

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 434 (Grayson) – As Amended March 16, 2023

**SUBJECT:** Housing element: notice of violation.

**SUMMARY:** Requires the Department of Housing and Community Development (HCD) to notify a city, county, or city and county (city or county), and allows HCD to notify the office of the Attorney General, if any local government has taken action in violation of specified provisions of law. Specifically, **this bill:**

- 1) Requires HCD to notify a city or county, and allows HCD to notify the office of the Attorney General, if any local government has taken action in violation of the following:
  - a) Provisions of law governing the number of hearings a city or county may conduct in connection with a proposed housing development project that complies with applicable, objective general plan and zoning standards in effect at the time the application is deemed complete, as specified.
  - b) Provisions of law governing accessory dwelling units (ADUs).
  - c) Provisions of law governing unpermitted ADUs built before January 1, 2018.
  - d) Provisions of law governing the separate conveyance of ADUs.
  - e) Provisions of law governing junior accessory dwelling units (JADUs).
  - f) SB 9 (Atkins), Chapter 162, Statutes of 2021, which requires ministerial approval of housing developments with two units (duplexes) and subdivision maps that meet certain conditions, increases the length of time that cities and counties can extend the validity of existing subdivision maps, and ministerial approval of specified parcel maps for urban lot splits.
  - g) SB 6 (Caballero), Chapter 659, Statutes of 2022, the Middle Class Housing Act of 2022.
- 2) Makes additional technical changes.

**EXISTING LAW:**

- 1) Requires HCD to notify a city or county, and allows HCD to notify the office of the Attorney General, if HCD finds that:
  - a) A housing element or an amendment to this element does not substantially comply with housing element law.
  - b) A city or county acts or fails to act in a manner that HCD determines is inconsistent with an adopted housing element or provisions of law stipulating the contents of a housing element.

- c) Any local government has taken an action in violation of 13 specified laws (Government Code (GC) § 65585).
- 2) Provides the following regarding ADUs:
    - a) Provides a process for the ministerial approval of ADUs that meet specified conditions (GC § 65852.2).
    - b) Prohibits a city or county from denying a permit for an unpermitted ADU that was constructed before January 1, 2018, except in specified circumstances (GC § 65852.23).
    - c) Allows an ADU to be sold or conveyed separately from the primary residence to a moderate-income or lower income household buyer under specified conditions (GC § 65852.26).
  - 3) Provides a process for the ministerial approval of JADUs that meet specified conditions (GC § 65852.22).
  - 4) Requires the ministerial approval by a city or county of two residential units in a single-family residential zone, under specified conditions (GC § 65852.21).
  - 5) Requires the ministerial approval by a city or county of a splitting of a parcel in a single-family residential zone into two parcels, under specified conditions (GC § 66411.7).
  - 6) Establishes the Middle Class Housing Act of 2022, which made housing an allowable use on sites zoned for residential, office, or parking uses, under specified conditions (GC § 65852.21).
  - 7) Provides that a city or county cannot conduct more than five public hearings for a proposed housing development project that complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete (GC § 65905.5).

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Bill Summary.** This bill Requires HCD to notify a city or county, and allows HCD to notify the office of the Attorney General, if any local government has taken action in violation of the following:
  - a) Provisions of law governing the number of hearings a city or county may conduct in connection with a proposed housing development project that complies with applicable, objective general plan and zoning standards in effect at the time the application is deemed complete, as specified.
  - b) Provisions of law governing ADUs.
  - c) Provisions of law governing unpermitted ADUs built before January 1, 2018.
  - d) Provisions of law governing the separate conveyance of ADUs.

- e) Provisions of law governing JADUs.
- f) SB 9 (Atkins), Chapter 162, Statutes of 2021, which requires ministerial approval of housing developments with two units (duplexes) and subdivision maps that meet certain conditions, increases the length of time that cities and counties can extend the validity of existing subdivision maps, and ministerial approval of specified parcel maps for urban lot splits.
- g) SB 6 (Caballero), Chapter 659, Statutes of 2022, the Middle Class Housing Act of 2022.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "California has a massive and growing housing production and affordability gap: six of the nation's most expensive large metropolitan rental markets are located here. According to the Roadmap Home 2030, California needs to build 1.2 million new affordable homes, 120,000 per year to meet the needs of low-income families over the next ten years. Yet California has never produced more than 20,000 new affordable rental homes in any year.

