

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1214 (Jones)
Version: March 24, 2022
Hearing Date: April 26, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

Planning and zoning: local planning

DIGEST

This bill requires a local planning agency to ensure architectural drawings that contain protected information are made available to the public in a manner that does not facilitate their copying by specifying how, where, and when these drawings can and cannot be made public, unless permission is granted otherwise as provided. Authorizes a design professional or owner of the copyright, upon submission of an official copy of the architectural drawings to a local planning agency, to submit a site plan or a massing diagram for posting online or for distribution to the public, upon request, and provides that if they do not submit a site plan or massing diagram permission is otherwise deemed to be granted.

EXECUTIVE SUMMARY

This bill attempts to strike a balance between the right of the public to access public records and protecting the copyrights of architectural works under federal law. The bill prohibits a local planning agency from posting architectural works that contain protected information on the internet or allowing members of the public to copy those works, unless allowed by the copyright holder. The bill provides an exception to the internet posting requirement during a public hearing of the planning agency or legislative body where a development application that incorporates those architectural drawings is being considered. The bill allows a site plan or a massing diagram to be submitted for posting online or for distribution to the public, and if one is not submitted then permission to allow copying or posting of the architectural works is deemed granted.

The bill is sponsored by the American Institute of Architects California. There is no known opposition. The bill passed out of the Senate Governance and Finance Committee on a vote of 5 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
 - a) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
 - b) Governs the disclosure of information collected and maintained by public agencies pursuant to the CPRA. (Gov. Code §§ 7920.000 et seq.)
 - c) States that, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7922.530.)
 - d) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 6253.)
- 2) Establishes the Ralph M. Brown Act (Brown Act), which secures public access to the meetings of public commissions, boards, councils, and agencies in the state. (Gov. Code, tit. 5, div. 2, pt. 1, ch. 9, §§ 54950 et seq.)
- 3) Requires that all meetings of the legislative body of a local agency be open and public, and all persons be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in the Brown Act. (Gov. Code, § 54953.)
- 4) Establishes in each city and county a planning agency with specified powers, and requires the legislative body of each city and county by ordinance to assign the functions of the planning agency to a planning department, one or more planning commissions, administrative bodies or hearing officers, the legislative body itself, or any combination thereof, as it deems appropriate and necessary. (Gov. Code § 65100.)
- 5) Provides that plans maintained by the building department of the city or county can be open for inspection only on the premises of the building department as a public record. The copy may not be duplicated in whole or in part except:
 - a) with the written permission, which is prohibited from being unreasonably withheld as specified, of the certified, licensed, or registered professional or their successor, if any, who signed the original documents and the written permission of the original or current owner of the building, or, if the building is part of a common interest development, with the written

permission of the board of directors or governing body of the association established to manage the common interest development; or

- b) by order of a proper court or upon the request of any state agency. (Health & Safe. Cod § 19851(a).)
- 6) Requires any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, to request written permission to do so, as provided. (*Id.* at subd. (b).)

This bill:

- 1) Requires a local planning agency to ensure architectural drawings that contain protected information are made available to the public in a manner that does not facilitate their copying, as provided.
- 2) Authorizes a local planning agency to maintain official copies of each set of architectural drawings submitted to the agency.
- 3) Provides that if an official copy of the architectural drawings maintained by the planning agency contains protected information then they are subject to the following restrictions, unless permission is granted by the design professional or the owner of the copyright otherwise:
 - a) the architectural drawings can only be open for inspection and public review on the premises of the planning agency as a public record;
 - b) the architectural drawings are prohibited from being copied by a member of the public without the permission of the design professional or the owner of the copyright; or
 - c) the local planning agency is prohibited from providing copies of the architectural drawings or postarchitectural drawings that contain protected information on the internet.
- 4) Authorizes a local planning agency, notwithstanding the provisions in 3) above, to do any of the following:
 - a) make copies of the architectural drawings for internal official review by the planning agency, legislative body, government agencies, or other government bodies responsible for the official review of architectural drawings;
 - b) distribute copies to members of the legislative body and members of the planning agency's governing body; however, these copies are not required to be made available to the public pursuant to the Brown Act; and
 - c) display a copy on the internet and a copy physically on premise during a public hearing of the planning agency or legislative body where a development application that incorporates those architectural drawings is being considered by the planning commission or legislative body.

