

ASSEMBLY BILL

No. 1279

Introduced by Assembly Member Bloom

February 21, 2019

An act to add Section 65913.6 to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1279, as introduced, Bloom. Planning and zoning: housing development: high-resource areas.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development, and the development of certain lands outside its boundaries, that includes, among other mandatory elements, a housing element. That law allows a development proponent to submit an application for a development that is subject to a specified streamlined, ministerial approval process not subject to a conditional use permit if the development satisfies certain objective planning standards, including that the development is (1) located in a locality determined by the Department of Housing and Community Development to have not met its share of the regional housing needs for the reporting period, and (2) subject to a requirement mandating a minimum percentage of below-market rate housing, as provided.

This bill would require the department to designate areas in this state as high-resource areas, as provided, by January 1, 2021, and every 5 years thereafter. The bill would authorize a city or county to appeal the designation of an area within its jurisdiction as a high-resource area during that 5-year period. In any area designated as a high-resource area, the bill would require that a housing development project be a use

by right, upon the request of a developer, in any high-resource area designated pursuant be a use by right in certain parts of the high-resource area if those projects meet specified requirements, including specified affordability requirements. For certain development projects where the initial sales price or initial rent exceeds the affordable housing cost or affordable rent to households with incomes equal to or less than 100% of the area median income, the bill would require the applicant agree to pay a fee equal to 10% of the difference between the actual initial sales price or initial rent and the sales price or rent that would be affordable, as provided. The bill would require the city or county to deposit the fee into a separate fund reserved for the construction or preservation of housing with an affordable housing cost or affordable rent to households with a household income less than 50% of the area median income.

This bill would require that the applicant agree to, and the city and county ensure, the continued affordability of units affordable to lower income and very low income households for 45 years, for rented units, or 55 years, for owner-occupied years. The bill would provide that a development housing is ineligible as a use by right under these provisions if it would require the demolition of rental housing that is currently occupied by tenants, or has been occupied by tenants within the past 10 years, or is located in certain areas. The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report 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. CEQA does not apply to the ministerial approval of projects.

This bill, by requiring approval of certain development projects as a use by right, would expand the exemption for ministerial approval of projects under CEQA.

By adding to the duties of local planning officials with respect to approving certain development projects, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65913.6 is added to the Government
2 Code, to read:

3 65913.6. (a) For purposes of this section:

4 (1) “Department” means the Department of Housing and
5 Community Development.

6 (2) “High-resource area” means an area of high opportunity and
7 low residential density that is not currently experiencing
8 gentrification and displacement, and that is not at a high risk of
9 future gentrification and displacement, designated by the
10 department pursuant to subdivision (b).

11 (3) “Infill site” means a site in which at least 75 percent of the
12 perimeter of the site adjoins parcels that are developed with urban
13 uses. For the purposes of this section, parcels that are only
14 separated by a street or highway shall be considered to be adjoined.

15 (4) (A) “Use by right” means that the local government’s review
16 of the development project under this section may not require a
17 conditional use permit, planned unit development permit, or other
18 discretionary local government review or approval that would
19 constitute a “project” for purposes of Division 13 (commencing
20 with Section 21000) of the Public Resources Code. Any subdivision
21 of the sites shall be subject to all laws, including, but not limited
22 to, the local government ordinance implementing the Subdivision
23 Map Act (Division 2 (commencing with Section 66410)).

24 (B) A local ordinance may provide that “use by right” does not
25 exempt the development project from design review. However,
26 that design review shall not constitute a “project” for purposes of
27 Division 13 (commencing with Section 21000) of the Public
28 Resources Code.

29 (b) (1) No later than January 1, 2021, and every five years
30 thereafter, the department shall designate areas in this state as

1 high-resource areas in accordance with this section. In designating
2 areas of the state as high-resource areas, the department shall
3 collaborate with the California Fair Housing Task Force, convened
4 by the department and the California Tax Credit Allocation
5 Committee, and shall solicit input from members of the public and
6 ensure participation from all economic segments of the community
7 as well as members of those classes protected pursuant to Section
8 12955. Except as provided in paragraph (2), the designation of an
9 area as a high-resource area shall remain valid for five years.