"In order to address the state's housing shortage, the legislature has enacted various state housing laws to facilitate housing development and hold local governments accountable for delaying projects. But without clear authority to enforce these laws, there is the possibility that even if an entity is found to be in violation of these much-needed housing laws, that HCD may be unable to bring in the Attorney General for an enforcement action. AB 434 will clarify the roles of HCD and the Attorney General in enforcing what is already current law."

- 3) **Background.** AB 72 (Santiago), Chapter 370, Statutes of 2017, established a process for HCD to notify cities, counties, and the Attorney General regarding specified non-compliance with, or violations of, several laws. AB 72 required HCD to notify a city or county, and allowed HCD to notify the office of the Attorney General, if HCD finds that a city's or county's housing element does not substantially comply with housing element law, or if any local government has taken an action in violation of specified housing laws. AB 72 was originally limited to four statutes: the Housing Accountability Act, Density Bonus Law, fair housing law, and "no net loss" policy for implementing housing elements.

Subsequent bills added nine more statutes to the law, including:

- a) Statutes that streamline market-rate and affordable housing. These include SB 35 (Wiener), Chapter 366, Statutes of 2017, AB 2162 (Chiu), Chapter 753, Statutes of 2017, AB 101 (Committee on Budget), Chapter 159, Statutes of 2019, and AB 2011 (Wicks), Chapter 647, Statutes of 2022.
- b) Statutes that create more certainty for development. These include SB 330 (Skinner), Chapter 654, Statutes of 2019, SB 478 (Wiener), Chapter 363, Statutes of 2021, and AB 2097 (Friedman), Chapter 459, Statutes of 2022.
- c) Statutes that direct certain local government actions and behaviors. These include the requirement for local governments to submit their Annual Progress Report to the state regarding implementation of their housing elements, and AB 686 (Santiago), Chapter

958, Statutes of 2018, which requires the state and local governments to affirmatively furthering fair housing.

- 4) **Related Legislation.** SB 450 (Atkins) adds the provisions of SB 9 to the list of laws that, when violated, trigger HCD’s notification requirements. SB 450 is pending in Senate Housing Committee.
- 5) **Previous Legislation.** AB 72 (Santiago), Chapter 370, Statutes of 2017: This bill gives HCD the authority to find a local government’s housing element out of substantial compliance if it determines that the local government acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the Attorney General.
- 6) **Arguments in Support.** A coalition of supporters, including YIMBY Action and several of their chapters and partners, writes, “California has a massive and growing housing production and affordability problem. According to the Roadmap House of 2030, California needs to build 1.2 million new affordable homes, 120,000 per year to meet the needs of low-income families over the next ten years. Unfortunately, California has never produced more than 20,000 new affordable rental homes any year.

“In order to address the state’s housing shortage, the legislature has enacted various state housing laws to facilitate housing development and hold local governments accountable for delaying projects. Among these have been SB 6 & SB 9, as well as bills governing the siting of Accessory Dwelling Units (ADU) and Junior ADUs. But without clear authority to enforce these laws, there is the possibility that even if an entity is found to be in violation of these much-needed housing laws, that HCD may be unable to bring in the AG for an enforcement action.

“AB 434 will ensure that the AG and HCD have adequate enforcement authority, commensurate with other state housing laws, and that local governments may be held accountable to the law. Ultimately, this will reduce the cost of housing development and facilitate meeting California housing needs.”

- 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 6-0 vote on March 29, 2023.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Bay Area Council  
 California Apartment Association  
 California Housing Partnership  
 East Bay YIMBY  
 Grow the Richmond  
 How to ADU  
 LeadingAge California  
 Mountain View YIMBY  
 Napa-Solano for Everyone

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  
YIMBY Law

**Opposition**

None on file

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958