

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 821 (Grayson) – As Amended April 11, 2023

SUBJECT: Planning and zoning: general plan: zoning ordinance: conflicts.

SUMMARY: Requires local agencies that fail to make their zoning ordinances consistent with the general plan, as required by existing law, to approve development projects at a density that is consistent with the local agency's general plan. Specifically, **this bill:**

- 1) Expands the circumstances under which a resident or property owner within a city or a county may bring an action or proceeding in superior court to compel their local agency to make its zoning ordinance consistent with its general plan. Specifically, the bill will allow a suit to be brought within 90 days of a zoning ordinance becoming inconsistent with the general plan due to amendment of the general plan or to any element of the plan.
- 2) Provides that, if a zoning ordinance becomes inconsistent with the general plan due to an amendment to the general plan or to any element of the general plan, and a local agency receives a development application that is consistent with the general plan but is inconsistent with the zoning ordinance, the local agency shall either:
 - a) Make the zoning ordinance consistent with the general plan within 90 days.
 - b) Process the development application in accordance with all applicable laws. The local agency processing the development application shall apply the objective general plan standards, but not inconsistent zoning standards, to the proposed development project to facilitate and accommodate development at the density allowed on the site by the general plan. For the purposes of this provision, the bill specifies that:
 - i) A proposed development shall not be deemed inconsistent with any zoning ordinance or related zoning standard or criteria and shall not be required to be rezoned to accommodate the proposed development, if there is substantial evidence that would allow a reasonable person to conclude that the proposed development is consistent with objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan.
 - ii) The objective general plan standards shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the development project.
- 3) Provides that, if a local agency subject to the provisions in paragraph 2) above fails to amend its zoning ordinance within 90 days, then the local agency shall process the development application per the requirements of that paragraph.
- 4) Finds and declares that the bill 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, the bill applies to all cities, including charter cities.

- 5) Provides that no reimbursement is required by this bill, pursuant to Section 6 of Article XIII B of the California Constitution, because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.

EXISTING LAW:

- 1) Requires each city and county to prepare, adopt, and administer a general plan for their jurisdiction, which must include a housing element, to shape the future growth of its community (Government Code (GC) § 65300 – 65404).
- 2) Requires a county or a city, including a charter city, zoning ordinance to be consistent with the general plan of the county or city by January 1, 1974. Provides that, in the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended (GC § 65860).
- 3) Specifies that a zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:
 - a) The city or county has officially adopted such a plan.
 - b) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan (GC § 65860).
- 4) Provides that any resident or property owner within a city or a county, as the case may be, may bring an action or proceeding in the superior court to enforce compliance with requirement that zoning ordinances are consistent with the general plan. Provides that any such action or proceeding shall be governed by Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure. Provides that no action or proceeding shall be maintained pursuant to this section by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance (GC § 65860).
- 5) Establishes the Housing Accountability Act (HAA) which, among other provisions, establishes the following:
 - a) When a proposed housing development project, as defined, complies with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time that the project's application is complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed project upon specified written findings.
 - b) A proposed housing development project, as defined, is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan, as specified.

- c) A housing development project, as defined, 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 project is consistent, compliant, or in conformity (GC § 65589.5).

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

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill expands the opportunity for residents and property owners to pursue legal remedies to require their local agency to make its zoning ordinances consistent with its general plan. This bill also requires local agencies to approve developments that are consistent with the general plan but not the applicable zoning ordinance, or to make the zoning ordinance consistent with the general plan within 90 days, as specified.

According to the author, "California is in a severe housing crisis. Several actions have been taken to remove barriers that slow down the production of housing in California. One barrier that has not been addressed are instances where local governments must amend a zoning ordinance to be in compliance with a general plan. Under existing law, a local government must amend their zoning ordinances within a 'reasonable time', but that time is undefined. This could result in allowing a local governments to take months to years to complete a rezoning. AB 821 would allow a development project to move forward in a timely manner where the project complies with the general plan but the local government's zoning ordinance is inconsistent. The bill would provide that, upon written notice, if a local government fails to amend an inconsistent zoning ordinance within 90 days, a project shall not be deemed to be inconsistent if there is substantial evidence that would allow a reasonable person to conclude that the project complies with the general plan."

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

- 2) **Housing Accountability.** The HAA, also known as the "Anti-NIMBY" law, limits the ability of local agencies to reject or make infeasible housing developments without a thorough analysis of the economic, social, and environmental effects of the action. A person who would be eligible to apply for residency in a housing development or emergency shelter, or a housing organization, as defined, may bring an action to enforce the HAA.

Specifically, when a proposed development complies with objective general plan and zoning standards, including design review standards, a local agency that intends to disapprove the project, or approve it on the condition that it be developed at a lower density, must make written findings based on a preponderance of the evidence that the project would have a specific, adverse impact on the public health or safety and that there are no feasible methods to mitigate or avoid those impacts other than disapproval of the project. If a local agency is found by a court to be in violation of the HAA, a court may issue an order or judgement compelling compliance with the HAA within 60 days.

