

Outline of SB 50 (Wiener) Planning and Zonings. Housing Development Incentives.
As Amended 01/06/2020

Key Elements of SB 50 as Amended 01/06/2020

- Allows developers of certain types of housing projects to override locally developed and adopted height limitations, housing densities, and parking requirements. These overrides are called “equitable communities incentives (ECI).” [Please see pages 2-3 for more detail].
- SB 50’s requirements are applied differently based on city population and the population of the county in which the city is located.
- Requires all cities to allow up to fourplexes in single-family neighborhoods through a streamlined, ministerial approval process unless project would have specific, adverse impact upon public health or safety.
- Allows “sensitive communities” identified by councils of governments to develop a community plan, as prescribed, and not be required to grant an ECI as long as the “community plan” achieves similar objectives and goals.
- Allows cities to develop a HCD-approved “local flexibility plan”, as an alternative to the requirements in SB 50.

The “Local Flexibility Plan:” Amendments adopted on January 6, 2020

The amendments offer an alternative: Cities and counties can adopt a “local flexibility plan” approved by HCD by January 1, 2023 or be required to grant ECI overrides of density, height and parking) of SB 50.

A “local flexibility plan” submitted on or after July 1, 2021 to HCD, must do all of the following:

- Affirmatively further fair housing, as that term is defined in Section 8899.50, to an extent as great or greater than if the local government were to grant an ECI.
- Achieve a standard of transportation efficiency as great or greater than if the local government were to grant an ECI.
- 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.

On or before July 1, 2021, OPR, in consultation with HCD, will develop guidelines for the submission and approval of a local flexibility plan. Rules, regulations and guidelines may be adopted with limited public process.

A local flexibility plan is an alternative to granting an ECI. A local flexibility plan does not exempt a city from ministerial approval of a fourplex in a single-family zone.

Comments Regarding the Amendments Adopted on January 6, 2020

- It appears that the intent of the amendments is to provide local governments with an opportunity to develop their own plans to meet the goals and objectives of SB 50. Unfortunately, the amendments, as drafted, raise the following concerns:
 - OPR and HCD are tasked with developing “rules, regulations, or guidelines for the submission and approval of a local flexibility plan” without sufficient Legislative direction. 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.

- 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.
- “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.” SB 50 does 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.
- Without clearly identified criteria, we are unable to evaluate whether the “local flexibility plan” is actually an alternative planning option.

The Community Plan: Sensitive Communities

Unchanged by the amendments are SB 50’s alternative for “sensitive communities.” Sensitive communities are determined by councils of governments (or by MTC in the ABAG region). The ECI provisions of SB 50 will apply to a “sensitive community” after January 1, 2026 unless the community adopts a “community plan” aimed toward increasing residential density and multifamily housing choices near transit stops. The community plan must:

- Permit increased density and multifamily development near transit with all upzoning linked to onsite affordable housing requirements;
- Include provisions to protect vulnerable residents from displacement;
- Promote economic justice for workers and residents; and
- Be developed in partnership with a nonprofit or community organization.

Equitable Communities Incentives

City must grant an Equitable Community Incentive (ECI) to “jobs-rich” or “transit-rich” project on a site zoned to allow housing with certain site exclusions as described below unless city makes finding that incentive would have a specific, adverse impact on any real property or historic district. Project must comply with city’s conditional use or other discretionary permit approval process and with certain affordability requirements (or local inclusionary ordinance) and is subject to CEQA review.

Counties with a population less than or equal to 600,000: Cities with population OVER 50,000

- Equitable Community Incentive to a jobs-rich or transit-rich housing project located within ½ mile of a major transit stop with a minimum density of 30 units/acre in “metropolitan” community or 20 units/acre in “suburban” community:
 - 1 additional story or fifteen feet in height.
 - Waiver of 0.6 Floor Area Ratio.
 - Maximum 0.5 parking spots per units; and no minimum parking requirement if within ¼ mile of rail transit station in city with population greater than 100,000.
 - Waiver of maximum controls density.

- Site exclusions: architecturally or historically significant district; special flood hazard area.
- Mandatory inclusionary housing requirements apply.
- Existing Density Bonus Law may be applied to the project.

Counties with a population over 600,000: All cities (except those under 50,000 in the coastal zone)

- Equitable Community Incentive to a jobs-rich or transit-rich housing project:
 - Waiver of maximum controls on density.
 - 0.5 parking spots per unit.
 - Within 1/2 mile of a major transit stop – height up to 45 feet, Floor Area Ratio of 2.5, and no parking requirements.
 - Within 1/4 mile of a major transit stop – height up to 55 feet , Floor Area Ration of 3.25, and no parking requirements.
- Mandatory inclusionary housing requirements apply.
- Existing Density Bonus Law may be applied to the project.