



**CITY OF NEWPORT BEACH**

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January 22, 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 City of Newport Beach continues to oppose SB 50 unless the measure is further amended to address our key concerns. The amendments taken on January 6, 2020, do not sufficiently respond to objections to SB 50 that our City previously sent and would result in residential development that is in direct conflict with policies of the California Coastal Act related to avoidance of coastal hazards, enhancement of public access, and protections of coastal resources that the City also has a mandated responsibility to uphold.

Additionally, you are no doubt aware that cities in the Southern California Association of Governments are grappling with how to comply with an extraordinary, unprecedented housing mandate. We are concerned that modifying housing policies during this process will derail cities' attempts – including our own – to comply with HCD's housing element requirements within the specified time frame. Any changes to housing policy that affect the already tight time frame is unwise without concurrently granting additional time to cities to comply in SCAG's region.

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

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. 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 a viable alternative planning option.
- **Office of Planning and Research (OPR) and the Department of Housing and Community Development (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:** Further Legislative direction is required.
  - “Achieve a standard of transportation efficiency as great as 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.

#### **Newport Beach’s Specific Concerns with the January 6, 2020 Amendments**

Given its location within the coastal zone, the City of Newport Beach has specific concerns with allowing density increases from fourplexes to a complete “waiver of

maximum controls on density” for projects with potential heights up to 55 feet in our existing single-family, multi-family, and mixed-use neighborhoods.

- **SB 50 should exclude all cities within the coastal zone, not just smaller cities.** SB 50 excludes coastal cities with a population of less than 50,000 in what appears to be in recognition that cities within the coastal zone are subject to additional oversight by the California Coastal Commission and are subject to the Coastal Act (Act). The Act significantly limits a jurisdiction’s ability to increase density near the coast due to concerns with coastal hazards and sea level rise, public access, and resource protection. However, the Coastal Act applies to all cities equally, regardless of population size, and the same coastal-related constraints apply equally. Therefore, it is recommended that the bill be revised to exclude all cities within the coastal zone, or at minimum, exclude parcels located within the coastal zone.
- **Parking reductions greatly impact public access to the coast, conflicting with Coastal Act laws intended to protect and enhance public access and environmental justice.** A majority of the City’s coastal zone includes dense residential neighborhoods, such as Balboa Island, Corona del Mar, and the Balboa Peninsula, which were constructed during the 1920s to 1950s. Residential development tends to be located on small lot sizes with insufficient off-street parking for residents and guests. As a result, many residents park on public streets, significantly impacting public access to the coast due to lack of available parking. SB 50 mandates significant reductions in parking requirements that would further exacerbate the availability of on-street public parking, thereby further restricting coastal access. Therefore, it is recommended that the parking reductions should not apply in the coastal zone, regardless of a jurisdiction’s population.
- **Inconsistency with transit definitions creates confusion.** The terms used in SB 50 to allow such projects include “equitable communities incentive” and “jobs-rich” or “transit-rich” projects, but these terms are not clearly defined and are not consistent with terms in State land use planning documents for transit-oriented development.

For example, the Southern California Association of Governments (SCAG), in conjunction with HCD, utilizes the definitions from SB 743, which was signed into law on September 27, 2013, to provide opportunities for exemptions to CEQA and streamlining to facilitate transit-oriented development. As defined in SB 743, “Transit Priority Area” means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

SB 50 defines “transit-rich housing project” as residential development, on parcels within a one-half mile radius of a major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor. Is SB 50 proposing to supersede SB 743 or just redefine Transit Priority Areas and change the radius from ½ mile to ¼ mile without having those areas or the associated “job-rich” areas mapped?

- **Lack of information to adequately evaluate “jobs-rich area.”** As presently drafted, it is very difficult to determine what constitutes a “jobs-rich area” since 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.

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

If a city should elect 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. Again, 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.

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

- Wastes staff time and money. SB 50 would greatly undermine locally adopted General Plans, Housing Elements (which are certified by the HCD), and Regional Transportation Plan/Sustainable Community Strategies (RTP/SCS). By allowing developers to override these 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.
- 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 ½ parking space per unit. This contradicts the purpose of local control and the home-rule doctrine found in the California Constitution.

- 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.
- A 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 to which SB 50 should apply.

For these reasons, the City of Newport Beach opposes SB 50 unless amended.

Sincerely,



Will O'Neill  
Mayor

cc. Newport Beach City Council Members  
Senator John Moorlach  
Senator Ling Ling Chang  
Assemblywoman Cottie Petrie-Norris  
Grace Leung, City Manager  
Seimone Jurjis, Community Development Director  
California Strategies, LLC  
League of California Cities (Via email: [cityletters@cacities.org](mailto:cityletters@cacities.org))