
SENATE COMMITTEE ON TRANSPORTATION AND HOUSING

Senator Jim Beall, Chair

2017 - 2018 Regular

Bill No: SB 35 **Hearing Date:** 2/28/2017
Author: Wiener
Version: 2/21/2017
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Planning and Zoning: affordable housing: streamlined approval process

DIGEST: This bill creates a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment numbers.

ANALYSIS:

Existing law:

- 1) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.
- 2) Requires the board of zoning adjustment or zoning administrator to hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance.
- 3) Requires cities and counties, to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.
- 4) Requires the housing element to identify adequate sites for housing, including rental housing, factory-built housing, mobile homes, and emergency shelters and to make adequate provision for the existing and projected needs of all economic segments of the community.

- 5) Requires cities and counties within the territory of a metropolitan planning organization (MPO) to revise their housing elements every eight years following the adoption of every other regional transportation plan. Cities and counties in rural non-MPO regions must revise their housing elements every five years.

This bill:

- 1) Requires a city, including a charter city, county, or city and county, on or before April 1, 2018, and on or before April 1 each year thereafter, to submit a report to HCD that includes the following:
 - a) The number of units of housing that have completed construction in the housing element cycle, and
 - b) The income category, including very low income, low-income, moderate-income, and above moderate income, for which each unit of housing satisfies.
- 2) Creates a streamlined, ministerial approval process for housing developments that meet the following criteria:
 - a) The development is an accessory dwelling unit or a multifamily housing development that contains two or more residential units.
 - b) The development is located on a site that satisfies both of the following: is an urban infill site and is zoned for residential use or residential mixed use development.
 - c) If the development contains units that are subsidized, rental units shall remain subsidized for 55 years if rented and 45 years if owned.
 - d) The development satisfies both of the following:
 - i. Is located in a locality that, according to its annual production report to HCD, completed construction of fewer units by income category than was required for the RHNA for that year.
 - ii. The development is subject to a requirement mandating a minimum percentage of below market rate housing based on the following:
 - The locality constructed fewer units of above moderate income housing than was required for the RHNA for that year and dedicates an unspecified percentage of the total number of units to below market rate housing, unless the locality has adopted a local inclusionary zoning ordinance that requires that greater than an unspecified percentage of the units dedicated to below market rate housing, in which case the inclusionary zoning ordinance applies.
 - The locality constructed fewer units of very low, low- or moderate-income housing than was required for the RHNA

cycle for that year, and dedicates an unspecified percentage of the total number of units to below market rate housing, unless the locality has adopted a local inclusionary zoning ordinance that requires that greater than an unspecified percentage of the units be dedicated to below market rate housing, in which case that inclusionary zoning ordinance applies.

- a) The development is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government.
 - b) The development is not located on a site that is any of the following: a coastal zone, prime farmland or farmland of statewide importance, wetlands, or a hazardous waste site. The development shall also not be within: a very high fire hazard severity zone, delineated earthquake fault zone, flood plain, or floodway.
 - c) The development does not require the demolition of the following: housing that is subject to rent control, housing that is subject to deed restrictions, housing that has been occupied by residents within the past 10 years, or a historic structure that was placed on a national, state, or local historic register prior to December 31, 2016.
 - d) The development shall be subject to enforceable wage requirements.
- 3) If the locality determines that a development submitted pursuant to this bill is in conflict with any of the objective planning standards specified above, it shall provide the development proponent with written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:
- a) Within 60 days of submittal of the development to the local government if the development contains 150 or fewer housing units.
 - b) Within 90 days of submittal of the development to the local government if the development contains more than 150 housing units.
 - c) If the locality fails to provide the required documentation according to the above timelines, the development shall be deemed to satisfy the objective planning standards as required under this bill.
- 4) Any design review of the development shall not in any way inhibit, chill or preclude the ministerial approval shall be completed as follows:
- a) Within 90 days of submittal of the development to the local government if the development contains 150 or fewer housing units.
 - b) Within 180 days of submittal of the development to the local government if the development contains more than 150 housing units.

- 5) A development approved pursuant to this section shall not be subject to any local or state parking minimum requirements.

COMMENTS:

- 1) *Purpose.* According to the author, for decades, California has failed to create enough housing, at all income levels, for our growing population. We have placed endless barriers in the way of new housing. According to the Legislative Analyst, California needs to produce approximately 180,000 units of housing per year to keep up with population growth – right now; we produce less than half that amount. The extreme cost of housing in many parts of California is harming our economy, our environment, and the health and quality of life of far too many people. When we don't have enough housing, low income and middle income residents are hit the hardest, with increased evictions and an inability to find suitable housing. While there are various reasons for this shortage, including zoning restrictions, one aspect of the problem is the significant length of time it takes to approve housing even if the project is entirely within zoning. It should not take years to approve a zoning-compliant housing development.

SB 35 will result in more housing at all income levels, good-paying jobs to build that housing, and more accountability in creating the new homes our residents so badly need. Under SB 35, if cities aren't on track to meet their RHNA goals, then approval of zoning-compliant projects will be streamlined, if they meet objective zoning, affordability, and environmental criteria, and if the projects pay prevailing wage. Under SB 35, all cities and counties are required to submit their progress on housing production to the California Department of Housing and Community Development, and HCD is required to make that data easily available to the public. Indeed, many cities aren't even required to report their progress to the state, and the state doesn't do a great job reporting out statewide RHNA progress. In combination with other bills pending in the Legislature - particularly affordable housing funding bills and bills to require better compliance with Housing Element requirements - SB 35 will help create more housing for people of all income levels. It deserves our support.

