



P.O. Box 3144
Los Altos, CA 94024
www.citiesassociation.org
408-766-9534

January 23, 2020

The Honorable Scott Wiener
Senator, California State Senate
State Capitol Building, Room 5100
Sacramento, CA 95814

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

Dear Senator Wiener:

The Cities Association of Santa Clara County (CASCC) continues to oppose SB 50 unless the measure is further amended to address our key concerns. The amendments taken on January 6, 2020 still fail to take into account our primary objections to SB 50. Although CASCC is pleased to see that the 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, it still falls short. CASCC is not able to evaluate, for example, 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

The amendments, as drafted, raise many concerns, including the following:

- **Little to no public input on the local flexibility plan process.** The 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 the OPR and HCD to craft rules, regulations, or guidelines with little to no public input or oversight.
- **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.

- **Continues to take away local control.** 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, CASCC 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 significant power to housing developers and transit agencies. Housing developers and transit agencies, who are not accountable to local voters, will have 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
- **Undefined essential terms cause confusion.** It is very difficult to determine what constitutes a “jobs-rich area” since the HCD and the 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.
- **Appears to conflict with existing state laws and policies.** 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. The proposed amendments also appear to conflict with recent legislation related to ADUs and the Housing Crisis Act of 2019.

- **Arbitrary exemption for certain cities.** 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.
- **Timeline to develop the local flexibility plan is not realistic.** SB 50 gives cities 18 months to develop and receive certification for a local flexibility plan once OPR and HCD release final regulations or guidelines (July 1, 2021 to January 1, 2023). 18 months is too short for cities to perform all the tasks needed to create a new plan, including meaningful public outreach, drafting a plan, performing CEQA and other required analyses (equivalence to equitable community incentives, transportation efficiency, feasible housing capacity), and then waiting for HCD to certify the plan. The CEQA process for an area plan EIR, for example, generally takes 1-2 years or longer.

Therefore, although CASCC supports finding a workable solution for our housing crisis in California, for the reasons stated above, CASCC opposes SB 50 unless amended.

Sincerely,



Larry Klein
President
Mayor, City of Sunnyvale



Neysa Fligor
Chair, Legislative Action Committee
Vice-Mayor, City of Los Altos

cc: Senators Wieckowski, Beall, Hill, Monning,
Assembly Members Rivas, Kalra, Chu, Berman, Low, Stone
Senator Scott Wiener
Seth Miller, Peninsula Division, League of California Cities (via email)
League of California Cities, cityletters@cacities.org

About: The Cities Association of Santa Clara County is a collaboration of the fifteen cities of the county and addresses pressing issues of mutual interest for our region. The Association is comprised of the elected representatives of over 1.9 million Bay Area residents. Our diverse community includes cities with a few thousand residents to a large city with a million people. Finding consensus and solutions remains our goal.