

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 281 (Grayson) – As Amended March 9, 2023

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

SUMMARY: Requires special districts to respond to inquiries relative to housing development projects within a specified timeframe. Specifically, **this bill**:

- 1) Places the following obligations on special districts:
 - a) Requires special districts to respond in writing to the following inquiries regarding housing development applications within specified timeframes:
 - i) Initial applications or requests for service or approval on a housing development proposal that a local agency already deemed complete.
 - ii) Subsequent submissions of additional information provided by an applicant in response to a notice from a special district requesting more information.
 - b) Requires special districts to respond in writing to inquiries noted above within the following timeframes:
 - i) Within 30 business days for a housing development project with 25 units or fewer.
 - ii) Within 60 business days for a housing development project with more than 25 units.
 - c) Requires special districts to continue to review each submission by an applicant to determine additional relevant information and provide written notice of the next steps or additional information required of the applicant within the timeframes noted above.
- 2) Specifies that a housing development applicant may provide additional information requested by a special district directly to the special district.
- 3) Specifies that this bill does not limit the amount of comments, feedback, revisions or requests for additional information that a special district may provide to an applicant or local agency.
- 4) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

EXISTING LAW:

- 1) Establishes the Permit Streamlining Act, 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 the local agencies to review non-discretionary postentitlement phase permits, including time limits within which local agencies must either approve or disapprove permits (Government Code § 65913.3).

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

COMMENTS:

- 1) **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.

- 2) **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.
- 3) **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.

The provisions of AB 2234 do not apply to the permit review process conducted by special districts.

- 4) **Bill Summary and Author’s Statement.** This bill replicates elements of AB 2234, and applies those requirements to special districts that are engaged in the permit approval process. Specifically, this bill requires special districts to respond to inquiries on housing development projects within 30 days for smaller projects with 25 units or fewer and within 60 days for larger projects with more than 25 units.

This bill is sponsored by the Housing Action Coalition and the Silicon Valley Leadership Group.

According to the author, “Local governments, such as cities and counties, are required to take prompt action on applications for housing developments, including applications for the postentitlement phase of a project. Postentitlement building permits are permits that are issued after discretionary review for certain actions that need to be taken on projects, such as demolition, excavation, grading, and other actions. While AB 2234 was an important step to help prevent delays in the postentitlement process, it did not apply to special districts, who often have to provide feedback to local governments before they issue postentitlement permits. AB 281 would apply similar timelines for special districts to review and return its findings to a local agency for a postentitlement permit. Depending on the size of a development, this bill would give a special district between 30-60 days to return its findings to a local agency. This is a good government bill that seeks to apply similar standards across the board for the review of postentitlement permits, and would reduce delays and barriers to housing production.”

- 5) **Arguments in Support.** The Housing Action Coalition writes in support, “Under AB 2234 (Rivas and Grayson, 2022), cities and counties are required to determine whether an application for a postentitlement building permit is complete within 15 days of the agency receiving the application. Postentitlement building permits must then be approved by local agencies within 30 or 60 days depending on the size of the development. AB 2234 did not apply these same provisions to special districts, potentially allowing delays to housing projects that, drive up costs and, and prevent construction. AB 281 will apply the same 30/60 day timeline found in AB 2234 to special districts, ensuring that all agencies will be held to the same standard and reducing further delays to critically needed housing.”
- 6) **Arguments in Opposition.** None on file.
- 7) **Related Legislation.** AB 1114 (Haney), expands the provisions of AB 2234 to apply to discretionary postentitlement phase permits in addition to non-discretionary postentitlement phase permits. AB 1114 is pending in this Committee.

- 8) **Previous Legislation.** AB 2234 (R. 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.
- 9) **Double-Referral.** This bill is double-referred to the Assembly Committee on Housing and Community Development.

REGISTERED SUPPORT / OPPOSITION:

Support

Housing Action Coalition [SPONSOR]
Silicon Valley Leadership Group [SPONSOR]
California Apartment Association
California Building Industry Association
East Bay Yimby
Grow the Richmond
How to ADU
Mountain View Yimby
Napa-Solano for Everyone
The Non-Profit Housing Association of Northern California
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
Progress Noe Valley
San Francisco Yimby
San Luis Obispo Yimby
Santa Cruz Yimby
Santa Rosa Yimby
South Bay Yimby
Southside Forward
Ventura County Yimby
Yimby Action

Opposition

None on file

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