SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
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HOUSING CRISIS ACT OF 2019

Enacts the "Housing Crisis Act of 2019," which, until January 1, 2030: (1) makes changes to local approval processes, (2) modifies the Permit Streamlining Act, (3) imposes restrictions on certain types of development standards, and (4) creates separate building standards for occupied substandard buildings.

Background

Planning and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Planning and Zoning Law. State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory "elements," including a housing element that establishes the locations and densities of housing, among other requirements. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Cities and counties must provide a path to appeal a decision to the planning commission and/or the city council or county board of supervisors.

When approving development projects, counties and cities can require applicants to mitigate the project's effects by paying fees. The California courts have upheld these mitigation fees for sidewalks, parks, school construction, and many other public purposes. When imposing a fee as a condition of approving a development project, local officials must determine a reasonable relationship between the fee's amount and the cost of the public facility.

State housing law. The Legislature has enacted a variety of statutes to facilitate and encourage the provision of housing, particularly affordable housing and housing to support individuals with disabilities or other needs. Among them is the Housing Accountability Act (HAA), enacted in 1982 in response to concerns over a growing rejection of housing development by local governments due to not-in-my-backyard (NIMBY) sentiments among local residents (SB 2011,

Greene). The HAA, also known as the "Anti-NIMBY" legislation, restricts a local agency's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA limits the ability of local governments to reject or render infeasible housing developments based on their density without a thorough analysis of the economic, social, and environmental effects of the action. Specifically, when a proposed development complies with objective general plan and zoning standards, including design review standards, a local agency that intends to disapprove the project, or approve it on the condition that it be developed at a lower density, must make written findings based on substantial evidence that the project would have a specific, adverse impact on the public health or safety and that there are no feasible methods to mitigate or avoid those impacts other than disapproval of the project.

Permit Streamlining Act. The 1977 Permit Streamlining Act requires public agencies to act fairly and promptly on applications for development permits, including wireless facilities. Public agencies must compile lists of information that applicants must provide and explain the criteria they will use to review permit applications. Public agencies have 30 days to determine whether applications for development projects are complete; failure to act results in an application being "deemed complete." However, local governments may continue to request additional information, potentially extending the time before the clock begins running.

Once a complete application for a development has been submitted, the Act requires local officials to act within a specific time period after completing any environmental review documents required under the California Environmental Quality Act. Specifically, local governments must act within (1) 60 days after completing a negative declaration or determining that a project is exempt from review, or (2) 180 days after certifying an environmental impact report (EIR). If the local government fails to approve or disapprove the application in the applicable time period, the application is deemed granted, and the applicant may file suit in state court to order the local government to issue the permit.

California's housing challenges. California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes have contributed to the lack of housing production. Recent reports by the Legislative Analyst's Office (LAO) and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members who may not want new neighbors. The building industry also points to CEQA review, and housing advocates note a lack of a dedicated source of funds for affordable housing.

Many local governments have adopted policies that limit or outright prohibit new residential development within their jurisdictions, or implement restrictive zoning ordinances, or otherwise impose costly procedural and design requirements on building. The author wants to remove some of these barriers in areas where housing is most acutely needed.

Proposed Law

Senate Bill 330 enacts the "Housing Crisis Act of 2019," which, until January 1, 2030: (1) makes changes to local approval processes, (2) modifies the Permit Streamlining Act, (3) imposes restrictions on certain types of development standards, and (4) creates separate building standards for occupied substandard buildings.

Approval process changes. SB 330 establishes a process for submitting a complete initial application—separate from and prior to the complete application required for the Permit Streamlining Act clock to begin running—and restricts the changes that local governments may apply to a project after a completed initial application is submitted.

SB 330 deems a complete initial application to have been submitted by a housing development applicant if they have provided the following information about the project:

- The specific location.
- The major physical alterations to the property on which the project is to be located.
- A site place showing the location on the property, as well as the massing, height, and approximate square footage, of each building that is to be occupied.
- The proposed land uses by number of units or square feet using the categories in the applicable zoning ordinance.
- The proposed number of parking spaces.
- Any proposed point sources of air or water pollutants.
- Any species of special concern known to occur on the property.
- Any historic or cultural resources known to exist on the property.
- The number of below market rate units and their affordability levels.

However, if a project applicant revises the project to change the number of units or square footage by 20 percent or more, excluding density bonus, the initial application is no longer complete.

SB 330 directs HCD to adopt a standardized form that applicants may use for submitting an initial application, and provides that the adoption of the form is not subject to the Administrative Procedures Act.

