

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 3122 (Kalra) – As Introduced February 16, 2024

SUBJECT: Streamlined housing approvals: objective planning standards.

SUMMARY: Revises the threshold at which a local government can apply recently adopted objective planning standards when a development approved under the streamlined ministerial process established by SB 423 (Wiener), Chapter 778, Statutes of 2023 is modified by the development proponent. Specifically, **this bill:**

- 1) Authorizes a local government to apply objective planning standards adopted after an approved SB 423 development application was first submitted when a developer requests to modify the project in the following ways:
 - a) The total square footage of the development increases by 15% or more, exclusive of underground space, or the total number of units decreases by 15% or more.
 - b) The total square footage of the development increases by 5% or more, exclusive of underground space, or the total number of units decreases by 5% or more, and the local government deems it necessary to subject the development to new standards that were not in effect when the development was first proposed to reduce a specific harm to public health or safety, with no feasible alternative method to mitigate the adverse impact.
- 2) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill, within the meaning of Section 17556 of the Government Code.

EXISTING LAW establishes all of the following pursuant to SB 423 (Wiener, Chapter 778, Statutes of 2023), as provided in Government Code (GOV) § 65913.4:

- 1) Allows a development proponent to submit an application for a development that is subject to a by right approval process, which is required to be approved by the local government and not subject to the California Environmental Quality Act (CEQA), if the development meets certain conditions, including locational, affordability, and labor requirements.
- 2) Specifies the process for approval by a local government of the proposed project, including that:
 - a) If a local government determines that a development submitted pursuant to the bill's provisions is in conflict with any objective planning standards, it must provide the development proponent written documentation within specified timeframes of which standards the development conflicts with, and what the conflict is.
 - b) Design review or public oversight must be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local

jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction.

- c) Design review or public oversight must be completed in a specified timeframe, and must not in any way inhibit, chill, or preclude the ministerial approval provided by SB 423 or its effect, as applicable.
- d) The development proponent may request modifications to a development approved under SB 423 if the request is submitted to the local government before the local government issues the final building permit required for construction.
- e) The local government's review of any modification requests must follow established timeframes and requirements, including that the local government can only apply objective planning standards adopted after the development application was first submitted if the requested modification:
 - i) Changes the total number of residential units or square footage by 15% or more, exclusive of any underground space; or
 - ii) Changes the total number of residential units or square footage by 5% or more, exclusive of any underground space, and the local government deems it necessary to subject the development to new standards that were not in effect when the development was first proposed to reduce a specific harm to public health or safety, with no feasible alternative method to mitigate the adverse impact.

FISCAL EFFECT: This bill is keyed fiscal and contains a state mandated local program.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill revises the threshold at which a local government can apply recently adopted objective planning standards when a development that has been approved under the streamlined ministerial process established by SB 423 is modified by the development proponent. San Francisco Bay Area Planning and Urban Research Association (SPUR) is the sponsor of this bill.

According to the author, "Housing developers have experienced challenges with the changing market trends, such as less demand for office space or increasing cost of construction. Clarifying the 15% threshold in SB 35 will allow projects to reduce the size of their project or to increase the residential units. California is facing a housing crisis, and cities and counties must build housing to meet the growing population, so modifying the 15% threshold, will give projects the flexibility to make those changes needed to respond to the changing market conditions. AB 3122 will help these housing projects move forward and ensure these developments are successful and can provide the housing our cities and counties need."

- 2) **Statewide Housing Needs.** According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update,¹ California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.²

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle, and would require production of over 300,000 units a year, including over 120,000 units a year of housing affordable to lower income households. By contrast, housing production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.³ As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- a) 2.1 percent of the very low-income RHNA.
 - b) 4.8 percent of the low-income RHNA.
 - c) 4.8 percent of the moderate-income RHNA.
 - d) 12.7 percent of the above moderate-income RHNA.
- 3) **Making it Easier to Approve Housing Projects.** In recent years the Legislature has passed several bills that override the local approval process for housing projects that meet objective standards. This includes accessory dwelling unit law [established in 2016 by AB 2299 (Bloom), Chapter 735, and SB 1069 (Wieckowski), Chapter 720], multi-family housing that complies with local zoning standards [SB 35 (Wiener) Chapter 366, Statutes of 2017), the allowance of duplexes and lot splits [SB 9 (Atkins), Chapter 162, Statutes of 2021], and the allowance of multi-family mixed-income housing along commercial corridors [AB 2011 (Wicks), Chapter 647, Statutes of 2022].

