

Date of Hearing: June 15, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1214 (Jones) – As Amended April 28, 2022

SENATE VOTE: 36-0

SUBJECT: Planning and zoning: local planning.

SUMMARY: Requires a local planning agency to ensure architectural drawings are made available to the public in a manner that does not facilitate their copying. Specifically, **this bill:**

- 1) Requires a local planning agency to ensure architectural drawings that contain protected information are made available to the public in a manner that does not facilitate their copying, as provided in this bill.
- 2) Allows a local planning agency to maintain official copies of each set of architectural drawings submitted to the agency.
- 3) Provides, unless permission is granted by the design professional or the owner of the copyright, if different from the design professional, if an official copy of the architectural drawings maintained by the planning agency contains protected information, that copy shall be subject to the following restrictions:
 - a) It shall be open for inspection and public review only on the premises of the planning agency as a public record.
 - b) It shall not be copied by a member of the public without the permission of the design professional or the owner of the copyright, if different from the design professional.
 - c) A local planning agency shall not provide copies of architectural drawings or postarchitectural drawings that contain protected information on the internet.
- 4) Allows, notwithstanding the restrictions specified in 3) above, a local planning agency to do any of the following regarding architectural drawings that contain protected information:
 - a) Make copies of the architectural drawings for internal official review by the planning agency, legislative body, government agencies, or other government bodies responsible for the official review of architectural drawings.
 - b) Distribute copies to members of the legislative body and members of the planning agency's governing body. Those copies shall not be required to be made available to the public pursuant to the Ralph M. Brown Act (Brown Act), as specified.
 - c) Display a copy on the internet and a copy physically on premise during a public hearing of the planning agency or legislative body where a development application that incorporates those architectural drawings is being considered by the planning commission or legislative body.

- 5) Allows a local planning agency to provide a copy of or post a site plan or massing diagram, or both, on the internet and allow a site plan or massing diagram, or both, to be copied.
- 6) Allows, upon submission of an official copy of architectural drawings to a local planning agency, the design professional or the owner of the copyright, if different from the design professional, to also submit to the planning agency a site plan or a massing diagram for posting online or for distribution to the public, upon request.
- 7) Provides that, if the design professional or the owner of the copyright, if different from the design professional, elects not to submit a site plan or massing diagram pursuant to 6), above, permission is deemed granted for the purposes of 3), above, and the planning agency shall not be subject to any restrictions on the copying or distribution of those architectural documents. The planning agency, or other governing body, shall not compel such permission.
- 8) Provides the following definitions for the purposes of this bill:
 - a) “Massing diagram” means a document that displays the three-dimensional form of a building and describes the general profile, bulk, setbacks, and size of the building, but does not contain specific architectural detail.
 - b) “Protected information” means an architectural drawing that meets both of the following conditions:
 - i) It is protected by the federal Copyright Act (Copyright Act) of 1976 (Public Law 94-553) as amended by the federal Architectural Works Copyright Protection Act (Architectural Copyright Act) of 1990 (Public Law 101-650).
 - ii) It contains a copyright annotation indicating it is protected by the Copyright Act.
 - c) “Site plan” means a document for a project that is drawn to scale and displays all of the following: property lines; setback lines; topographic lines; easements; drainage; utilities; lighting; driveways; surrounding streets and traffic flow; parking lots and parking spaces; landscaped areas; setback distance between buildings and property lines; outline of existing and proposed buildings and structures; distance between buildings; and, ground sign location.
- 9) Finds and declares that Section 1 of this act, which adds Section 65103.5 to the Government Code, imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

This act balances the public’s right to access information relied upon by public bodies while protecting the intellectual property interests of design professionals and owners of copyrights.

