Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 1114 (Haney) – As Introduced February 15, 2023

SUBJECT: Planning and zoning: housing development projects: postentitlement phase permits.

SUMMARY: Expands the scope of postentitlement phase permits subject to mandated processing timelines and other requirements to include discretionary permits, and makes issuance of postentitlement phase permits ministerial. Specifically, **this bill**:

1) Extends the standards local agencies must comply with when processing non-discretionary postentitlement phase permits to also include discretionary postentitlement phase permits.

2) Declares that the issuance of postentitlement phase permits for housing development projects is a ministerial duty of local agencies.

3) Finds and declares that the bill is not intended to limit any other law regarding issuance of building permits.

4) Finds and declares that access to affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, and therefore this bill applies to all cities, including charter cities.

5) 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.

EXISTING LAW:

1) Establishes the Permit Streamlining Act (PSA), which, among other things, establishes time limits within which state and local government agencies must either approve or disapprove permits to entitle a development (Government Code § 65920 - 65964.5).

2) Establishes standards and requirements for local agencies to review non-discretionary postentitlement phase permits, including time limits within which local agencies must either approve or disapprove postentitlement permits (Government Code § 65913.3).

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

COMMENTS:

1) **Author's Statement.** According to the author, "In San Francisco it can take almost two years to issue a postentitlement building permit, partly because it's the only city in California where one person can appeal a building permit after a project has already been approved by the Board of Supervisors or Planning Commission. Because of this unique process, San Francisco is struggling to build housing and is falling behind the rest of the State on its affordable housing goals. AB 1114 will address the post approval appeals problem and help

build more housing in San Francisco by making *all* postentitlement building permits a ministerial action."

2) **Planning for and Approval of Housing.** Planning for 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. Cities and counties enforce this land use authority through zoning regulations, as well as through an "entitlement process" for obtaining discretionary as well as ministerial approvals.

   The scale of the proposed development, as well as the existing environmental setting determine the degree of local review that occurs. For larger developments, the local entitlement process commonly requires multiple discretionary decisions regarding the subdivision of land, environmental review per the California Environmental Quality Act (CEQA), design review, and project review by the local agency's legislative body (city council or county board) or by a planning commission delegated by the legislative body.

   Navigating through the various stages of local approval requires developers to invest time and resources early in the development process. This creates a certain degree of risk for developers who must bear any costs associated with navigating the local approval process long before they can realize the profits typically associated with a completed development.

3) **The Permit Streamlining Act.** The PSA requires public agencies to act fairly and promptly on applications for development proposals, including housing developments. Under the PSA, public agencies have 30 days to determine whether applications for development projects are complete and request additional information; failure to act results in an application being "deemed complete." The PSA applies to the discretionary approval phase of a development review process; this is the phase where the agency, in its discretion, decides whether it approves of the concept outlined in the development proposal.

4) **Non-discretionary Postentitlement Permits.** A development proposal that is approved and entitled by a local agency is still required to obtain approval for a range of non-discretionary permits. This includes building permits and other permits related to the physical construction of the development proposal. The timelines established in the PSA do not apply to these non-discretionary permits.

   Essentially, the PSA applies to the discretionary approval phase of a development review process. This is the phase where the local agency, in its discretion, decides whether or not it approves of the concept outlined in the development proposal. Because the local agency is exercising discretion, these approval decisions are subject to CEQA. A development proposal that is approved and entitled by a local agency must also obtain approval of objective permits associated with the development proposal. This ensures the proposal is compliant with state and local building codes and other measures that protect public health, safety and the environment. This stage of the review process is often ministerial, as these postentitlement permits are typically objective in nature. Generally, once a local agency invests the time and effort to approve and entitle a development proposal, there is an incentive for the agency to process the postentitlement permits in a timely fashion. In order to expedite this stage of the development approval process, AB 2234 (Robert Rivas), Chapter 651, Statutes of 2022,

required local agencies to process non-discretionary permits within 30 days for small housing development projects and 60 days for large housing development projects.

