

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1515 (Daly) – As Amended May 1, 2017

SUBJECT: Planning and zoning: housing.

SUMMARY: Establishes, for purposes of the Housing Accountability Act (HAA), a reasonable person standard for deeming consistency, as specified, for a housing development project or emergency shelter. Specifically, **this bill:**

- 1) Specifies that a housing development project or emergency shelter is deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity, pursuant to the HAA.
- 2) Makes the following legislative findings and declarations:
 - a) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.
 - b) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.
 - c) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.
 - d) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.
 - e) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only half of California's households are able to afford the cost of housing in their local regions.
 - f) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.
 - g) The majority of California renters, more than 3,000,000 households, pay more than 30 % of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 % of their income toward rent.

- h) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.
- i) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.
- j) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.
- k) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.
- l) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

EXISTING LAW:

- 1) Provides, pursuant to the HAA, the following:
 - a) Defines "housing development project" to mean a use consisting of any of the following:
 - i) Residential units only;
 - ii) Mixed-use developments consisting of residential and nonresidential uses as specified; and,
 - iii) Transitional housing or supportive housing.
 - b) Defines "disapprove the development project" to include any instance in which a local agency either:
 - i) Votes on a proposed housing development project and the application is disapproved; or,
 - ii) Fails to comply with the required time period for approval or disapproval required by law.
 - c) Defines "housing for very low-, low-, or moderate-income households" as either:

- i) At least 20% of the total units shall be sold or rented to lower-income households; or,
 - ii) 100% of the units shall be sold or rented to persons and families of moderate-income or middle-income.
- d) Defines “very low-income” as persons and families whose income does not exceed 50% area median income (AMI).
- e) Defines “low-income” as persons and families whose income does not exceed 80% AMI.
- f) Defines “moderate-income” as persons and families whose income does not exceed 120% of AMI.
- g) Defines “above moderate-income” as persons and families whose income exceeds 120% of AMI.
- h) Prohibits a local agency from disapproving a proposed housing development project for very low-, low-, or moderate-income households or an emergency shelter, or conditioning approval in a manner that renders the project infeasible for development, unless it makes written findings based upon substantial evidence in the record, as to one of the following:
- i) The jurisdiction has adopted and revised its housing element as required by law and has met its share of the regional housing need allocation;
 - ii) The proposed development project would have a specific adverse impact upon public health or safety that cannot be mitigated without rendering the development unaffordable or shelter infeasible;
 - iii) The denial of the proposed development project is required to comply with specific state or federal law and there is no feasible method to comply without rendering the development unaffordable or shelter infeasible;
 - iv) The development project or emergency shelter is proposed on land that does not have adequate water or waste water facilities, or is zoned for agriculture or resource preservation, as specified; and,
 - v) The proposed development project or emergency shelter is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete.
- i) Provides that when a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

- i) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete; and,
 - ii) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to a), above, other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.
- j) Requires, if a jurisdiction denies approval or imposes restrictions that have a substantial adverse effect on the viability or affordability of a housing development for very low-, low-, or moderate-income households and is the subject of a court action which challenges the denial, the burden of proof to be on the local legislative body.
 - k) Requires, in any action taken to challenge the validity of a decision by a jurisdiction to disapprove a project or approve a project upon the condition that it be developed at a lower density, the local government shall bear the burden of proof that its decision has conformed to all of the conditions specified in the HAA.
 - l) Authorizes the applicant, any person who would be eligible to apply for residency in the proposed development or emergency shelter, or a housing organization to bring an action to enforce the HAA.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill provides, pursuant to the HAA, that a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

This bill is sponsored by the California Building Industry Association.

- 2) **Author’s Statement.** According to the author, “The HAA, also known as the “Anti-NIMBY” law, was signed by Gov. Jerry Brown in 1982. It was enacted during a housing shortage to help address development impediments, some of which have grown significantly since then, along with exorbitant housing costs. In 2011, a California appellate court confirmed that the HAA applies to all housing projects, not just affordable projects.

“AB 1515 is intended to strengthen the provisions of the Housing Accountability Act and to provide the courts with clear standards for interpreting the Act in favor of building housing. The HAA fosters and respects responsible local control by providing that once a local government establishes its planning rules, housing projects that are consistent with those rules receive the reasonable certainty of not being denied or reduced in density unless there

are significant health and safety impacts that cannot be mitigated. The HAA's intent is to provide appropriate certainty to all stakeholders in the local approval process and prevent NIMBYism from successfully pressuring local officials to reject or downsize compliant housing projects.

“Unfortunately, NIMBY forces often mobilize anti-housing sentiment, and local governments then refuse to extend HAA's protections to projects that could reasonably be found to be consistent with the local planning rules. This creates far too much latitude for anti-housing and development sentiments to thwart reasonable and much needed housing.

“AB 1515 would amend the HAA (Section 65589.5 of the Government Code) so that “a housing development project or emergency shelter shall be deemed consistent with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would lead a reasonable person to conclude that the housing development project or emergency shelter is consistent” with an applicable plan, etc., at the density permitted on the site.”

3) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Changes the Consistency Determination.** In land use cases, courts tend to give a great deal of deference to local governments when determining whether a project is consistent with general plan and zoning standards. A consistency determination is generally upheld unless the court determines the local government has acted arbitrarily, capriciously, or without evidentiary basis. For example, “[a]city's findings that [a] project is consistent with its general plan can be reversed only if [they are] based on evidence from which no reasonable person could have reached the same conclusion.” (*A Local & Regional Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 648, as cited by *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 677) In other words, a local government's decision will be upheld unless no reasonable person could have made the same decision.

This bill would require courts to give less deference to a local government's consistency determination. It would change the standard of review by providing that a project is consistent if there is substantial evidence that would allow a reasonable person to find it consistent. As zoning and planning consistency is a threshold requirement for the HAA, this bill would potentially expand the number of housing developments that are afforded the protections of the HAA. Additionally, this bill could extend the consistency analysis beyond the question of consistency with a zoning ordinance or general plan element. The standard would apply if the jurisdiction rejected or conditioned a project on inconsistency with a local plan, program, policy, ordinance, standard, requirement, or other similar provision—in other words any local law, plan, or policy.

- b) **New Requirement for Land Use Decisions.** According to the American Planning Association, California Chapter, (APA) in opposition, the bill is setting up “a new and undefined review requirement for land use decisions...[that] would essentially allow applicants to determine whether a project is consistent with the local zoning and general plan.” Additionally, APA writes that “a project would have to be found consistent with local plans if there's any evidence or interpretation supporting a finding of consistency, regardless of circumstances and evidence to the contrary.”

- c) **Other HAA Legislation.** There are several other bills that are amending the HAA, including SB 167 (Skinner), and SB 678 (Bocanegra). The Committee may wish to ask the author about plans to ensure consistency in approach for these bills.
- 4) **Arguments in Support.** Supporters believe that this bill is an important step toward stimulating additional housing production and thereby addressing the shortage of homes.
- 5) **Arguments in Opposition.** APA argues that this bill ignores already existing requirements in the HAA that limit the agency to requiring compliance with “objective” development standards and policies which must be applied to facilitate the density permitted on the side.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association [SPONSOR]
Apartment Association of Greater Los Angeles
CalChamber
Santa Barbara Rental Property Association

Opposition

American Planning Association, California Chapter

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