- 5) Authorizes the design professional or the owner of the copyright, upon submission of an official copy of the architectural drawings to a local planning agency, to submit a site plan or a massing diagram for posting online or for distribution to the public, upon request.
 - a) If the design professional or the owner of the copyright elects not to submit a site plan or massing diagram, permission is deemed granted for the purposes of 3) above, and the planning agency is not subject to any restrictions on the copying or distribution of those architectural documents.
 - b) The planning agency, or other governing body, is prohibited from compelling such permission.

- 6) Defines the following terms for these purposes:
 - a) "massing diagram" means a document that displays the three-dimensional form of a building and describes the general profile, bulk, setbacks, and size of the building, but does not contain specific architectural detail;
 - b) "protected information" means an architectural drawing that meets both of the following conditions: (i) it is protected by the federal Copyright Act of 1976 (Public Law 94-553) as amended by the federal Architectural Works Copyright Protection Act of 1990 (Public Law 101-650), and (ii) it contains a copyright annotation indicating it is protected by the federal Copyright Act of 1976 (Public Law 94-553); and
 - c) "site plan" means a document for a project that is drawn to scale and displays all of the following: property lines, setback lines, topographic lines, easements, drainage, utilities, lighting, driveways, surround streets and traffic flow, parking lots and parking spaces, landscaped areas, setback distance between buildings and property lines, outline of existing and proposed buildings and structures, distance between buildings, and ground sign location.

COMMENTS

1. Stated need for the bill

The Author writes:

SB 1214 addresses the handling by local agency planning departments of plans and drawings prepared by architects in support of development proposals. The provisions of the bill are substantially similar to long-standing provisions of the Health and Safety Code relating to local building departments. This bill's objective is to balance the critical importance of facilitating public participation in local agency planning decisions with the need to protect the architects' intellectual property rights under the federal Copyright Act. Specifically, the bill clarifies that public officials will always have full access to the architects' plans and drawings, and the public will have the same access to the full plans during agency hearings and by

visiting the planning department offices. If the public wants to duplicate copyrighted materials, permission must be granted by the architect. The bill also gives architects the opportunity to submit less detailed drawings, including site plans and massing diagrams, which may be copied without limit by members of the public. Taken together the provisions of SB 1214 will help prevent the misappropriation of the intellectual property of licensed architects, while preserving the ability of local officials and members of the public to participate in the planning, entitlement and permit process.

2. The bill is trying to balance federal copyright protections of architectural works and the public's right to access public records

a. *Access to public records is a fundamental right*

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Cod § 7921.000.) Under the CPRA, public records are open to inspection at all times during the office hours of a public agency for inspection by the public, unless exempted, and the public has a right to copy public records. (Gov. Cod § 7922.525 & § 7922.530.) A public record is defined as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 7920.530.) The CPRA allows a public agency 10 days or, in specified "unusual circumstances," within 14 days of the 10-day period to disclose the requested public record, and authorizes the agency to charge a fee for its "direct costs of duplication" to the record. (Gov. Code § § 7922.525.)

b. *Bill limits the public's right to access records under existing law, but provides mechanisms for the public to view the documents without copying them*

The bill's provisions attempt to strike a balance between the right of the public to access public records and protecting the copyrights of architectural works under federal law. The provisions of the bill are substantially similar to existing provisions of the Health and Safety Code relating to local building departments. (see Health & Safe. Code §§ 19851.) Generally, the owner of a copyrighted work possesses the exclusive right to reproduce, publish, or display that work, and copying the work or posting it on the internet without their permission could constitute an infringement of the owner's copyright. The federal Copyright Act of 1976 (Public Law 94-553) was amended by the federal Architectural Works Copyright Protection Act of 1990 (Public Law 101-650) to provide copyright protection for architectural works defined as:

the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the

design, but does not include the individual standard features. (Tit. 17 U.S.C. §101 & §102.)

This bill limits the public's right to access architectural drawings in the possession of a local planning agency that contain protected information by not allowing them to be copied and only viewed on the physical premise of the planning agency. Protected information is defined as an architectural drawing that is protected by the federal copyright law and contains an annotation indicating it is protected by the federal copyright law. Specifically, the bill provides that architectural drawings can only be open for inspection and public review on the premises of the planning agency as a public record and that they are prohibited from being copied by a member of the public without the permission of the copyright holder. Additionally, the local planning agency is prohibited from providing copies of the architectural drawings or post-architectural drawings that contain protected information on the internet.