SB 330 prohibits a city or county from conducting more than three de novo hearings on a proposed housing development if it complies with the applicable, objective general plan and zoning standards in effect at the time a complete initial application. The city or county must consider and either approve or disapprove the application at any of the three hearings consistent with the applicable timelines under the Permit Streamlining Act. In addition to those requirements, the city or county must either approve or disapprove the permit within 12 months from when the date on which the application is deemed complete. However, SB 330 stops the clock from running while the applicant is revising their application materials.

SB 330 states that a project cannot be found inconsistent, not in compliance, or not in conformity with the zoning, and the project does not require rezoning, if the zoning does not allow the maximum residential use, density, and intensity allowable on the site by the land use or housing element of the general plan.

SB 330 amends the HAA to prohibit a local agency from applying ordinances, policies, and standards to a development after a completed initial application is submitted. The bill allows local governments to apply new standards after the complete initial application is submitted in the following circumstances:

- A development fee or exaction is indexed to inflation in the ordinance.

- A local government finds that a new standard is needed to mitigate or avoid a specific, adverse impact to public health or safety based on a preponderance of the evidence in the record, and there is no feasible alternative to mitigate it.
- A new policy, standard, or ordinance is needed to mitigate an impact of the project to a less than significant level pursuant to CEQA.
- The housing development project has not commenced construction within three years following the date that the project received final approval, as defined.
- The housing development project is revised following submittal of a complete initial application such that the number of residential units or square footage of construction changes by 20 percent or more, excluding the application of density bonus.

A local agency may also subject new square footage or units to the ordinances, policies, and standards in effect when the complete initial application is submitted.

A development applicant, a person who would be eligible to apply for residency in a proposed development, or a housing organization can file a lawsuit if a local agency requires a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a complete initial application was submitted.

Permit Streamlining Act changes. SB 330 also amends the existing application process under the Permit Streamlining Act. Specifically, SB 330 requires a public agency to provide an applicant with an exhaustive list of items in their application that was not complete. That list must be limited to those items actually required on the agency's checklist that is required by existing law. In any subsequent review of the application determined to be incomplete, the local agency cannot request the applicant to provide any new information that was not stated in the initial list of items that were not complete. When determining if the application is complete, the public agency must limit its review to only determining whether the application includes the missing information. SB 330 also requires each city and each county to make copies of any list of required application information available both (1) in writing to those persons to whom the agency is required to make information available, and (2) publicly available on their website.

The bill also requires any determination of whether the site of a proposed housing development is a historic site to be made at the time when the application for the project is deemed complete under the Permit Streamlining Act.

SB 330 provides that the timelines under the Permit Streamlining Act are mandatory.

Restrictions on local development standards and policies. SB 330 imposes restrictions on several types of development standards in an affected city or county. SB 330 defines "affected city" to be those that meet all the following conditions:

- The percentage by which the city's average rate of rent exceeded 130 percent of the national median rent in 2017, based on the federal 2013-2017 American Community Survey 5-year estimates.
- The percentage by which the vacancy rate for residential rental units is less than the national vacancy rate, based on the federal 2013-2017 American Community Survey 5-year estimates.
- The city has a population of more than 5,000, or has a population of 5,000 or less but is located within an urban core.

SB 330 defines an affected county to mean a county where at least half the cities are affected cities.

In an affected city or county, SB 330 prohibits a local government from adopting a development policy, standard, or condition that would have any of the following effects:

- Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use, as defined to include specified zoning standards, or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018.
- Imposing a moratorium or similar restriction or limitation on housing development, including mixed-use development, within all or a portion of the jurisdiction of the affected county or city, other than to specifically protect against an imminent threat to the health and safety. A city or county cannot enforce the moratorium until HCD approves it.
- Imposing or enforcing design standards established on or after January 1, 2018, that are not objective design standards.
- Limiting the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city, as applicable.
- Capping the number of housing units that can be approved or constructed either annually or for some other time period.
- Limiting the population of the affected county or affected city, as applicable.

However, a local government may change land use designations or zoning ordinances to allow a less intensive use if it concurrently increases intensity elsewhere it ensure that there is no net loss of residential capacity. SB 330 also allows a local government to enact a policy that prohibits commercial use of land that is designated for residential use, such as short-term occupancy of a residence.

SB 330 also prohibits an affected city or county from:

- Imposing any new, or increasing or enforcing any existing, requirement that a proposed housing development include parking.
- Charging a development fee or exaction, including water or sewer connection fees, in an amount that exceeds the amount that would have applied to the project on January 1, 2018, except if that fee or exaction is indexed to inflation, or if that fee is charged in lieu of an inclusionary housing requirement.
- Charging any development fees or exactions to deed-restricted units affordable to lower income persons and families, as defined.

An affected city or county cannot deny a housing project solely because the applicant does not pay a fee that is prohibited by the bill.

