Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 1174 (Grayson) – As Amended April 6, 2021

SUBJECT: Planning and zoning: housing: development application modifications, approvals, and subsequent permits.

SUMMARY: Makes changes to the streamlined, ministerial process created by SB 35 (Wiener, Chapter 366, Statutes of 2017). Specifically, **this bill**:

1) Requires, for a development project approved pursuant to the SB 35 process that submits a modification to the project, the following:

    a) The time-period for which the project approval is valid must be extended for the number of days between the submittal of a modification request and the date of its final approval, plus an additional 180 days. If litigation is filed relating to the modification request, the time must be further extended while the litigation is pending. This change applies retroactively to developments approved prior to January 1, 2022; and,

    b) Any objective building standards adopted after the application for modifications was submitted must be agreed to by the development proponent if the modification application is submitted after the first building permit application. This change applies retroactively to developments approved prior to January 1, 2022.

2) Requires a local government to consider an application for subsequent permits based upon the objective standards specified in any state or local laws that were in effect when the original development application was submitted, unless the development proponent agrees to a change in objective standards. This change applies retroactively to subsequent permits submitted prior to January 1, 2022.

3) Clarifies the law regarding the expiration of project approvals by removing a redundant paragraph.

4) Provides that the Legislature finds and declares this act addresses a matter of statewide concern rather than a municipal affair, and therefore 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: Establishes a process for a housing development to be approved and modified through a streamlined, ministerial approval process as follows:

1) The development must contain two or more residential units and satisfies specified objective planning standards, including being located on an urban infill site that is zoned for residential

or residential mixed-use, with at least two-thirds of the square footage designated for residential use;

2) The development must be located in a jurisdiction that has been determined by the state Department of Housing and Community Development (HCD) to have issued insufficient building permits to meet its share of the regional housing need assessment (RHNA), as specified;

3) For projects over 10 units, the development must include units that are affordable to lower income households, and the development proponent must record a long-term affordability covenant on the units, as specified;

4) For projects over 10 units, the development proponent must certify to the locality that either the entirety of the development is a public work, or that all construction workers employed by the project will be paid at least prevailing wage, as specified. For specified developments, a skilled and trained workforce must be used;

5) The development must not be located in environmentally unsafe or sensitive areas, including a coastal zone, wetlands, a high or very fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement;

6) If a local government approves a development pursuant to this process, that approval must remain valid for three years from the date of the final action establishing that approval and must remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress;

7) The local government may apply objective building standards contained in the California Building Standards Code to all modifications; and,

8) A local government must issue a subsequent permit required for a development approved under this process if the application substantially complies with the development as it was approved.

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

COMMENTS:

1) **Author's Statement.** According to the author, "The legislature has made enormous effort to dramatically increase our housing supply. However, ambiguities in the law have been exploited by anti-growth community groups to delay and derail desperately needed housing projects. For example, SB 35 streamlining approvals are currently valid three years after the project is approved. Some jurisdictions have used lawsuits to extend the project timeline beyond this window, and then revoke the streamlining provisions. Another issue arises when jurisdictions require a project to comply with objective standards that were not in place at the time of project approval. This can compel a project proponent to seek a modification, which can further delay or derail the project.

   "To address these challenges, AB 1174 specifies that the 'shot clock' for a development or modifications is paused when a project is sued, and clarifies that subsequent permit

applications must only meet the objective standards that were in place when the project was initially approved."

2) **SB 35 (Wiener, Chapter 366, Statutes of 2017)**. SB 35 (Wiener) created a streamlined approval process for infill projects with two or more residential units in localities that have failed to produce sufficient housing to meet their regional housing needs allocation. To access the streamlined process for housing developments, the developer must demonstrate that the development meets 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 housing that has been rented out in the last ten years. Localities must provide written documentation to the developer of a failure to meet the specifications for streamlined approval, within a specified a period of time. If the locality does not meet those deadlines, the development is deemed to satisfy the requirements for streamlined approval and must be approved by right.

