

Date of Hearing: April 27, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Susan Talamantes Eggman, Chair
AB 2557 (Santiago and Bloom) – As Amended April 18, 2016

SUBJECT: Zoning regulations: interim ordinances.

SUMMARY: Deletes provisions in current law that allow a city or county to adopt an interim emergency ordinance that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing, and declares that the section of code relating to the ability of a city or county to enact emergency and interim ordinances, as proposed to be amended by the bill, shall apply to charter cities. Specifically, **this bill:**

- 1) Specifies that an interim ordinance adopted by a city or county shall not have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing.
- 2) Deletes provisions in current law that allow a city or county to adopt an interim ordinance that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing, and deletes provisions in existing law that specify that certain findings need to be made by a city or county, supported by substantial evidence on the record.
- 3) Finds and declares that addressing rising home costs, monthly rent costs, and housing inventory within the state, including the development of multifamily housing to alleviate housing need, is a matter of statewide concern and is not a municipal affair, thereby applying this code section that allows for cities and counties to adopt emergency and interim ordinances (Section 65858 of the Government Code), as proposed to be amended by the bill's provisions, to all cities, including charter cities.

EXISTING LAW:

- 1) Allows the legislative body of a county, city, including a charter city, or city county, without following the procedures otherwise required prior to the adoption of a zoning ordinance, to adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time, in order to protect the public safety, health, and welfare.
- 2) Requires a four-fifths vote of the legislative body to adopt an urgency measure, as specified in 1), above.
- 3) Specifies that the interim ordinance shall be of no further force and effect 45 days from its date of adoption.
- 4) Allows, after notice and public hearing, the legislative body to extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year, and specifies that these extensions require a four-fifths vote for adoption.

- 5) Specifies that only two extensions may be adopted.
- 6) Allows, alternatively, an interim ordinance to be adopted by a four-fifths vote, following notice and a public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. Allows, after notice and public hearing, the legislative body, by four-fifths vote, to extend the interim ordinance for 22 months and 15 days.
- 7) Prohibits the legislative body from adopting or extending any interim ordinance, unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance, would result in the threat to public health, safety, or welfare.
- 8) Specifies that any interim ordinance adopted that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing may not be extended, except upon written findings adopted by the legislative body, supported by substantial evidence on the record, that all of the following conditions exist:
 - a) The continued approval of the development of multifamily housing projects would have a specific, adverse impact upon the public health or safety. Specifies that 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 that the ordinance is adopted by the legislative body;
 - b) The interim ordinance is necessary to mitigate or avoid the specific, adverse impact identified in 8a), above; and,
 - c) There is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impact identified, pursuant to 8a), above.
- 9) Requires the legislative body to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance 10 days prior to the expiration of that interim ordinance or any extension.
- 10) Specifies that “development of multifamily housing projects” does not include the demolition, conversion, redevelopment, or rehabilitation of multifamily housing that is affordable to lower-income households, as defined, or that will result in an increase in the price or reduction of the number of affordable units in a multifamily housing project.
- 11) Defines “projects with a significant component of multifamily housing” to mean projects in which multifamily housing consists of at least one-third of the total square footage of the project.
- 12) Enacts the Housing Accountability Act and applies its provisions to charter cities.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill specifies that an interim ordinance adopted by a city or county shall not have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing. This bill also deletes provisions in current law that allow a city or county to adopt an interim ordinance that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing, and deletes provisions in existing law that specify that certain findings need to be made by a city or county, supported by substantial evidence on the record.

This bill makes findings that addressing rising home costs, monthly rent costs, and housing inventory within the state, including the development of multifamily housing to alleviate housing need, is a matter of statewide concern and is not a municipal affair, thereby applying the code section that allows for cities and counties to adopt emergency and interim ordinances (Section 65858 of the Government Code), as proposed to be amended by the bill's provisions, to all cities, including charter cities.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "While many local governments are devoting large amounts of energy and attention to the issue of increasing housing production, there are others who have been unable to do so – due to either a lack of will by the local legislative body or by constituent groups within those localities. In some areas, attempts have even been made to block future housing developments of various kinds.

"A recent article in the *Los Angeles Times* noted that "in some ways, state lawmakers' hands are tied on boosting housing supply because cities and counties primarily control building and permitting." AB 2557 attempts to loosen those binds on legislators some by establishing a statewide concern for the development of housing. In doing so, the measure will limit the abilities of those at the local level to implement development moratoriums or to further stymie statewide efforts to lift Californians out of poverty and into better socio-economic circumstances."

- 3) **Moratorium Ordinances.** Government Code Section 65858 allows a city or county to adopt an interim ordinance to temporarily prohibit certain land uses in the community. These ordinances are commonly referred to as "moratorium ordinances" and allow a local agency the time to study the potential impact of particular activities to figure out how these activities should be regulated.

A local agency can adopt an urgency ordinance without following the usual process that it would use to amend its municipal code, which requires two approvals called "readings," by the city council or board of supervisors and a 30-day delay between the second reading and the effective date of the new law. An urgency ordinance can instead be passed without advance notice to the public and can take effect immediately. In order to pass an urgency ordinance, Government Code 65858 requires a four-fifths vote of the legislative body.

An urgency ordinance may remain in effect for only 45 days, unless it is extended by another four-fifths vote. To extend the ordinance, the local agency must provide notice and have a public hearing, at which point the legislative body can vote to extend the ordinance for either ten months and 15 days, with the option of an additional one-year extension, or 22 months

and 15 days. This would bring the full duration of the ordinance to two years, with the required four-fifths vote of the local legislative body.