5) **State Review of San Francisco's Housing Policies.** The challenges and delays associated with developing housing in the City and County of San Francisco (San Francisco) are the subject of an ongoing state investigation. In August of 2022, the California Department of Housing and Community Development (HCD) announced that the department's Housing Accountability Unit would conduct a nine-month Housing Policy and Practice Review of San Francisco, aimed at identifying and removing barriers to housing in San Francisco. This is the first such investigation initiated by HCD. At the time of the announcement, the director of HCD noted, "We are deeply concerned about processes and political decision-making in San Francisco that delay and impede the creation of housing and want to understand why this is the case." The day prior to the announcement, HCD provided a letter to San Francisco outlining the steps the jurisdiction must take to achieve a compliant housing element for the state's 6th housing element cycle. In the letter the department noted, "HCD has received several public comments and has active enforcement cases and complaints related to the local permit process that have indicated a complex, untimely, and cumbersome process with little certainty to applicants. There are also indications of potential violations of various state laws, including the Permit Streamlining Act, Housing Accountability Act, Housing Crisis Act, and State Density Bonus Law."

   This February the Governor announced the certification of San Francisco's Housing Element for the 6th cycle, a blueprint for the development of more than 82,000 homes over the next eight years. While the state certified San Francisco's 6th cycle housing element, the Governor's office noted that, "The Administration will continue to pursue HCD's San Francisco Housing Policy and Practice Review, conducted through the Housing Accountability Unit, which is undertaking a comprehensive analysis of the patterns that created years of costly building delays in San Francisco." In addition to a heightened degree of state oversight, the delays in San Francisco's permitting process continue to garner media attention.

6) **Permitting Delays in San Francisco.** The San Francisco Chronicle published an article in December 2022 highlighting HCD data revealing that the timeline for obtaining development approvals in San Francisco increased dramatically over the last 10 years, "Citywide, the median approval time for permits has increased 83% since 2012." According to data compiled by HCD the average length of time it takes get a development proposal entitled in San Francisco (450 days) and the average length of time it takes to get an entitled proposal permitted (524 days) is the longest in the state among jurisdictions that approved more than 10 projects. These figures are disproportionate to the statewide average, but they do not disaggregate important aspects of the timeline.[1]

   San Francisco's reported approval timeframes denote the total length of time for the entire approval process. It does not distinguish between the days that a development proposal is awaiting action from the applicant and the time the proposal is waiting for action from San Francisco. It is possible in some cases that San Francisco acted expeditiously in performing

[1]Dustin Gardiner and Susie Neilson; *627 days, just for the permit: This data shows the staggering timeline to build homes in S.F.*, The San Francisco Chronicle, 14 December 2022.

its review, while the applicant required an extended period to respond. As an example, a simplified permit review process could look like this:

- January 1, applicant with an entitled project submits a building permit to San Francisco for review. **[Clock starts].**
- January 31, San Francisco returns a full set of comments on the building permit to the applicant **[+ 30 days].**
- May 1, applicant submits a revised building permit that addresses comments on the application. **[+ 90 days].**
- May 31, San Francisco determines that the revised building permit is compliant and files appropriate notices relative to the compliant permit **[+ 30 days].**
- June 30, notice period for the compliant building permit expires without appeal or request for hearing. **[+30 days]**

In this scenario, looking only at the time from submission to approval, it is possible to state, "it took 180 days for the applicant to obtain a building permit from San Francisco." The previous statement is true, but disaggregating the time the application was waiting for action from the applicant (90 days), rather than San Francisco (90 days) paints a more accurate picture.

While it is important to consider the applicant's role in the process, the time it takes to entitle a project and the time to permit an entitled project in San Francisco is an undeniable outlier. As a point of comparison, the City of Los Angeles takes an average of 165 days to entitle projects and 85 days to permit an entitled project. It takes an average of 250 days to get a project entitled and permitted in Los Angeles and 974 days in San Francisco.

This bill would subject San Francisco's review periods (first and third bullets) to the time limits established in AB 2234. This bill would also eliminate the final 30 day notice period and its potential for triggering a hearing (fourth bullet) in the permit approval process noted above. That process can be as short as 30 days if there are no appeals. However, if there is an appeal or request for a hearing, the final permit approval may be delayed indefinitely.