10 (2) (A) A city or county that includes within its jurisdictional
11 boundaries an area designated as a high-resource area pursuant to
12 this section may appeal to the department to remove that
13 designation at any point during the five-year period specified in
14 paragraph (1) by submitting an appeal in a form and manner
15 prescribed by the department.

16 (B) The department may remove the designation of a city or
17 county that submits an appeal pursuant to subparagraph (A) if it
18 finds, based on substantial evidence, that the city or county has
19 adopted policies after the area was designated as a high-resource
20 area that meet the following requirements:

21 (i) The policies permit development of higher density housing
22 in the high-resource area, in a manner substantially similar to
23 subdivision (c), than were allowed under the city's or county's
24 policies in effect at the time the area was designated as a
25 high-resource area.

26 (ii) The policies are sufficient to accommodate a similar number
27 of housing units within the area and at similar levels of affordability
28 as would be allowed under subdivision (c).

29 (iii) The policies are consistent with the city's or county's
30 obligation to affirmatively further fair housing pursuant to Section
31 8899.50.

32 (C) In considering an appeal of a city or county submitted
33 pursuant to this subparagraph (A), the department shall consult
34 with the California Fair Housing Task Force and shall issue a
35 decision within 90 days of receiving the appeal.

36 (D) The decision of the department regarding an appeal pursuant
37 to this paragraph shall be final.

38 (c) Notwithstanding any inconsistent provision of a city's or
39 county's general plan, specific plan, zoning ordinance, or
40 regulation, upon the request of a developer a housing development

1 project shall be a use by right in any high-resource area designated
2 pursuant to this section if the development satisfies the following
3 criteria:

4 (1) If the development project is located in any portion of the
5 high-resource area where allowable uses are limited to
6 single-family residential development:

7 (A) The development project consists of no more than four
8 residential units and has a height of no more than 20 feet.

9 (B) Either of the following apply:

10 (i) The initial sales price or initial rent for units in the
11 development project does not exceed the amount of affordable
12 housing cost or affordable rent, as specified in Sections 50052.5
13 and 50053, respectively, of the Health and Safety Code, to
14 households with a household income equal to or less than 100
15 percent of the area median income, as determined by the
16 department pursuant to Section 50093 of the Health and Safety
17 Code.

18 (ii) If the initial sales price or initial rent exceeds the limit
19 specified in clause (i), the developer agrees to pay a fee to the
20 county or city equal to 10 percent of the difference between the
21 actual initial sales price or initial rent and the sales price or rent
22 that would be affordable to households making up to 100 percent
23 of the area median income, as provided in this subparagraph. The
24 city or county shall deposit any fee received pursuant to this clause
25 into a separate fund reserved for the construction or preservation
26 of housing with an affordable housing cost or affordable rent, as
27 specified in Sections 50052.5 and 50053, respectively, of the Health
28 and Safety Code, to households with a household income less than
29 50 percent of the area median income, as determined by the
30 department pursuant to Section 50093 of the Health and Safety
31 Code.

32 (C) The development project complies with all objective design
33 standard of the city or county. However, the city or county shall
34 not require the development project to comply with an objective
35 design standard that would preclude the development from
36 including up to four units or impose a maximum height limitation
37 of less than 20 feet.

38 (2) If the development project is located in any portion of the
39 high-resource area where residential use is an allowable use:

1 (A) The development project consists of no more than 40
2 residential units and has a height of no more than 30 feet.

3 (B) The development project is located on a site that is
4 one-quarter acre in size or greater and is either adjacent to an
5 arterial road or located within a central business district.

6 (C) (i) For development projects consisting of 10 or fewer units,
7 either of the following apply:

8 (I) The initial sales price or initial rent for units in the
9 development project does not exceed the amount of affordable
10 housing cost or affordable rent, as specified in Sections 50052.5
11 and 50053, respectively, of the Health and Safety Code, to
12 households with a household income equal to or less than 100
13 percent of the area median income, as determined by the
14 department pursuant to Section 50093 of the Health and Safety
15 Code.

16 (II) If the initial sales price or initial rent exceeds the limit
17 specified in subclause (I), the developer agrees to pay a fee to the
18 county or city equal to 10 percent of the difference between the
19 actual initial sales price or initial rent and the sales price or rent
20 that would be affordable to households making up to 100 percent
21 of the area median income, as provided in this subparagraph. The
22 city or county shall deposit any fee received pursuant to this
23 subparagraph into a separate fund reserved for the construction or
24 preservation of housing with an affordable housing cost or
25 affordable rent, as specified in Sections 50052.5 and 50053,
26 respectively, of the Health and Safety Code, to households with a
27 household income less than 50 percent of the area median income,
28 as determined by the department pursuant to Section 50093 of the
29 Health and Safety Code.