This section of law prohibits the legislative body from adopting or extending any interim ordinance, unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use, which is required in order to comply with a zoning ordinance, would result in that threat to public health, safety or welfare.

Multifamily Housing. Any interim ordinance adopted that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing may not be extended, except upon written findings adopted by the legislative body, supported by substantial evidence on the record, that all of the following conditions exist:

- a) The continued approval of the development of multifamily housing projects would have a specific adverse impact upon the public health or safety. 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 that the ordinance is adopted by the legislative body;
- b) The interim ordinance is necessary to mitigate or avoid the specific, adverse impact identified, pursuant to a), above; and,
- c) There is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impact identified, pursuant to a), above, as well or better, with a less burdensome or restrictive effect, than the adoption of the proposed interim ordinance.

Existing law also requires, 10 days prior to the expiration of that interim ordinance or any extension, the legislative body to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

- 4) **Housing Accountability Act.** In 1982, the Legislature enacted “Anti-Nimby” legislation, which was officially re-named the “Housing Accountability Act” by legislation that passed in 2006. The Housing Accountability Act restricts a city’s ability to disapprove, or require density reductions in, certain types of residential projects. Under this section of law, a city may not disapprove a housing development project affordable to very low-, low-, or moderate-income households, or emergency shelters, or condition approval of such a project in a manner that makes the project infeasible, unless it finds, based on substantial evidence, one of the following:

- a) The city has adopted a housing element that has been revised in accordance with existing law, is in substantial compliance with the Housing Element law, and the city has met or exceeded its share of the regional housing need for the income category proposed for the housing development projects;
- b) The project as proposed would have a specific adverse impact upon the public health and safety that cannot be satisfactorily mitigated without rendering the housing development

project unaffordable, or development of the emergency shelter financially infeasible; inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon public health and safety;

- c) The denial of the project or imposition of conditions is required in order to comply with state or federal law, and there is no feasible method to comply without rendering the housing development project unaffordable or development of the emergency shelter financially infeasible;
- d) The project is on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agriculture or preservation purposes, or the site does not have an adequate water or wastewater facility to serve the project; or,
- e) The project is inconsistent with both the city's zoning ordinance and general plan land use designation as specified in the general plan as it existed on the date the application was deemed complete, and the city has adopted a revised housing element in accordance with existing law, as specified.

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

- a) **Applicability of Emergency Ordinance Code Section to Charter Cities.** This bill finds and declares that “addressing rising home costs, monthly rent costs, and housing inventory within the state, including the development of multifamily housing to alleviate housing need is a matter of statewide concern and is not a municipal affair,” thereby *applying the code section that allows for cities and counties to adopt emergency and interim ordinances (Section 65858 of the Government Code), as proposed to be amended by the bill's provisions to all cities, including charter cities.*

The Committee may wish to consider the precedent of applying one part of this code section to charter cities, and whether this creates a slippery slope.

- b) **Emergency Ordinance Statute as Valuable Local Planning Tool.** This section of law enables a local government that is being overwhelmed with growth or facing some specific planning issue which is not adequately addressed in its existing general plan to take a brief break and ensure that its existing plans are up to date. In addition, an interim ordinance allows a local government to put off a decision on a specific project that may be in conflict with a plan or zoning change that the jurisdiction is studying or considering.

The Committee may wish to consider the impact of prohibiting the legislative body of a city or county from adopting an interim ordinance that does have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing – there may be unintended consequences and in some instances, there may be very good reasons that a local agency is adopting an emergency ordinance or moratorium.

6) **Committee Amendments.** The Committee may wish to consider the following amendments, which would address some of the policy considerations raised previously.

Strike existing contents of the bill, and instead, add a new section, as follows:

65858.5 (a) *Notwithstanding Section 65858, any local measure, implemented through an interim ordinance, that takes effect before January 1, 2020, shall not have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing.*

(b) *For purposes of this section, “projects with a significant component of multifamily housing” means projects in which multifamily housing consists of at least one-third of the total square footage of the project.*

(c) *The Legislature finds and declares that addressing rising home costs, monthly rent costs, and housing inventory within the state, including the development of multifamily housing to alleviate housing need, 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. Therefore, Section 65858.5 shall apply to all cities, including charter cities.*

- 7) **Arguments in Support.** Supporters argue that the bill would limit the ability of local development moratoria to delay or halt the approval of multifamily housing – housing that is critical for addressing the housing shortage, and in particular, low-income housing.
- 8) **Arguments in Opposition.** According to the League of California Cities, “A city may adopt by vote an interim zoning ordinance prohibiting certain uses which may be in conflict with a contemplated change in the general plan, specific plan or zoning ordinance. If a city is studying a policy change, it should not be forced to approve a use that will conflict with the new policy.

“Under the Housing Accountability Act, if a project is consistent with the zoning and general plan, it must be approved unless the city can make findings that the project will have a specific, adverse impact upon the public health or safety. This standard is recognized as an important regulatory protection for the future residents of the housing. If a city is able to demonstrate – based upon substantial evidence – that the project would have a specific adverse impact upon the public health or safety that cannot be mitigated or avoided except by the extension of the interim ordinance, a city should be able to extend an interim ordinance.

“Finally, planning and zoning law does not apply to charter cities, with very few exceptions. This bill would represent an intrusion to their home rule authority.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

City of Los Angeles
California Building Industry Association
California Apartment Association
Cal Chamber
California Association of Realtors
California Business Properties Association

Opposition

League of California Cities

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958