill from the Senate Appropriations Committee, where it faced a January 24 deadline, and sent it to the Rules Committee, where it may be referred directly to the Senate Floor.

Local Flexibility Plans

For a local agency to be exempt from the upzoning afforded to a developer seeking to utilize an EQI, the local agency would need to demonstrate that their local flexibility plan would increase housing capacity for households of all incomes and to meet or exceed SB 50’s goals related to equity and reducing vehicle miles traveled. In addition, such plans would be subject to approval by the Department of Housing and Community Development (HCD).

By July 1, 2021, the bill requires the Office of Planning and Research (OPR), in consultation with HCD, to develop guidelines for an acceptable local flexibility plans requiring that the local government demonstrate how the plan would:

- “Affirmatively further fair housing... to an extent as great or greater than” if the local government were to be subject to default SB 50 upzoning
- “Achieve a standard of transportation efficiency as great or greater than” if the local government were to be subject to default SB 50 upzoning
- “Increase overall feasible housing capacity” for households of all income levels “considering economic factors such as cost of likely construction types, affordable housing requirements, and the impact of local development fees.”

Deferred Implementation

The revised bill would also delay for two years, until January 1, 2023, *most* of the upzoning provisions, during which time jurisdictions could develop a local alternative. As in previous versions, upzoning in “sensitive communities” would be delayed until January 1, 2026, during which time the community may develop an alternative plan that allows for residential development capacity at least as

great as would be permitted with SB 50 default upzoning. Fourplexes would continue to be permitted by-right across the state, beginning on the bill's effectiveness date of January 1, 2020, subject to certain conditions.

Neighborhood Preference Provision Added to Address Displacement Concerns

In response to continued criticisms that SB 50 could exacerbate gentrification and displacement, the amendments would add a neighborhood preference requirement for SB 50 developments. Specifically, residents currently living within ½ mile of a proposed development would receive priority for 40 percent of the units reserved for low-income households in each income category.

MTC/ABAG Background and Staff Analysis

A local option was one of the three amendments recommended by the MTC and ABAG Legislation Committees in May 2019. (Note: SB 50 was put on hold before the recommendation went before the respective boards for approval, thus neither agency formally adopted the “seek amendment” position). We are pleased that the bill is moving in this direction, but the local option criteria is too vague at this point with substantial discretion left to the state to determine how it would actually work in practice and whether it would provide the type of flexibility local agencies seek, while also making progress on increasing housing production in the right places, consistent with regional and state goals related to climate change, transportation, equity and resilience, to name a few.

Background

SB 50 aims to increase housing production near jobs and transit by setting minimum density standards and concessions (such as lower parking requirements) in certain locations. Different standards are set for counties with a population less than or equal to 600,000. Developers would be eligible for these new standards only if their project meets certain affordability, tenant protection, and location requirements. In addition, SB 50 would authorize fourplexes by right on a statewide basis if the project meets certain criteria including zoning consistency and anti-demolition and tenant protection standards.

A “sensitive community”—defined for the Bay Area as those census tracts that are both MTC Communities of Concern and Bay Conservation and Development Commission-designated disadvantaged communities—could opt out of the SB 50 EQI standards by adopting an alternative upzoning plan. Similarly, local governments with an HCD-certified “local flexibility plan” would not be subject to the EQI standards. Sensitive communities would be required to adopt a “community plan” alternative by July 1, 2025. Absent a community plan, SB 50 standards would be effective in sensitive communities on January 1, 2026.

Attachments:

Attachment A: SB 50 Equitable Communities Incentive Standards



Therese W. McMillan

SB 50 Development Standards for Equitable Communities Incentive				
Transit-Rich: An area within 1/2-mile of a major transit stop (rail station or ferry terminal) or within 1/4-mile of a high-quality bus corridor				
Jobs-Rich: A high-opportunity area that is either jobs-rich or would enable shorter commutes, as determined by HCD				
	Large Counties (>600,000)			Small Counties (<600,000) Cities over 50,000 in population
	1/4-mile major transit stop	1/2-mile major transit stop	All other Jobs-rich and transit-rich areas	1/2-mile major transit stop
Height (lowest allowable maximums)	55 ft	45 ft	local zoning	15 feet or 1-story above highest allowable height for mixed use or residential development
Density (minimums)	density waiver	density waiver	density waiver	density waiver
	3.25 FAR	2.5 FAR	local zoning	0.6 FAR
Parking (highest allowable minimums)	no parking minimums	no parking minimum	0.5 parking spots/unit	0.5 parking spots/unit, unless within 1/4-mile of a rail stop in a city with a population over 100,000, then no parking minimum

Site Limitations Related to Applicability of an Equitable Communities Incentive		
	Large Counties	Small Counties
Coastal Zone	Allowed for cities larger than 50,000. Exempt for smaller cities.	Same (standards only apply to cities larger than 50,000).
100-year flood zone	Yes	No, unless the site meets FEMA-approved flood management criteria.
Very high fire hazard severity zone	Exempt, unless a site is excluded from hazard zones by a local agency or the site has adopted state-approved fire hazard mitigation measures.	Same
Historic district/site	Exempt	Same
Non-urbanized/rural	Allowed in the following: 1) Urbanized area or urban cluster 2) areas designated for urban use 3) areas zoned to allow for residential or mixed-use	Same plus the development must meet density standards of 30 du/acre for metropolitan areas or 20 du/acre for suburban areas.

Equitable Communities Incentive Project Affordability Requirements	
<10 units	None
11-20 units	may pay in-lieu fee
20 units or more	15% - 25% lower income, 8%-15% very low income OR 6%-11% ELI, depending on size. Highest targets apply to 351 units or above.
Local preference for residents living within 1/2-mile of the development (40% of the units reserved for each low-income category).	

Equitable Communities Incentive Tenant Protections
Excludes projects on sites that include tenant-occupied units in the seven years preceding the date of the application.
Excludes projects on sites in which the owner, through the Ellis Act, withdrew from the rental market in the 15 years preceding the date of the application.