In 2023, SB 423 (Wiener) amended SB 35, creating a streamlined, ministerial local approvals process for housing development proposals in jurisdictions that have failed to produce sufficient housing to meet their RHNA. To access the by-right process, the project must meet a number of requirements, including that the development includes a percentage of affordable housing units, meets specified labor standards, is not on an environmentally sensitive site, and would not result in the demolition of existing housing. Localities are

¹ California Department of Housing and Community Development, *A Home for Every Californian: 2022 Statewide Housing Plan*. March 2022, <https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136>

² U.S. Department of Housing and Urban Development, Point in Time Counts. <https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html>

³ <https://www.hcd.ca.gov/policy-research/housing-challenges.shtml>

allowed to provide design review, and are allowed to apply their own objective development standards, but they must approve the development project in specified timeframes.

- 4) **The Need for Flexibility.** Existing law requires any modifications to housing projects approved pursuant to SB 423 to be subject to the same objective standards of the original approval, with certain exemptions, including that the unit count or square footage of the approved project cannot “change” by more than 15%. If local regulations have changed from the time of initial project submittal, the 15% change threshold could constrain a developer’s ability to modify their project. For example, an approved proposal to reduce square footage by more than 15% in response to market conditions could be precluded if local zoning regulations would no longer permit the uses contained in the approved project. The 15% limit also does not allow for larger increases in the unit count, which limits the ability to use some of the recent amendments to expand upon Density Bonus Law.

These limitations have affected entitled developments in the housing pipeline. Developers might need to revise their housing development proposals after initial approval for a variety of reasons, including changing market conditions, financial constraints, and unforeseen site challenges. For instance, the COVID-19 pandemic led to a significant shift in work habits, with many white-collar workers transitioning to remote or hybrid work, which in turn reduced the demand for new office space and ground floor commercial uses. Additionally, developers may encounter difficulties in completing their capital stack in a timely manner due to changes in investor sentiment, fluctuations in interest rates, or stricter lending criteria from banks, impacting overall project feasibility. It can take years for affordable housing projects relying on local, state, or federal funds to complete their capital stacks, and market conditions can change while this pursuit is underway.

- 5) **Previous Legislation.** SB 423 (Wiener), Chapter 778, Statutes of 2023 amended SB 35 (Wiener), which created a streamlined, ministerial local approvals process for housing development proposals in jurisdictions that have failed to produce sufficient housing to meet their RHNA.
- 6) **Arguments in Support.** According to the sponsor SPUR, and supporters, AB 3122 “Will allow for streamlined housing production in California in counties and cities that are not building enough housing to keep up with state housing construction requirements. The bill amends the 2017 statute in SB 35 to adjust the 15 and five percent thresholds on projects being revised after approval without being subject to local objective planning standards. In turn, this will enable project size to be rationalized by excluding or reducing non-residential components.

“...This bill will fix a scenario the Legislature did not account for with the implementation of SB 35. It will provide much needed clarification to the SB 35 application process by modifying the 15 percent and five percent threshold in existing law. This will enable approved housing projects to increase square footage for construction or allow residential units to not be subjected to local government objective planning standards.”

- 7) **Arguments in Opposition.** None on file.
- 8) **Double-Referred.** This bill was heard in the Assembly Housing and Community Development Committee on April 17th and passed with a vote of 9-0.

REGISTERED SUPPORT / OPPOSITION:

Support

SPUR [SPONSOR]
Abundant Housing LA
Bay Area Council
California Community Builders
California YIMBY
CivicWell
Housing Trust Silicon Valley
Midpen Housing
Sand Hill Property Company
YIMBY Action

Opposition

None on file

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