

Date of Hearing: July 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 330 (Skinner) – As Amended July 1, 2019

SENATE VOTE: 28-7

SUBJECT: Housing Crisis Act of 2019.

SUMMARY: Restricts, for a period of five years, actions by cities and counties that would reduce the production of housing. Specifically, **this bill:**

- 1) Enacts the Housing Crisis Act of 2019. Makes a number of findings and declarations related to the housing supply crisis in the State of California, and declares, in light of the findings, that the Legislature hereby declares a statewide housing emergency, to be in effect until January 1, 2025, at which point the provisions specified below will be repealed.
- 2) Declares the intent of the Legislature, in enacting the Housing Crisis Act of 2019, to do both of the following:
 - a) Suspend certain restrictions on the development of new housing during the period of the statewide emergency; and,
 - b) Work with local governments to expedite the permitting of housing in regions suffering the worst housing shortages and highest rates of displacement.
- 3) Establishes a preliminary application process for housing projects, as follows:
 - a) Deems an applicant for a housing development to have submitted a “preliminary application” upon providing all of the following information about the proposed project to the city, county, or city and county, from which approval for the project is being sought and upon payment of the permit processing fee:
 - i) The specific location, including parcel numbers, a legal description, and site address, if applicable;
 - ii) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located;
 - iii) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied;
 - iv) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance;
 - v) The proposed number of parking spaces;
 - vi) Any proposed point sources of air or water pollutants;

- vii) Any species of special concern known to occur on the property;
- viii) Any portion of the property located within any of the following:
 - (1) A very high fire hazard severity zone;
 - (2) Wetlands;
 - (3) A hazardous waste site, as specified;
 - (4) A special flood hazard area, as specified;
 - (5) A delineated earthquake fault zone, as specified;
 - (6) Any historic or cultural resources known to exist on the property;
 - (7) The number of proposed below market rate units and their affordability levels;
 - (8) The number of bonus units and any incentives, concessions, waivers, or parking reductions;
 - (9) Whether any approvals under the Subdivision Map Act are being requested;
 - (10) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.
- b) Requires each local agency to compile a checklist and application form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application. Requires the Department of Housing and Community Development (HCD) to adopt a standardized form that applicants may use if a local agency has not developed its own application form;
- c) Prohibits a checklist or form from requiring or requesting any information beyond what was identified above;
- d) Provides that the housing development project shall not be deemed to have submitted a preliminary application if, after the submittal of all the information, the development proponent revises the project such that the number of residential units or square footage of construction changes by 20% or more, as specified;
- e) Requires, within 180 calendar days after submitting a preliminary application to a city or county, the development proponent to submit an application for a development project that includes all of the information to process the development application, as specified;
- f) Requires, if the public agency determines that the application for the development project is not complete, the proponent to submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. Specifies that the preliminary application shall expire if the proponent does not submit the information within 90 days; and,

- g) Requires, if an application is determined to be incomplete, the lead agency to provide the development project applicant with an exhaustive list of items that were not complete. Requires the list to be limited to those items required on the lead agency's submittal checklist and application form. Prohibits, if any subsequent review of the application is determined to be incomplete, the local agency from requesting the applicant to provide any new information that was not stated in the initial list of items that were not complete. Requires, when determining if the application is complete, the local agency to limit its review to determining whether the application includes the missing information.
- 4) Reduces the time period that a housing project must be approved or disapproved upon the completion of an Environmental Impact Report (EIR) by 30 days, to 60 days for specified projects that are at least 49 % affordable to very-low and low-income households, and 90 days for other housing projects.
- 5) Establishes a new chapter (Chapter 12) in Division 1 of Title 7 of the Government Code, entitled the "Housing Crisis Act of 2019," and establishes the following for Chapter 12:
- a) Defines "affected city" to mean:
 - i) A city that HCD determines that the average of the following metrics is greater than zero: (1) the percentage the average rate of rent differed from 130% of the national median rent in 2017, and (2) the percentage by which the vacancy rate for rental units differs from the national rate; and;
 - ii) A city that does not have a population of 5,000 or fewer and is not located in an urban core.
 - b) Defines "affected county" to mean:
 - i) The unincorporated portion of any county that is wholly within the boundaries of an urbanized area or urban cluster and qualifies based on the same metrics as affected cities, above in 5)a)i);
 - c) Specifies that an affected city or county includes the electorate of an affected city or county exercising its local initiative or referendum power;
 - d) Requires HCD to determine which cities and counties are affected cities and counties no later than June 30, 2020;
 - e) Amends the development policies, standards, and conditions for affected cities and counties as follows:
 - i) Prohibits an affected city or county, with respect to land where housing is an allowable use on or after January 1, 2018, from enacting a development policy, standard, or condition that would have any of the following effects:
 - ii) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or

- zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city as in effect January 1, 2018;
- iii) Imposing a moratorium or similar restriction or limitation on housing development within all or a portion of the jurisdiction, other than to specifically protect against an imminent threat to health and safety;
 - iv) Imposing or enforcing design review standards established after January 1, 2018, if the standards are not objective design standards, defined as involving no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application;
 - v) Establishing or implementing any provision that limits the number of land use approvals or permits necessary for the approval and construction of housing, acts as a cap on the number of housing units, or limits the population, except for specified longstanding limits in predominantly agricultural counties, as specified;
 - vi) Allows an affected city or county to change land use designations or zoning ordinances to allow for less intensive uses if it concurrently changes the density elsewhere to ensure that there is no net loss in residential capacity;
 - vii) Allows an affected city or county to enact a development policy, standard, or condition to prohibit the commercial use of land that is designated for residential use, including but not limited to, short-term occupancy of a residence; as specified; and,
 - viii) Prohibits an affected city or county from approving a housing development project that will require the demolition of residential dwelling units as will be demolished, except as specified.
- 6) Amends the Housing Accountability Act (HAA), as follows:
- a) Prohibits a local agency from applying ordinances, policies, and standards to a development after a preliminary application is submitted, except in narrowly defined specified circumstances. Allows specified persons and entities to file a lawsuit to enforce this prohibition, including prospective residents of the development;
 - b) Provides that a housing development project shall only be subject to the preconstruction development ordinances, policies and standards adopted and in effect when all the information required in a preliminary application was submitted;
 - c) Provides that 6b), above, shall not prohibit a housing development project from being subject to preconstruction development ordinances, policies, and standards adopted after the preliminary application was submitted in the following circumstances:
 - i) In the case of a fee, charge, or other monetary exaction, to an increase resulting from an automatic annual adjustment based on an independently published cost index that

- is referenced in the ordinance or resolution establishing the fee or other monetary exaction;
- ii) A preponderance of the evidence in the record establishes that subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety, and there is no feasible alternative method, as specified;
 - iii) Subjecting the housing development project to an ordinance, policy, standard, or any measure, beyond those in effect when a preliminary application was submitted, is necessary to avoid or substantially lessen an impact of the project under CEQA;
 - iv) The housing development project has not commenced construction within 2 ½ years following the date that the project received final approval, as defined; and,
 - v) The housing development project is revised following submittal of the preliminary application such that the number of residential units or square footage of construction changes by 20% or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision.
- 7) Prohibits a city or county from conducting more than five hearings in specified circumstances, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete. Requires the city or county to approve or disapprove the application at any of the five hearings consistent with the applicable timelines under the Permit Streamlining Act (PSA).
- 8) Requires any determination that a housing project is on a historic site to occur at the time the housing application is deemed complete. This determination will remain valid throughout the development process unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.
- 9) Finds and declares that the provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, 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 provisions of this act apply to all cities, including charter cities.
- 10) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

- 11) Specifies that the provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

EXISTING LAW:

- 1) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community.
- 2) Establishes the HAA, which provides that when a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time that the housing development 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 housing development project upon specified written findings.
- 3) Establishes the PSA, which sets forth the rules for reviewing and processing development applications.

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

COMMENTS:

- 1) **Background.** Planning 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.

State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory “elements,” including a housing element that establishes the locations and densities of housing, among other requirements. Cities’ and counties’ major land use decisions – including most zoning ordinances and other aspects of development permitting – must be consistent with their general plans. 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 legislative body of the city or county itself. Cities and counties must provide a path to appeal a decision to the planning commission and/or the city council or county board of supervisors.

