

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2668 (Grayson) – As Amended March 31, 2022

SUBJECT: Planning and zoning: housing: streamlined, ministerial approval.

SUMMARY: Adds parameters for determining a project’s compliance with the streamlined, ministerial process created by SB 35 (Wiener, Chapter 366, Statutes of 2017). Specifically, **this bill:**

- 1) Provides that a local government shall not determine that a development seeking to use SB 35 or modify an SB 35-approved project is in conflict with its objective planning standards based on the absence of application materials, provided the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.
- 2) Updates cross references to the California Public Records Act.

EXISTING LAW:

- 1) Allows a city or a county 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.
- 2) Requires, pursuant to Planning and Zoning Law, every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element.
- 3) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans.
- 4) Establishes, pursuant to SB 35 (Weiner), Chapter 366, Statutes of 2017, a streamlined, ministerial review process for housing development projects that meet strict objective standards.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Author’s Statement.** According to the author, “The legislature has made enormous efforts 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. To help close these emergent loopholes, AB 2668 will clarify that a local government shall not determine that a development is in conflict with the objective planning standards on the basis that application materials are not included, if the application contains enough information for a reasonable person to conclude that the development is consistent

with the objective standards. This small fix will help ensure that badly-needed housing projects are streamlined as intended under current law.”

- 2) **Streamlined Ministerial Approval Under SB 35.** SB 35 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, as defined. To access the streamlined process, a developer must demonstrate that the development meets a number of planning standard 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 that find a proposal is in conflict with one of the SB 35 planning standards must provide written documentation to the developer within a specified 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.

Prior to submitting an application as described above, a developer must first submit to the local government a notice of intent to submit an application. Upon receipt of the notice of intent, the local agency must engage in a scoping consultation with California Native American Tribes, as specified. The modifications in this bill will apply to the objective planning standards that are verified by local agencies, but do not apply to the scoping consultation requirements in SB 35.

- 3) **SB 35 Projects.** According to The Department of Housing and Community Development’s (HCDs) Annual Progress Report (APR) Dashboard, 892 projects were completed using SB 35 authority from the years 2018-2020 creating 1850 units. Roughly 61 percent of units reported are above moderate income units, 20 percent are moderate income, 5.5 percent are low income and 12 percent are very low income.

Since adoption of SB 35, the legislature has passed several bills 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 and AB 1174 (Grayson, Chapter 160, Statutes of 2021), which further refined the modification process and the process for subsequent permits.

- 4) **Bill Summary.** This bill clarifies that a local government cannot determine that a development, or its subsequent modification, is in conflict with the local government’s objective planning standards based on the absence of application materials, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

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

- 5) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it passed on a 8-0 vote on March 23, 2022.
- 6) **Previous Legislation.** AB 831 (Grayson) Chapter 194, Statutes of 2020, added a process for SB 35 projects to be modified after their approval.

AB 1174 (Grayson) Chapter 160, Statutes of 2021, further refined the modification process and the process for subsequent SB 35 permits.

7) **Arguments in Support.** The Bay Area Council writes in support, “AB 2668 will clarify that local governments cannot deny SB 35 projects based on missing application materials if the application contains enough information to conclude it is consistent with objective standards.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council [SPONSOR]
San Francisco Bay Area Planning and Urban Research Association [SPONSOR]
California Apartment Association
California Association of Realtors
South California Rental Housing Association
Southern California Rental Housing Association
Sv@home Action Fund

Opposition

None on file.

Analysis Prepared by: Hank Brady / L. GOV. / (916) 319-3958