7) **Discretionary Postentilement Review in San Francisco.** As noted above, local agencies are required to abide by specific review timeframes during the entitlement phase of development approval (the PSA). Similarly, AB 2234 requires local agencies to comply with specific review timeframes for postentitlement phase permits. The timelines established in AB 2234 apply specifically to "non-discretionary" postentitlement permits. However, jurisdictions can exempt themselves from aspects of AB 2234 by making postentitlement phase permits "discretionary." San Francisco, a notable outlier for its lengthy permit approval timelines, is exempt from aspects of AB 2234 because it issues several postentitlement phase permits on a discretionary basis.

The San Francisco Planning Code (SF Planning Code) establishes a specific set of permit review procedures that can substantially delay the issuance of permits for projects that the planning department already certified as compliant with San Francisco's development standards. Specifically, the SF Planning Code subjects permits issued under the California Building Standards Code for the construction, demolition, or alteration of buildings (as well as other permits that are typically non-discretionary) to additional discretionary review procedures. The SF Planning Code requires that the San Francisco Planning Department,

upon determination that an application complies with applicable development standards, post a notice on the project site for 30 days and provide a notice to specified groups and individuals including "neighborhood organizations" that indicated an interest in the property or the area. The SF Planning Code requires San Francisco's planning commission to exercise discretionary review and to hold a hearing on a compliant building permit if a hearing request is received during the notice period. San Francisco's planning commission, in exercising its discretion, may reject a compliant permit, such as a building permit.

Effectively, in San Francisco, the building permit for a project that the San Francisco Board of Supervisors approved and entitled, and that the planning department certified as compliant, is subject to an additional notice period and may be subject to discretionary review and hearing by the planning commission at the request of an individual or neighborhood organization opposed to the project. San Francisco's planning commission can deny the project or impose additional conditions on the project as a part of its discretionary review of the building permit. In practice, this relegates the entitlement approvals issued by the San Francisco Board of Supervisors to a "tentative" status, as a secondary entity retains discretion to deny issuance of postentitlement phase permits for an entitled project that is compliant with the requirements of that postentitlement phase permit. This aspect of San Francisco's permitting process also exempts it from many of the requirements of AB 2234.

8) **Bill Summary.** This bill extends the requirements of AB 2234 to specified discretionary postentitlement phase permits. This bill also establishes that the issuance of postentitlement phase permits is a ministerial duty of local agencies.

   This bill is sponsored by the Bay Area Council, the Housing Action Coalition, and the Silicon Valley Leadership Group

9) **Policy Consideration.** The Committee may wish to consider the following:

   Entitlement Approvals and Postentitlement Approvals. As drafted, this bill creates a new section of code (proposed Section 65913.3.7) that states that the issuance of postentitlement phase permits is a ministerial duty of a local agency. Section 65913.3, as created by AB 2234, carefully spells out the manner in which local agencies must review and approve *compliant* postentitlement phase permits. The proposed language in 65913.3.7 could be read as superseding the requirements of 65913.3 and requiring a local agency to approve postentitlement phase permits regardless of whether they are compliant with the permit requirements. While this would address the author's intent of precluding local agencies from subjecting compliant postentitlement phase permits to redundant hearings and potential denials, it could have the unintended consequence of requiring ministerial approval of noncompliant permits. ***The Committee May wish to consider*** amending the bill to remove ministerial language and more directly address the issues created by San Francisco's unique permit approval process.

10) **Committee Amendments.** In order to address the issue discussed above, the Committee may wish to consider the following amendments:

    a) Make the following changes to Section 2 of the bill:

       i) Amend Section 65913.3 (c) to read:

"(c) (1) For housing development projects with 25 units or fewer, a local agency shall complete the review and either return in writing a full set of comments to the applicant with a comprehensive request for revisions or**, if the local agency determines that the complete application is compliant with the permit standards,** return the approved permit application on each postentitlement phase permit requested, and immediately transmit that determination to the applicant by electronic mail and, if applicable, by posting the response on its internet website in the manner prescribed in subdivision (b) of Section 65913.3.5 not later than 30 business days after the local agency determines that an application for a postentitlement phase permit is complete pursuant to subdivision (b).

(2) For housing development projects with 26 units or more, a local agency shall complete the review and either return in writing a full set of comments to the applicant with a comprehensive request for revisions or**, if the local agency determines that the complete application is compliant with the permit standards,** return the approved permit application on each postentitlement phase permit requested, and immediately transmit that determination to the applicant by electronic mail and, if applicable, by posting the response on its internet website in the manner prescribed in subdivision (b) of Section 65913.3.5 not later than 60 business days after the local agency determines that an application for a postentitlement phase permit is complete pursuant to subdivision (b).