30 (ii) For development projects consisting of more than 10 units,
31 at least 10 percent of the units in the development project have an
32 affordable housing cost or affordable rent, as specified in Sections
33 50052.5 and 50053, respectively, of the Health and Safety Code,
34 to lower income households and at least 5 percent have an
35 affordable housing cost or affordable rent to very low income
36 households. However, if the city or county requires that the
37 development project include a greater percentage of units that are
38 affordable to lower income and very low income households, the
39 development project shall comply with that greater requirement.

1 (D) The development project complies with all objective design
2 standards of the city or county. However, the city or county shall
3 not require the development project to comply with an objective
4 design standard that would preclude the development from
5 including up to 40 units or impose a maximum height limitation
6 of less than 30 feet.

7 (3) (A) If the development project is located in any portion of
8 the high-resource area where residential or commercial uses are
9 an allowable use:

10 (i) The development project consists of no more than 100
11 residential units and has a height of no more than 55 feet.

12 (ii) The development project is located on a site that is one-half
13 acre in size or greater and is either adjacent to an arterial road or
14 located within a central business district.

15 (iii) At least 25 percent of the units in the development project
16 have an affordable housing cost or affordable rent, as specified in
17 Sections 50052.5 and 50053, respectively, of the Health and Safety
18 Code, to lower income households and at least 25 percent have an
19 affordable housing cost or affordable rent to very low income
20 households.

21 (iv) The development project complies with all objective design
22 standards of the city or county. However, the city or county shall
23 not require the development project to comply with an objective
24 design standard that would preclude the development from
25 including up to 100 units or impose a maximum height limitation
26 of less than 55 feet.

27 (B) A development project that is a use by right pursuant to this
28 paragraph shall be eligible for a density bonus or other incentives
29 or concessions if it includes units within an affordable housing
30 cost or affordable rent, as specified in Sections 50052.5 and 50053,
31 respectively, of the Health and Safety Code, to lower income and
32 very low income households in excess of the minimum amount
33 required by clause (ii) of subparagraph (A).

34 (4) An applicant for a development project that is a use by right
35 pursuant to paragraph (1), (2), or (3) shall agree to, and the city or
36 county shall ensure, the continued affordability of units included
37 in the development project that are affordable to lower income and
38 very low income households in accordance with the applicable
39 affordability requirement under this subdivision for at least the
40 following periods of time:

1 (A) Fifty-five years for units that are rented.

2 (B) Forty-five years for units that are owner occupied.

3 (d) A development project shall not be eligible for approval as
4 a use by right pursuant to subdivision (c) if any of the following
5 apply:

6 (1) The development project would require the demolition of
7 rental housing that is currently occupied by tenants or has been
8 occupied by tenants within the past 10 years.

9 (2) The development project is proposed to be located on a site
10 that is any of the following:

11 (A) A coastal zone, as defined in Division 20 (commencing
12 with Section 30000) of the Public Resources Code.

13 (B) Either prime farmland or farmland of statewide importance,
14 as defined pursuant to United States Department of Agriculture
15 land inventory and monitoring criteria, as modified for California,
16 and designated on the maps prepared by the Farmland Mapping
17 and Monitoring Program of the Department of Conservation, or
18 land zoned or designated for agricultural protection or preservation
19 by a local ballot measure that was approved by the voters of that
20 jurisdiction.

21 (C) Wetlands, as defined in the United States Fish and Wildlife
22 Service Manual, Part 660 FW 2 (June 21, 1993).

23 (D) Within a very high fire hazard severity zone, as determined
24 by the Department of Forestry and Fire Protection pursuant to
25 Section 51178, or within a high- or very high fire hazard severity
26 zone as indicated on maps adopted by the Department of Forestry
27 and Fire Protection pursuant to Section 4202 of the Public
28 Resources Code. This subparagraph does not apply to sites
29 excluded from the specified hazard zones by a local agency,
30 pursuant to subdivision (b) of Section 51179, or sites that have
31 adopted fire hazard mitigation measures pursuant to existing
32 building standards or state fire mitigation measures applicable to
33 the development.