- 2) *Housing needs and approvals generally.* Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. The land use element sets a

community's goals on the most fundamental planning issues—such as the distribution of uses throughout a community, as well as population and building densities—while other elements address more specific topics. Communities also may include elements addressing other topics—such as economic development, public facilities, and parks—at their discretion.

Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

Each community's fair share of housing is determined through a process known as Regional Housing Needs Allocation (RHNA). The RHNA process has three main steps: 1) Department of Finance and HCD develop regional housing needs estimates; 2) regional councils of governments allocate housing within each region; and 3) cities and counties incorporate their allocations into their housing elements.

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to CEQA review, while projects permitted ministerially generally are not.

- 3) *The Governor's 2016 "by-right proposal."* In May 2016, the Governor introduced trailer bill language designed to streamline approval processes by broadening eligibility for by-right, ministerial land use approvals for

multifamily infill housing developments that include affordable housing. Specifically, that proposal applied to projects that were within a “transit priority area” (defined as within ½ a mile of a major transit stop) and had at least 10% of units reserved for low-income households or 5% of units reserved for very low-income households. It also applied to projects that are not in a “transit priority area,” in which at least 20% of the units are reserved for individuals making less than 80% of the area median income. A local government may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval for qualifying developments that include one of the affordable housing components noted above, provided they are consistent with objective general plan and zoning standards and are, where applicable, subject to mitigating measures to address potential environmental harm.

The Governor’s proposal sought to address California’s housing supply problem by expediting approval processes at the local level for predominately market rate housing developments. Given that this proposal was limited to infill development; it is likely that these expedited approvals would have taken place in more urban and coastal regions where the housing demand is particularly acute. This solution, which focuses on increasing market rate units, also referred to as “filtering,” assumes that, over time, older market-rate housing becomes more affordable as new units are added to the market, and is the most effective way to exit the affordable housing crisis. Unfortunately, the filtering process can take generations, meaning that units may not filter at a rate that meets needs at the market’s peak, and the property may deteriorate too much to be habitable. Further, prioritizing market rate housing development could be built to the exclusion of construction of more housing that is affordable to low- and moderate-income renters and homeowners. While many jurisdictions have not met their housing needs for any income level, generally the rate of production of units affordable to lower-income renters is significantly less than that of market rate units.

- 4) *Creating streamlined approvals for infill projects.* This bill creates a streamlined approval process for infill projects with two or more residential units or for ADUs in localities that have failed to produce sufficient housing to meet their RHNA numbers. This streamlined approval process may be triggered in two circumstances: 1) If the locality constructed fewer units of above moderate income housing than was required for the RHNA for that year and the development dedicates an unspecified percentage of the total number of units to below market rate housing, unless the locality has adopted a local inclusionary zoning ordinance that requires that greater than an unspecified percentage of the units dedicated to below market rate housing, in which case

the inclusionary zoning ordinance applies; and 2) The locality constructed fewer units of very low, low- or moderate-income housing than was required for the RHNA cycle for that year, and dedicates an unspecified percentage of the total number of units to below market rate housing, unless the locality has adopted a local inclusionary zoning ordinance that requires that greater than an unspecified percentage of the units be dedicated to below market rate housing, in which case that inclusionary zoning ordinance applies.

The author has committed to working with the affordable housing community to identify appropriate affordability percentages in projects that qualify for ministerial approval under this bill, particularly in jurisdictions that fail to meet their RHNA obligations for lower-income renters.

- 5) *Reporting Requirements.* This bill requires localities to report annually to HCD on the number of units of housing that have completed construction in the housing element cycle, and the income category, including very low income, low-income, moderate-income, and above moderate income, for which each unit of housing satisfies. The author's intent is to add new requirements to an existing annual report found in Government Code Section 65400; however this intent is not clear from the current language. Further, local governments who look to the existing code section may not see that this new requirement was added in a different code section.

Going forward, the author may wish to consider referencing Government Code Section 65400 in the bill, and amend Government Code Section 65400 to include the new requirements in this bill.

- 6) *Double-referral.* This bill was referred to this committee and the Senate Governance and Finance Committee.

RELATED LEGISLATION:

Trailer Bill 707 (Governor's Budget, 2016) —would have permitted ministerial “by-right” land use approvals for multifamily infill housing developments that include affordable housing units. This proposal was tied to a \$400 million general fund allocation to be used for affordable housing as proposed by the Legislature. The trailer bill language faced significant opposition and therefore an agreement on this proposal and a funding allocation could not be reached.

AB 2522 (Bloom, 2016) —would have exempted a housing development that includes either 20% low-income units or 100% moderate-income units and middle-

income units from a conditional use permit, a planned unit development permit, or project level CEQA review. The bill hearing in Assembly Housing and Community Development was canceled at the request of the author.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, February 22, 2017.)

SUPPORT:

San Francisco Chamber of Commerce

OPPOSITION:

None received.

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