- 10) 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) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny.
- 2) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA), including that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure.
- 3) Establishes the Brown Act, which:
 - a) Requires that all meetings of the legislative body of a local agency be open and public, and all persons be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in the Brown Act.
 - b) Requires local agencies to post meeting agendas online through a direct link on their homepage.
 - c) Requires, upon request and without delay, local agencies to make available any written materials that are distributed to at least a majority of the members of a legislative body in connection with a public meeting. Any member of the public can request that a local agency provide them a copy of the meeting materials via mail or electronically.
 - d) Requires local agencies, upon receiving this request, to provide the meeting materials when it publicly posts a meeting agenda or distributes the meeting materials to a majority of its legislative body, whichever occurs first.
- 4) Establishes in each city and county a planning agency with specified powers.
- 5) Requires the building department of each city and county to maintain an official copy of the plans of every building during the life of the building for which it issued a building permit.
- 6) Provides that plans maintained by the building department of the city or county can be open for inspection only on the premises of the building department as a public record. The copy may not be duplicated in whole or in part, except:
 - a) With the written permission, which is prohibited from being unreasonably withheld as specified, of the certified, licensed, or registered professional or their successor, if any, who signed the original documents and the written permission of the original or current owner of the building, or, if the building is part of a common interest development, with the written permission of the board of directors or governing body of the association established to manage the common interest development.
 - b) By court order or upon the request of any state agency.

- 7) Requires any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, to request written permission to do so, as provided.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Background.** The Brown Act was enacted in 1953 and has been amended numerous times since then. The legislative intent of the Brown Act was expressly declared in its original statute, which remains unchanged:

“The Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The Brown Act generally requires local agencies to notice meetings in advance, including the posting of an agenda, and requires these meetings to be open and accessible to the public. The Brown Act defines a “meeting” as “any congregation of a majority of the member of a legislative body at the same time and location, including teleconference locations, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.” The Brown Act only allows local agencies to take actions, meaning a majority vote of the legislative body unless otherwise specified, on items that appear on the posted agenda.

If a member of the public, including the respective district attorney, believes a local agency violated the Brown Act, it must first send an order to the local agency to correct the violation. If the local agency disagrees with the complaint and does not correct it, the submitter can pursue the complaint through the courts. If the court agrees with the complaint, outcomes range from invalidating certain actions of the local agency to a misdemeanor criminal conviction.

- 2) **The Brown Act and Meeting Materials.** The Brown Act requires local agencies to post meeting agendas online through a direct link on their homepage. Additionally, upon request and without delay, local agencies must make available any written materials that are distributed to at least a majority of the members of a legislative body in connection with a public meeting. Any member of the public can request that a local agency provide them a copy of the meeting materials via mail or electronically. Upon receiving this request, the local agency must provide the meeting materials when it publicly posts a meeting agenda or distributes the meeting materials to a majority of its legislative body, whichever occurs first. A request to receive materials in this manner lasts until January 1 of the following year.

- 3) **California Public Records Act.** The CPRA generally requires state or local agencies to make records available to the public. After an individual submits a request, the public agency must reach out within ten days to notify the individual whether they can comply with the request, whether they need an extension, or if they have questions about the request. However, local agencies are not required to disclose certain records exempted by the Act. These exemptions are usually created because of a public interest, such as a privacy right, in not disclosing a certain record, or if disclosure is prohibited pursuant to state or federal law.
- 4) **Planning and Zoning Law.** Planning and approving new development is mainly a local responsibility. The California Constitution allows every city and 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. This includes land use authority.

The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the governing body of the city or county itself. If a city or county creates a planning commission, it must have at least five members. A city and county can establish for its planning agency any rules, procedures, or standards that do not conflict with state or federal laws. Cities and counties must provide a path to appeal a decision on a development to the planning commission and/or the city council or county board of supervisors.

- 5) **Planning Hearings.** Local planning laws often require public hearings in connection with development approvals. For example, planning agencies and legislative bodies must hold hearings when adopting zoning ordinances, and must develop and publish procedural rules for their hearings and make available records of their hearings and planning staff reports. Local agencies often also hold public hearings on individual development projects that require a discretionary approval where the local agency can impose conditions (up to a statutory limit of five public hearings on housing development projects that comply with local zoning). Cities and counties also often establish boards or commissions to review the design and appearance of a building, or to determine whether it is consistent with historical preservation requirements.

