

Growing Cities Up

California's SB 50 is a model for addressing the urban housing crisis.

City-Journal, by Christopher S. Elmendorf, January 14, 2020

Earlier this month, California state senator Scott Wiener began the third year of his push for a state law to override local zoning and authorize midsize apartment buildings near transit stops. The latest version of his bill, SB 50, comes with a twist that augurs well for its passage and eventual impact.

The bill tackles a thorny problem. Longtime residents, especially homeowners, resist neighborhood change. They're also the dominant force in local politics. The preserve-the-neighborhood norm would be innocuous if it was limited to a few locales, but when all of a metro region's municipalities throw up barricades to new housing—and just as environmentalists are rallying to protect exurban greenfields—the cumulative effect is disastrous: wildly unaffordable housing, a working-class exodus, sprawling homeless encampments, and enormous foregone productivity. This is the story of coastal California since the seventies.

The ambition of SB 50 is to turn the clock back to an earlier era—not just pre-1970, but before the Great Depression, when single-family homes in growing cities were commonly torn down and replaced by small apartment buildings. After World War II, this pattern of incremental densification largely disappeared. Today, the expansion of urban housing stock is basically confined to formerly industrial and commercial zones. The majority of buildable land in major cities remains locked up in the zoning straightjacket. Once a tract has been zoned and developed for single-family homes, it's stuck.

Two questions have dogged Wiener's effort to loosen the straitjacket. First, how could a bill that upsets so many homeowners and local officials ever pass? And second, even if the bill passes, what's to keep homeowner-dominated cities from making the nominally permissible new housing practically impossible to build? To mollify opponents, Wiener has made it clear that his bill would not touch local authority over demolition controls, design standards, permitting procedures, impact fees, and more. But the less that the bill preempts, the easier it will be to evade.

The new version of SB 50 deftly resolves this dilemma. Instead of immediately “up-zoning” all residential parcels within a half mile of a transit stop—as the prior versions would have done—the bill defines a default zoning “envelope” for these parcels. Local governments will get two years either to accept the default or propose an alternative “local flexibility plan” that creates an equivalent amount of developable space in the aggregate, while also scoring well on certain transit and fair-housing metrics. A flexibility plan takes effect only if approved by the state housing department; otherwise, the SB 50 up-zoning kicks in, by default.

The provision for local flexibility plans should make SB 50 both easier to pass and more resistant to local gamesmanship. Though some local governments may pursue the old strategy of regulatory obstruction, that approach carries legal risk. The more prudent course for many local officials will involve submitting a local flexibility plan that lightens the density load on their most resistant constituents while authorizing commensurately greater heights and residential density in more supportive neighborhoods, as well as in formerly commercial or industrial zones.

Once a local government follows this path, the state housing department will exert significant control over the stratagems by which a municipality might kill development on newly up-zoned sites. A local flexibility plan must “increase overall *feasible* housing capacity,” as the

new SB 50 declares. To deliver on that goal, the state agency could insist that a flexibility plan put reasonable limits on fees, permitting times, demolition controls, and more.

The state agency might even allow regional local governments to exchange “SB 50 density” with one another. Beverly Hills mayor John Mirisch has made a name for himself fighting SB 50. If another Southern California city were willing to take Beverly Hills’s mandated density—for a price—Mirisch could propose a deal, perhaps even subsidizing an expansion of the other city’s transit system. His wealthy constituents would have no trouble affording it. However outlandish Beverly Hills’s land-use practices may be, California will be better off if Mirisch devotes his formidable resources to wheeling and dealing over flexibility plans, rather than spearheading a campaign for SB 50’s repeal.

California has long been the poster child for housing-policy dysfunction, but the problems facing San Francisco, Los Angeles, San Jose, and San Diego are also playing out in superstar cities across the nation and worldwide. The new SB 50 is a model that can travel. Urbanists everywhere should take heed.

Christopher S. Elmendorf is Martin Luther King Jr. Professor of Law at UC Davis School of Law.