SB 330 provides that if the affected county or affected city approves an application for a conditional use permit for a proposed housing development project and that project would have

been eligible for a higher density under the affected county's or affected city's general plan land use designation and zoning ordinances as in effect prior to January 1, 2018, the affected county or affected city must allow the project at that higher density.

A development that would require demolition of specified types of affordable housing units or rental units cannot benefit from SB 330's provisions unless (1) the developer agrees to provide relocation benefits to the current residents and offers them first right of refusal in the new development, and (2) the development is at least as dense as the existing residential use of property.

SB 330 nullifies any development policy, standard, or condition enacted on or after January 1, 2018, that does not comply with the above prohibitions. The bill states that it must be construed broadly to maximize the development of housing, and that any exceptions shall be construed narrowly.

SB 330 applies its provisions to the electorate of an affected city or county, and voids any voter initiative or other policy that requires local voter approval for an increase the allowable intensity of housing, to establish housing as an allowable use, or to provide services and infrastructure necessary to develop housing.

SB 330 exempts the Very High Fire Hazard Severity Zone, as defined in existing law, from its provisions, and provides that it does not affect the California Coastal Act of 1976, nor does it prevent the operation of CEQA.

Substandard buildings. SB 330 also establishes a process for legalizing occupied substandard buildings. The bill requires HCD to develop building standards and other rules that apply to an occupied substandard building, defined to be a building in which one or more persons reside that an enforcement agency finds is in violation of any health and safety requirements. SB 330 applies these standards, once developed, in lieu of the requirements that apply to buildings under existing law. The standards developed by HCD must:

- Require that an occupied substandard building include adequate sanitation and exit facilities and comply with seismic safety standards;
- Permit those conditions prohibited under existing substandard building laws that do not endanger the life, limb, health, property, safety, or welfare of the public or the occupant; and
- Meet rules and regulations developed by the State Fire Marshal.

SB 330 deems the occupied substandard building in compliance with state building codes and health and safety laws if it meets the substandard building requirements developed by HCD for a period of seven years. After that time, the current building standards in force at the time apply.

SB 330 sunsets all its provisions on January 1, 2030 and provides throughout the bill that nothing in the bill supersedes, limits, or otherwise modifies the requirements of CEQA. The bill also states that its provisions are severable, makes technical and conforming changes, and includes findings and declarations to support its purposes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. California is in the midst of a housing crisis. Rents across the state significantly exceed the rest of the United States, and homeownership has fallen to abysmal levels. Demand is clearly high, but builders find themselves unable to meet that demand because of local rules that limit the number of units or simply prohibit building altogether. At a time when housing is so desperately needed, there are some local policies that should just be off limits. SB 330 is a targeted approach that prohibits the most egregious practices in the areas that are hardest hit by the housing crisis. It repeals local voter initiatives enacted by NIMBYs that have prevented well-meaning local officials from taking the steps they need to ensure that housing can get built. It prevents local governments from downzoning unless they upzone elsewhere, and it stops them from changing the rules on builders who are in the midst of going through the approval process. SB 330 also limits the application of parking ratios and design standards that drive up the cost of building. These are not uncontroversial changes, but SB 330 sunsets its provisions so that the Legislature can evaluate its effectiveness. The first rule of holes says that when you're in one, stop digging: SB 330 applies this principle to one of the state's greatest challenges.

2. Home rule. California is a diverse state, with 482 cities and 58 counties. Local elected officials for each of those municipalities are charged by the California Constitution with protecting their citizens' welfare. One chief way local governments do this is by exercising control over what gets built in their community. Local officials weigh the need for new housing against the concerns and desires of their constituents. Where appropriate, those officials impose enact ordinances to shape their communities or set standards to make sure that the impacts of new development are considered and mitigated, based on local conditions. SB 330 runs roughshod over the unique features of California's communities by imposing blanket prohibitions on certain types of development regulation.

3. Time marches on. Local governments update their development policies and standards over time to reflect new circumstances within their jurisdiction or to respond to mistakes made in the past. In some cases, this may mean amending those standards while a city or county is actively considering a project for approval. SB 330 freezes in time the standards that were in place when a complete initial application, a new term created in the bill, is filed. But these completed applications do not include all the information a local government needs to understand a development's impacts, make a decision on the project, or to even necessarily know which standards apply to it. That's why it's important to have a completed *final* application. Should the Legislature prevent new ordinances from applying before a local government has a chance to understand the impacts of a development?