The HAA also allows a court, upon a determination that the locality has failed to comply with the order or judgment compelling compliance with the HAA within 60 days, to impose

finer on a local agency that has violated the HAA and to deposit any fine into a local housing trust fund or elect to deposit the fine in a state account. The fine shall be a minimum of \$10,000 per unit. Additional fines may be imposed if the court finds that the locality acted in bad faith.

- 3) **California's Housing Crisis.** California faces a severe housing shortage. A variety of causes have contributed to the lack of housing production. Recent reports by the Legislative Analyst's Office and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members that may not want new neighbors. The building industry also points to The California Environmental Quality Act as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.

A major cause of the housing crisis is the mismatch between the supply of housing and the need for housing. The Statewide Housing Plan adopted by the Department of Housing and Community Development in 2022 found that California needs approximately 2.5 million units of housing, including one million units affordable to lower income households, in order to address this mismatch over the next eight years. That would require production of over 300,000 units a year, including over 120,000 units a year of housing affordable to lower income households. By contrast, production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.

- 4) **Policy Consideration.** As noted above, California is in a housing crisis. As a result, the state has enacted a series of measures intended to address this crisis. The provisions in this bill would ensure that housing development projects that are not already protected by the HAA can move forward if they are consistent with the general plan but not compliant with an applicable zoning ordinance that is inconsistent with the general plan. The bill provides that, in this scenario, the objective general plan standards shall be applied to facilitate and accommodate development at the *density* allowed on the site by the general plan. As written, it is implied that these provisions apply exclusively to housing development projects as housing projects are the only projects typically regulated at a *density* prescribed by the local agency. However, the bill does not specifically state that its provisions apply to housing development projects. Therefore, it could be interpreted to apply to nonresidential development. It is unclear that allowing this bill's provisions to apply to commercial properties will help alleviate the state's housing crisis. In order to address the author's stated intent to "remove barriers that slow down the production of housing in California," the author may wish to consider clarifying the scope of projects subject to the bill.
- 5) **Previous Legislation.** SB 8 (Skinner), Chapter 161, Statutes of 2021, extended the sunset on the Housing Crisis Act of 2019 by five years and made a number of minor changes to the Act, including clarifying the provisions for demolition and replacement.

SB 330 (Skinner), Chapter 654, Statutes of 2019, established the Housing Crisis Act of 2019 and restricted, for a period of five years, actions by cities and counties that would reduce the production of housing, including demolition of housing that would result in less total units and less units affordable to lower income households.

SB 1333 (Wieckowski), Chapter 856, Statutes of 2018, applied several laws related to planning and zoning to charter cities, including the requirement that local agencies make their zoning ordinances consistent with their general plan.

- 6) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee.
- 7) **Arguments in Support.** SPUR writes in support of the bill, “When a local government does not maintain its zoning ordinance consistent with the general plan, it can limit the production of housing. If a housing development project meets the standards of a local government’s general plan, but the zoning ordinance hasn’t been updated, the project can be denied or delayed and even subject to litigation...”

“AB 821 would allow a development project to move forward in a timely manner where the project complies with the general plan but the local government’s zoning ordinance is inconsistent. The bill would provide that, upon written notice, if a local government fails to amend an inconsistent zoning ordinance within 90 days, a project shall not be deemed to be inconsistent if there is substantial evidence that would allow a reasonable person to conclude that the project complies with the general plan. This bill would apply to developments that are less than two-thirds residential, as these projects are not covered under the [HAA]”.

- 8) **Arguments in Opposition.** The City of San Marcos writes in opposition, “This bill, among other things, would provide that, in the event that a city or county fails to amend an inconsistent zoning ordinance within 90 days after receiving written notice of the inconsistency, a proposed development project shall not be deemed inconsistent with that zoning ordinance and related zoning standard or criteria and shall not be required to be rezoned... This undermines tried and true development processes established to ensure sustainable and community friendly developments are built.”

REGISTERED SUPPORT / OPPOSITION:

Support

SPUR [SPONSOR]

California Housing Consortium

California Building Industry Association

City of Gilroy Council Member Zach Hilton

Civicwell

Council of Infill Builders

East Bay Yimby

Fieldstead and Company, INC.

Grow the Richmond

Habitat for Humanity California

How to ADU

Meta

Mountain View Yimby

Napa-solano for Everyone

Northern Neighbors

Peninsula for Everyone

People for Housing Orange County

Progress Noe Valley
San Francisco Yimby
San Luis Obispo Yimby
Sand Hill Property Company
Santa Cruz Yimby
Santa Rosa Yimby
South Bay Yimby
Southside Forward
Ventura County Yimby
Yimby Action
Yimby Law

Opposition

City of San Marcos

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