

MEMO

To: City of Cupertino
Legislative Review Committee

From: Townsend Public Affairs, Inc.

Date: July 23, 2021

Subject: Consider adopting a position on AB 215 (Chiu) Housing Element: regional housing need: relative progress determination

Bill Information

The official text of AB 215 can be found [here](#)¹.

Summary

This bill establishes a process for a mid-cycle housing element consultation between the state Department of Housing and Community Development (HCD) and any jurisdiction it deems to have not made sufficient progress toward its regional housing needs allocation (RHNA), including a requirement for the jurisdiction to obtain a pro-housing designation.

Specifically, AB 215 contains the following provisions:

- Requires HCD, beginning with the sixth housing element cycle, to determine the progress of each city, county, Council of Governments (COG), and sub-region toward meeting its RHNA allocation, and to post these determinations on its website by July 1 of each year, as follows:
 - In the fifth year of the planning period: progress toward meeting its total RHNA allocation and its lower income RHNA allocation.
 - In the year after the planning period ends: progress toward meeting its total RHNA allocation.
- Requires a jurisdiction, if its progress is less than that of the COG as a whole, to undertake a mid-cycle housing element consultation with HCD. Progress shall be calculated by dividing the jurisdiction's progress toward its RHNA share by its pro-rated share of the regional housing need. Requires the jurisdiction, in coordination with HCD, for any of the categories for which the consultation is required, to review and update, as necessary, all scheduled programs to ensure they include enforceable actions and concrete timelines.
- Requires HCD, if it determines that the jurisdiction has not made sufficient progress, to notify the jurisdiction by July 1 of the year it makes the determination, and to commence the consultation within six months. Requires a jurisdiction to complete any housing element revisions, as directed by HCD, within one year of the consultation. Requires

¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB215

HCD, if it determines that a jurisdiction has not complied with the mid-cycle consultation requirements, to find its housing element out of compliance.

- Requires a jurisdiction that has attained at least 10 percentage points less progress than its COG, to obtain a pro-housing designation from HCD. Requires HCD to determine whether a jurisdiction is required to obtain the designation by July 1 of the year in which it makes the determination and by July 1 of the year after the jurisdiction's housing element planning period ends. Requires the jurisdiction that receives notice to attain the pro-housing designation by July 1 of the year after the notice. Requires HCD, if the jurisdiction fails to attain a pro-housing designation by the required date, to find its housing element out of compliance.
- Provides, that if a jurisdiction fails to submit a substantially compliant Annual Progress Report:
 - HCD may require a mid-cycle consultation.
 - HCD must find its housing element out of compliance.

Status

AB 215 was approved by the Senate Housing Committee (5-2) on July 1st. The measure is currently in the Senate Appropriations Committee.

Support

The author states, "At the end of the day, the only way to solve the housing crisis is to put more roofs over people's heads. The housing element is one of the state's most critical tools to ensure that such housing production occurs. AB 215 is designed to make sure the process works, and everyone is accountable to the plans they create. It would ensure that cities with underperforming housing production have the opportunity to review their plans and policies every four years, instead of every eight. Where production substantially lags behind peer cities, local governments would be required to ensure that they have adopted pro-housing policies, for which they will receive preferences for state funding programs. By increasing accountability at the local level, the state and cities can continue to work together to facilitate the necessary production of homes for Californians of all income levels."

Supporters of AB 215 include: California Housing Consortium; Bay Area Council; Bridge Housing Corporation; CalChamber; California Apartment Assn; California Assn of Realtors; California Building Industry Assn; California Council for Affordable Housing; California YIMBY; Habitat for Humanity California; MidPen Housing; San Francisco Bay Area Planning and Research Assn; Silicon Valley at Home; Silicon Valley Community Foundation; and Silicon Valley Leadership Group.

Opposition

Cities, counties, and equity organizations state a number of concerns, in opposition to AB 215, including:

- Opponents state that it is inappropriate to use the pro-housing designation, which was established as incentive just two years ago, as a penalty for non-compliance with housing element requirements, particularly since the pro-housing regulations are not yet final.

- Opponents state that the “relative progress” metric could hurt unincorporated areas, which tend to have less urban infrastructure, fewer employment options, and other economic limitations that can cause housing production to lag in comparison to cities.
- Opponents state that HCD’s existing enforcement authority enables it to identify and remedy violations of the law well before the midpoint of the housing element cycle.
- The mid-cycle consultation process created by the bill potentially undermines existing authority and does not allow for public input.

Opponents of AB 215 include: California Cities for Local Control; California Rural Legal Assistance Foundation; California State Assn of Counties; League of California Cities; Rural County Representatives of California; Urban Counties of California; Western Center on Law and Poverty; and the cities of: Beaumont, Carlsbad, Corona, El Segundo, Fortuna, Garden Grove, San Bernardino, and Thousand Oaks.

Legislative Platform

This bill falls under Cupertino’s 2021 Legislative Platform in the Housing and Community Development Section, Item #2 (page 6) and allows for an Oppose position.

Recommended Action

Adopt an oppose position on AB 215 and authorize the Mayor to send letters to the state legislature.