There are two caveats to these prohibitions. First, if the copyright holder gives permission for the architectural drawings to be copied or displayed on the internet. Second, the bill authorizes the design professional to submit a site plan or a massing diagram for posting on the internet or distribution to the public when they submit the official copy of architectural drawings to a local planning agency. The bill provides that if a design professional does not submit a site plan or a massing diagram permission for purposes of the prohibitions in the prior paragraph will be deemed given. Essentially, if a design professional wants to ensure their copyrighted works cannot be copied by the public or be posted online, they have the option of providing a site plan or massing diagram. A massing diagram is defined as a document that displays the three-dimensional form of a building and describes the general profile, bulk, setbacks, and size of the building, but does not contain specific architectural detail. A site plan is defined as a document for a project that is drawn to scale and displays specified things, such as property lines, setback lines, drainage, utilities, easements, driveways, and other information that cannot be copyrighted. Under the bill, a planning agency or other governing body is prohibited from compelling a design professional from providing permission to post their work or allow the public to copy it.

The bill provides findings related to limiting the public's right to access information stating that the bill "balances the public's right to access information relied upon by public bodies while protecting the intellectual property interests of design professionals and owners of copyrights."

c. Allows planning agencies to copy documents to facilitate their duties

Acknowledging the needs of the planning agency to share architectural works in order to accomplish its duties, the bill authorizes a local planning agency to make copies of the architectural drawings for internal official review by the government agencies and bodies responsible for the official review of architectural drawings, and to distribute

copies to members of the legislative body and members of the planning agency's governing body. However, these copies are not required to be made available to the public pursuant to the Brown Act. However, a local planning agency is authorized to display architectural drawings containing protected information on the internet and physically on the premises during a public hearing of the planning agency or legislative body where a development application that incorporates those architectural drawings is being considered, so the public will have access to the full architectural drawings when the planning agency is considering approval of the project at a public meeting.

d. Need for this limitation

According to the sponsor of the bill, local planning agencies are posting architectural plans for proposed projects online with much more frequency, especially since the pandemic; however, in many instances the plans they are posting contain copyrighted information and are violating federal copyright law. The sponsors have not provided any specific examples where designs were illegally copied from architectural plans held by a planning agency. Instead they highlight one example of an architect admitting to colleagues that they have used local agency websites to look at and possibly use elements of an architectural drawing, and state that it is common practice among contractors to do this.

3. Proposed amendments¹

The author may wish to amend the bill to make it clear that the site plan or a massing diagram has to be submitted at the time when an official copy of architectural drawings are submitted to a local planning agency and not afterwards and fix a typographical error. The specific amendments are as follows:

Amendment 1

On page 4, at line 4, delete "diagram," and insert:

diagram upon submission of an official copy of architectural drawings to a local planning agency,

In addition, there is a typographical error in the bill the author may wish to correct.

Amendment 2

On page 5, at line 2, delete "Surround" and insert: Surrounding

¹ The amendments may also include the addition technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

4. Statements in support

The American Institute of Architects California, sponsor of the bill, writes in support:

SB 1214 finds a balance between providing the public with information on proposed development projects that is needed for the public to be informed participants in the decision making process of local planning departments and following federal law regarding protecting the intellectual property in architectural plans.

In recent years more local planning departments have adopted the practice of posting architectural plans for proposed projects online to help the public access information and make informed comments. Unfortunately, this practice violates the federal Copyright Act. Information included in architectural plans submitted to local planning departments includes information protected by the Copyright Act. This means these architectural plans cannot be posted online, where they can be copied, without the permission of the owner of the architectural plans.[...]

Fortunately, there are architectural plans that express the scope of a project and do not contain information protected by the Copyright Act. Site Plans and Massing Diagrams both provide important information about the project and allow the public to understand and make informed comments on proposed projects. These documents include information on the distance between buildings, setbacks distances, location of parking lots, property lines, landscaped areas, and a three-dimensional form of buildings that describe the general profile, bulk, and size.

SB 1214 balances the need to provide the public with information and the obligation of planning departments to follow the Copyright Act. SB 1214 limits when architectural plans that contain information protected by the Copyright Act can be posted online, and places no limit on the online posting of architectural plans that do not contain protected information, such as Site Plans and Massing Diagrams. Importantly, it allows members of the public to view the protected documents in-person on the premises of the planning agency and during a hearing of planning agency or legislative body.[...]

SUPPORT

American Institute of Architects California (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Governance and Finance Committee (Ayes 5, Noes 0)