   Existing law requires HCD to determine when a locality is subject to the streamlining and ministerial approval process in SB 35 (Wiener) based on the number of units issued building permits as reported in the annual production report local governments submit each year as part of housing elements. This determination occurs at the half way and end of the eight-year housing element planning period. If HCD determines that a local government has not permitted enough units to meet its above moderate- and its lower income regional housing needs, a development must dedicate 10 percent of the units to lower income in the development to receive streamlined, ministerial approval. If the jurisdiction has permitted its share of above moderate-income housing but not its share of the lower income housing, then developments must dedicate 50 percent of the units for lower income to have access to streamlining.

3) **CEQA and Ministerial Review.** CEQA requires the state and local governments to study and mitigate, to the extent feasible, the environmental impacts of proposed projects, providing a key protection for the environment and residents of California. Ministerial approvals remove a project from all discretionary decisions of a local government, including an environmental review under CEQA. Thus, establishing processes to approve certain types of projects ministerially also creates exemptions from CEQA.

   A CEQA exemption can provide a tremendous benefit to property owners, developers, local governments and other parties involved in the approval of a project as it allows for the project to be completed in an expedited fashion. In light of the state's ongoing housing crisis, the Legislature has created several exemptions to CEQA that are designed to increase the production of housing. The protection of resources afforded by CEQA is not exempted lightly. The Legislature balances the risk of allowing projects to proceed without a full environmental review by limiting exemptions to projects that comply with scores of objective standards and criteria. These standards and criteria are an expression of the state's values and ensure that exempt projects do not result in harm to public health and safety and the environment.

4) **SB 35 Projects**. There is currently no statewide data available on the utilization of SB 35 since its implementation in 2018. However, anecdotal evidence suggests that it has become an effective tool for facilitating the development of projects that are at least 50 percent affordable to lower income households. By contrast, evidence also suggest that SB 35 has not

been widely utilized for market-rate housing developments that are less than 50 percent affordable to lower income households. A 2019 review by the Southern California News Group looked at 44 projects and found, "In Southern California, at least 23 developers sought streamlined approval under SB 35 for projects ranging from seven to 202 units apiece. More than 79% of the 1,594 housing units planned for Los Angeles, unincorporated L.A. County, Inglewood and Whittier will be reserved for low-income residents."

The new development approval process created by SB 35 created a learning curve for both the local governments and developers. At times the process has turned contentious, resulting in multiples lawsuits. Since adoption of SB 35, several bills have been passed to provide further clarity and address areas of contention. This includes AB 831 (Grayson, Chapter 194, Statutes of 2020), which added a process for projects to be modified after their approval.

5) **Bill Summary.** This bill would amend the modification process created by AB 831 by extending the project approval period to reflect the time necessary to approve the modification, the need for any new building permit, as well as any litigation that might occur. It would also allow a developer that has already submitted their first building permit application to determine whether to apply an updated building code or the previous building code to their modification. Finally, this bill would also allow a developer to agree to updated objective standards for any subsequent permits required for the project, rather than the objective standards that were in effect when the original development application was submitted. All three of these changes would be retroactively applicable to existing projects, enabling them to address the challenges that have arisen as they navigate this still relatively new process.

   This bill is sponsored by the Bay Area Council and the San Francisco Bay Area Planning and Urban Research Association (SPUR).

6) **Arguments in Support.** SPUR writes in support, "AB 1174 will bring consistency and clarity to current law and help the state address its formidable housing crisis."

7) **Arguments in Opposition.** None on file.

8) **Double-Referral.** This bill was double-referred to the Housing and Community Development Committee, where it passed on a 8-0 vote on April 15, 2021.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council [SPONSOR]
San Francisco Bay Area Planning and Urban Research Association (SPUR) [SPONSOR]
California Association of Realtors
California YIMBY
Casita Coalition
California Building Industry Association
Council of Infill Builders
Fieldstead and Company, INC.
Greenbelt Alliance
Habitat for Humanity California

Hello Housing
Housing Action Coalition
Lisc San Diego
Midpen Housing
Sand Hill Property Company
Sv@home Action Fund
The Two Hundred
California Community Builders
TMG Partners

Opposition

None on file.

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