City councils, boards of supervisors, planning commissions, and design review boards meet the definition of legislative bodies under the Brown Act (unless they are composed solely of less than a quorum of members of the legislative body), and therefore must adhere to its requirements.

- 6) **Architectural Works.** Architects are licensed design professionals who plan buildings and often oversee construction. Architects produce architectural drawings that depict how a building will look and function when built. Architectural drawings have various components, including:
 - a) A “site plan” that displays an overhead view of the site and its buildings in relation to the nearby area. Site plans often contain information on property lines, utilities, lighting, streets, and outlines of existing and proposed structures drawn to scale.

- b) A “massing diagram” that displays the three-dimensional form of a building and its general size, shape, and bulk, but may not contain architectural details such as the external materials to be used, designs on the façade, or the positioning of windows.
 - c) A “floor plan” that indicates the position of internal components inside of a building.
 - d) An “elevation” that shows the exterior or a cross-section of a building as viewed directly facing the building.
- 7) **Copyright Law and Architectural Works.** The Copyright Act prohibits the unauthorized copying of an “original work of authorship” fixed in a “tangible form of expression.” Among other protections, federal copyright law provides copyright owners with the exclusive right to reproduce the work, prepare other works based on it, sell or lease copies, and display it publicly. Copyright law also provides the owner of a copyright the ability to authorize others to exercise these rights. An original work of authorship is copyrighted automatically by fixing it in a tangible form of expression, but copyright owners can also register a copyright with the United States Copyright Office, which confers additional protections and can be of assistance in litigating copyright issues. Additionally, copyright owners may place a copyright notice, along with the date of first publication and the owner’s name, on copies of a work to indicate that the author is claiming ownership.

In 1990, the United States Congress enacted the Architectural Copyright Act to allow the “original design” of a building to be protected under the Copyright Act. This original design can include architectural plans, drawings, the building itself, or other tangible forms of expression. However, standard features – such as standard configurations of spaces and individual standard features, such as windows, doors, and other staple building components – cannot be registered.

- 8) **Inspection and Duplication of Plans Held by Building Departments.** Every city or county building department must maintain an official copy of the plans of every building, during the life of the building, for which it issued a building permit. However, this copy of the plans is only available for inspection in person, and the copy generally cannot be duplicated without the written permission of the professional who signed the original document and the building owner. When asked to duplicate the plans, the building department must (1) ask the professional and the owner for permission, and (2) provide the requester with an affidavit to be signed that states:
- a) The plans will only be used for the maintenance, operation, and use of the building.
 - b) Drawings are instruments of professional service and are incomplete without the interpretation of a professional.
 - c) A licensed architect who signs plans cannot be held responsible for damage caused by subsequent changes to, or use of, those plans that are not approved by the architect.

The building department must send the affidavit along with the request for permission to the professional. If the professional does not respond within 30 days of receipt of the request, or if the professional refuses to give permission for the duplication after receiving the signed affidavit, the professional’s signature is not required.

- 9) **Author's Statement.** According to the author, "SB 1214 addresses the handling by local agency planning departments of plans and drawings prepared by architects in support of development proposals. The provisions of the bill are substantially similar to long-standing provisions of the Health and Safety Code relating to local building departments. This bill's objective is to balance the critical importance of facilitating public participation in local agency planning decisions with the need to protect the architects' intellectual property rights under the federal Copyright Act.

"Specifically, the bill clarifies that public officials will always have full access to the architects' plans and drawings, and the public will have the same access to the full plans during agency hearings and by visiting the planning department offices. If the public wants to duplicate copyrighted materials, permission must be granted by the architect. The bill also gives architects the opportunity to submit less detailed drawings, including site plans and massing diagrams, which may be copied without limit by members of the public. Taken together the provisions of SB 1214 will help prevent the misappropriation of the intellectual property of licensed architects, while preserving the ability of local officials and members of the public to participate in the planning, entitlement and permit process."