4. Power to the people. In 1911, California voters amended the Constitution to provide voters the power to enact initiatives and referenda. The voter initiative is a "reserved power;" it is not a right granted to them, but a power reserved by them. As such, the power of initiative is integral to California's political process. SB 330 removes the ability of local elected officials, and more importantly, local voters, to enact new growth management ordinances or even enforce existing ones. Locals adopt these measures for a variety of reasons, some more noble than others: for example, some are adopted out of environmental concerns, such as preventing sprawl or

reducing pressure to convert agricultural land to urban uses, while others are intended to block new neighbors from moving in. To avoid universally overturning the will of the voters and to draw a distinction between some, the Committee may wish to consider amending SB 330 to allow the continuation some duly adopted growth management ordinances, such as those that may need enhanced open-space protections, that still allow for affordable housing development, and that have been in effect for a longer period of time.

5. Gridlock. Ask any local elected official: Californians love their cars and consider it of paramount importance that they have somewhere to park them. For this reason, many local governments impose minimum parking requirements. But building new parking is expensive and potentially increases the cost of new development. Developers, for their part, would prefer to only build the parking they absolutely need to include in order to rent or sell their units. SB 330 voids local parking requirements in areas that it affects, regardless of whether residents can realistically go without cars. The Committee may wish to consider amending SB 330 to allow some parking requirements to remain in force for developments that aren't close to transit or are built in smaller cities that may not have the density of amenities to allow going car-free, or otherwise allowing local governments to impose some parking limits where they are truly needed.

6. Time is money. Developers face lots of costs when they try to get a project built: the "hard" construction costs of the actual structure, plus the "soft" costs of completing all the procedural steps and documentation that are needed to secure approval, plus the time value of money. SB 330 aims to reduce these costs in several ways, including by imposing a 12-month time limit on approval and limiting the number of hearings on development applications that are consistent with local zoning to three. But this reduction in the number of hearings constrains public input on new developments. Given that the bill caps the total time to approval, developers' soft costs may be sufficiently reduced to encourage new production without having to limit public comment. The Committee may wish to consider amending SB 330 to increase or remove the limit on the number of hearings allowed on development approvals that is imposed by the bill.

7. Whither general plans? The general plan is often called the "constitution for future development." It serves an important role in shaping the location and type of development that will occur, ensuring that there is adequate infrastructure to support that development, providing adequate open space, and mitigating future risks from fire, floods, and climate change. Zoning ordinances then effectuate the requirements in the housing element and general plan—those ordinances are specific where the general plan is, well, general. SB 330 provides that a project isn't inconsistent with local zoning if it meets the objective standards for density and other metrics in the general plan, but that misunderstands how general plans and zoning ordinances are applied. For example, a general plan may specify a range of densities for an area, which is only then specifically applied through the zoning ordinance. AB 3194 (Daly) of last year initially made similar changes to the HAA as SB 330 does, but was amended to more accurately reflect the way zoning works in practice. The Committee may wish to consider amending SB 330 to track the changes made in the final version of AB 3194.

8. Pay the man. Local governments have seen their revenues significantly constrained over the past several decades. Local governments have seen their sources of revenue slashed by a series of propositions, while demand for public services have increased. As a result, cities and counties follow a simple principle: new developments should pay for the impacts that they have on the community and the burden they impose on public services. Developer fees pay for important public services, including schools, new infrastructure for water and wastewater, roads, transit,

and parks. SB 330 prevents most increases in fees, even if they follow the stringent requirements of the Constitution and state law, and outright exempts affordable units, even though those units are likely to generate similar demands for public services. Without the ability to charge appropriate fees, residents may find that their services are scaled back.

9. Mandate. The California Constitution generally requires the state to reimburse local agencies for their costs when the state imposes new programs or additional duties on them. Because SB 330 expands the penalties under state housing law and requires new duties of local planning officials, Legislative Counsel says it creates a new state mandate. But the bill disclaims the state's responsibility for reimbursing local governments for enforcing these new crimes. That's consistent with the California Constitution, which says that the state does not have to reimburse local governments for the costs of new crimes (Article XIIIB, 6[a] [2]). SB 330 also says that if the Commission on State Mandates determines that the bill imposes a reimbursable mandate, reimbursement must be made pursuant to existing statutory provisions.

10. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. SB 330 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding that the provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, is a matter of statewide concern.

11. Double referral. The Senate Rules Committee has ordered a double referral of SB 330: first to the Governance and Finance Committee to hear issues relating to local permitting, and then to the Senate Housing Committee.

12. Related legislation. The Legislature is considering numerous bills to increase the production of housing in the state. Most notably, SB 4 (McGuire) and SB 50 (Wiener), increase zoning near transit and in other parts of the state.

Support and Opposition (4/5/19)

Support: Bay Area Council; Bridge Housing Corporation; Building Industry Association of the Bay Area; California Building Industry Association; California Community Builders; California Yimby; Enterprise Community Partners, Inc.; Facebook, Inc.; Silicon Valley At Home (Sv@Home); TMG Partners.

Opposition: League of California Cities.

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