(3) Once a local agency determines that a postentitlement permit is compliant with applicable permit standards pursuant to paragraph (1) or (2) the local agency shall not subject the postentitlement phase permit to any appeals or additional hearing requirements.

~~(3)~~ **(4)***(*A) The time limits in this subdivision shall not apply if the local agency makes written findings within the time limits specified in paragraph (1) or (2) based on substantial evidence in the record that the proposed postentitlement phase permit might have a specific, adverse impact on public health or safety and that additional time is necessary to process the application.

(B) For the purposes of this paragraph, "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

~~(4)~~ **(5)** If the local agency requires review of the application by an outside entity, the time limits in this subdivision shall be tolled until the outside entity completes the review and returns the application to the local agency, at which point the local agency shall complete the review within the time remaining under the time limit, provided that the local agency notifies the applicant within three business days by electronic mail and, if applicable, by posting the notification on its internet website in the manner prescribed in subdivision (b) of Section 65913.3.5 of the tolling and resumption of the time limit.

ii) Amend Section 65913.3 (j)(3)(A) to read:

"(3) (A) "Postentitlement phase permit" includes **the following**:

(i) ~~all nondiscretionary~~ **All nondiscretionary** permits and reviews ~~filed after the entitlement process has been completed~~ that are required or issued by the local agency **after the entitlement process has been completed** to begin construction of a development that is intended to be at least two-thirds residential, excluding discretionary and ministerial planning permits, entitlements, and other permits and reviews that are covered under Chapter 4.5 (commencing with Section 65920). A postentitlement phase permit includes, but is not limited to, all of the following

~~(i)~~ **(A)** Building permits, and all ~~inter-departmental~~ **interdepartmental** review required for the issuance of a building permit.

~~(ii)~~ **(B)** Permits for minor or standard off-site improvements.

~~(iii)~~ **(C)**Permits for demolition.

~~(iv)~~ **(D)**Permits for minor or standard excavation and grading.

(ii) All building permits and other permits issued under the California Building Standards Code, or under any applicable local building code, for the construction, demolition, or alteration of buildings, whether discretionary or nondiscretionary…"

b) Remove Section 3 of the bill.

11) **Arguments in Support.** The Housing Action Coalition writes in support, "In most jurisdictions, the issuance of a post-entitlement building permit is a ministerial action, which means there is no opportunity to appeal the permit once the project has been approved by the local government. San Francisco is one of the only jurisdictions in which post-entitlement building permits are discretionary; appeals can be filed on the issuance of all building permits for new housing, and these permits are not covered by AB 2234. As a result, it takes an average of 627 days for a post-entitlement building permit to be issued in San Francisco."

12) **Arguments in Opposition.** The State Building and Construction Trades Council of California is opposed unless amended and writes, "AB 1114 would exempt major development activities with significant public health and environmental impacts from environmental review required by the California Environmental Quality Act ("CEQA"). CEQA applies to discretionary project approvals. CEQA requires an agency to analyze the whole project, which includes any discretionary permits or other entitlements, including those required later in the postentitlement review process. CEQA efficiently requires review be completed one time and in one environmental review document during the pre-entitlement phase. **By making postentitlement discretionary permits ministerial, AB 1114 would eliminate the activities authorized by those permits from the environmental review process required by CEQA."**

13) **Related Legislation.** AB 281 (Grayson), requires special districts to respond to inquiries relative to housing development projects within a specified timeframe. AB 281 is pending in this Committee.

14) **Previous Legislation.** AB 2234 (Robert Rivas), Chapter 651, Statutes of 2022, required local agencies to post information related to postentitlement phase permits for housing development projects, process those permits in a specified time period depending on the size of the housing development, and establish a digital permitting system if the local agency meets a specific population threshold.

15) **Double-Referral**. This bill is double-referred to the Assembly Committee on Housing and Community Development.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council [SPONSOR]
Housing Action Coalition [SPONSOR]
Silicon Valley Leadership Group [SPONSOR]
California Apartment Association

Oppose Unless Amended

State Building and Construction Trades Council of California

Opposition

None on file

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