34 (E) A hazardous waste site that is listed pursuant to Section
35 65962.5 or a hazardous waste site designated by the Department
36 of Toxic Substances Control pursuant to Section 25356 of the
37 Health and Safety Code, unless the Department of Toxic
38 Substances Control has cleared the site for residential use or
39 residential mixed uses.

1 (F) Within a delineated earthquake fault zone as determined by
2 the State Geologist in any official maps published by the State
3 Geologist, unless the development complies with applicable seismic
4 protection building code standards adopted by the California
5 Building Standards Commission under the California Building
6 Standards Law (Part 2.5 (commencing with Section 18901) of
7 Division 13 of the Health and Safety Code), and by any local
8 building department under Chapter 12.2 (commencing with Section
9 8875) of Division 1 of Title 2.

10 (G) Within a special flood hazard area subject to inundation by
11 the 1 percent annual chance flood (100-year flood) as determined
12 by the Federal Emergency Management Agency in any official
13 maps published by the Federal Emergency Management Agency.
14 If a development proponent is able to satisfy all applicable federal
15 qualifying criteria in order to provide that the site satisfies this
16 subparagraph and is otherwise eligible for streamlined approval
17 under this section, a local government shall not deny the application
18 on the basis that the development proponent did not comply with
19 any additional permit requirement, standard, or action adopted by
20 that local government that is applicable to that site. A development
21 may be located on a site described in this subparagraph if either
22 of the following are met:

23 (i) The site has been subject to a Letter of Map Revision
24 prepared by the Federal Emergency Management Agency and
25 issued to the local jurisdiction.

26 (ii) The site meets Federal Emergency Management Agency
27 requirements necessary to meet minimum flood plain management
28 criteria of the National Flood Insurance Program pursuant to Part
29 59 (commencing with Section 59.1) and Part 60 (commencing
30 with Section 60.1) of Subchapter B of Chapter I of Title 44 of the
31 Code of Federal Regulations.

32 (H) Within a regulatory floodway as determined by the Federal
33 Emergency Management Agency in any official maps published
34 by the Federal Emergency Management Agency, unless the
35 development has received a no-rise certification in accordance
36 with Section 60.3(d)(3) of Title 44 of the Code of Federal
37 Regulations. If a development proponent is able to satisfy all
38 applicable federal qualifying criteria in order to provide that the
39 site satisfies this subparagraph and is otherwise eligible for
40 streamlined approval under this section, a local government shall

1 not deny the application on the basis that the development
2 proponent did not comply with any additional permit requirement,
3 standard, or action adopted by that local government that is
4 applicable to that site.

5 (I) Lands identified for conservation in an adopted natural
6 community conservation plan pursuant to the Natural Community
7 Conservation Planning Act (Chapter 10 (commencing with Section
8 2800) of Division 3 of the Fish and Game Code), habitat
9 conservation plan pursuant to the federal Endangered Species Act
10 of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural
11 resource protection plan.

12 (J) Habitat for protected species identified as candidate,
13 sensitive, or species of special status by state or federal agencies,
14 fully protected species, or species protected by the federal
15 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.),
16 the California Endangered Species Act (Chapter 1.5 (commencing
17 with Section 2050) of Division 3 of the Fish and Game Code), or
18 the Native Plant Protection Act (Chapter 10 (commencing with
19 Section 1900) of Division 2 of the Fish and Game Code).

20 (K) Lands under conservation easement.

21 (3) The development project is proposed to be located on a site
22 that is not an infill site.

23 (e) This section shall not be construed to prevent a developer
24 from submitting an application for a development permit in a
25 high-resource area under the county's or city's general plan,
26 specific plan, zoning ordinance, or regulation for a project that
27 does not meet the criteria specified in subdivisions (c) and (d).

28 (f) The Legislature finds and declares that ensuring residential
29 development at greater density in high-resource areas of this state
30 is a matter of statewide concern and is not a municipal affair as
31 that term is used in Section 5 of Article XI of the California
32 Constitution. Therefore, this section applies to all cities, including
33 charter cities.

34 SEC. 2. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 a local agency or school district has the authority to levy service
37 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O