- 10) **Bill Summary.** This bill requires a local planning agency to ensure architectural drawings that contain protected information are made available to the public in a manner that does not facilitate their copying. "Protected information" means the architectural drawing is protected under the Copyright Act, as amended by the Architectural Copyright Act, and contains a copyright annotation indicating it is protected by the Copyright Act.

This bill specifies that a local planning agency may maintain official copies of each set of architectural drawings submitted to the agency, but imposes restrictions on those copies if they contain protected information, unless permission is granted by the design professional or the owner of the copyright. These restrictions include:

- a) The copy shall be open for inspection and public review only on the premises of the planning agency as a public record.
- b) The copy must not be copied by a member of the public without the permission of the design professional or the owner of the copyright.
- c) A local planning agency must not provide on the internet copies of architectural drawings or postarchitectural drawings that contain protected information.

Despite these restrictions, however, this bill allows a local planning agency to do any of the following regarding architectural drawings that contain protected information:

- a) Make copies of the architectural drawings for internal official review by the planning agency, legislative body, government agencies, or other government bodies responsible for the review.
- b) Distribute copies to members of the legislative body and members of the planning agency's governing body without having to make them available to the public pursuant to the Brown Act.

- c) Display a copy on the internet and a copy physically on premise during a public hearing of the planning agency or legislative body when a development application that incorporates those architectural drawings is under consideration.

When a design professional or the owner of the copyright submits an official copy of architectural drawings to a local planning agency, the design professional or the owner of the copyright can also submit a site plan or a massing diagram for posting online or for distribution to the public. A local planning agency may provide a copy of or post on the internet a site plan or massing diagram, and may allow a site plan or massing diagram to be copied.

If the design professional or the owner of the copyright elects not to submit a site plan or massing diagram, this bill deems permission to be granted to exhibit the full designs and the planning agency is not subject to any restrictions on the copying or distribution of those architectural documents.

This bill is sponsored by the American Institute of Architects, California.

- 11) **Arguments in Support.** The American Institute of Architects, California, sponsor of this measure, writes, “SB 1214 finds a balance between providing the public with information on proposed development projects that is needed for the public to be informed participants in the decision making process of local planning departments and following federal law regarding protecting the intellectual property in architectural plans.

“In recent years more local planning departments have adopted the practice of posting architectural plans for proposed projects online to help the public access information and make informed comments. Unfortunately, this practice violates the federal Copyright Act. Information included in architectural plans submitted to local planning departments includes information protected by the Copyright Act. This means these architectural plans cannot be posted online, where they can be copied, without the permission of the owner of the architectural plans...

“Fortunately, there are architectural plans that express the scope of a project and do not contain information protected by the Copyright Act. Site Plans and Massing Diagrams both provide important information about the project and allow the public to understand and make informed comments on proposed projects. These documents include information on the distance between buildings, setbacks distances, location of parking lots, property lines, landscaped areas, and a three-dimensional form of buildings that describe the general profile, bulk, and size.

“SB 1214 balances the need to provide the public with information and the obligation of planning departments to follow the Copyright Act. SB 1214 limits when architectural plans that contain information protected by the Copyright Act can be posted online, and places no limit on the online posting of architectural plans that do not contain protected information, such as Site Plans and Massing Diagrams. Importantly, it allows members of the public to view the protected documents in-person on the premises of the planning agency and during a hearing of planning agency or legislative body. Also, SB 1214 allows planning department staff, members of a planning agency governing body, or legislative body to be provided

copies of architectural plans that contain protected information when the proposed project is under consideration.”

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

13) **Double-Referral.** This bill is double-referred to the Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Institute of Architects California [SPONSOR]
California Builders Alliance
Sacramento Regional Builders Exchange

Opposition

None on file

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