The Legislature has enacted a variety of statutes to facilitate and encourage the provision of housing, particularly affordable housing and housing to support individuals with disabilities or other needs. Among them is the HAA, enacted in 1982 in response to concerns over a growing rejection of housing development by local governments due to not-in-my-backyard (NIMBY) sentiments among local residents (SB 2011, Greene). The HAA, also known as the “Anti-NIMBY” legislation, restricts a local agency’s ability to disapprove, or require

density reductions in, certain types of residential projects. The HAA limits the ability of local governments to reject or render infeasible housing developments based on their density without a thorough analysis of the economic, social, and environmental effects of the action. 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 substantial 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.

The PSA requires public agencies to act fairly and promptly on applications for development permits. Public agencies must compile lists of information that applicants must provide and explain the criteria they will use to review permit applications. Public agencies have 30 days to determine whether applications for development projects are complete; failure to act results in an application being “deemed complete.” However, local governments may continue to request additional information, potentially extending the time before the clock begins running.

- 2) **Bill Summary.** SB 330 makes a number of changes to local planning processes to restrict, for the next five years, actions by cities and counties related to housing development. The major changes fall into three categories: creation of a new preliminary application for a development, limits on local agencies planning powers related to housing developments, and enforcement provisions.
 - a) **Preliminary Application.** SB 330 changes the permitting process for housing projects in “affected” cities and counties (as the bill defines) over the next five years. This change is implemented through the bill’s creation of a “preliminary application,” a new first step in the PSA process. After submittal of this application, the bill prohibits a local agency from applying ordinances, policies, and standards to a development, except in narrowly defined circumstances. The information required in the preliminary application is specified in the bill, and includes only objective information, such as site location, existing uses, proposed uses, specified environmental and cultural sensitivities and hazards, and proposed approvals process.

Local jurisdictions are precluded from requiring additional information and must deem the application to be complete if all of the required information is provided. If the required information is not provided, then the bill specifies a process for both the applicant and the jurisdiction to follow. Failure to comply by the applicant results in the voiding of their application. Failure to comply by the jurisdiction results in the application being deemed “complete.”
 - b) **Limits on Local Planning Powers.** SB 330 makes a number of changes to how affected cities and counties plan for housing by prohibiting cities and counties, through January 1, 2025, from enacting a development policy, standard, or condition that would:
 - i) Reduce the housing development capacity of a parcel to less than what was allowed under the land use designation and zoning ordinances of the city or county, as in effect January 1, 2018;

- ii) Impose or enforce any non-objective design review standards on housing that were established after January 1, 2018; or,
- iii) Limit the number of land use approvals or permits necessary for the approval and construction of housing, act as a cap on the number of housing units, or limit the population, except for specified longstanding limits in predominantly agricultural counties.

SB 330 prohibits a city or county from conducting more than five hearings in specified circumstances, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete. The bill also requires any determination that a housing project is on a historic site to occur at the time the housing application is deemed complete.

c) **Enforcement.** SB 330 amends the HAA to:

- i) Prohibit a local agency from applying ordinances, policies, and standards to a development after a preliminary application is submitted, except in narrowly defined specified circumstances. The bill allows specified persons and entities to file a lawsuit to enforce this prohibition, including prospective residents of the development; and,
- ii) Provide that a housing development project shall only be subject to the preconstruction development ordinances, policies and standards adopted and in effect when all the information required in a preliminary application was submitted, except in specified circumstances.

This bill is an author-sponsored measure.

- 3) **Author's Statement.** According to the author, "California is experiencing an extreme housing shortage. We now rank 49th in the number of housing units per capita and are home to 33 of the 50 US cities with the highest rents. SB 330 is designed to address our housing crisis by asking local governments to hold off on actions that would decrease or delay housing and to process permits for housing that is already allowed under their existing rules, but to do it faster and not change the rules once the housing application is submitted. By requiring timely processing of permits and relaxing a limited set of rules, SB 330 employs the same approach that cities have used to help recover from fires or other disasters. Lastly, to help keep tenants and low-income families in their homes, SB 330 also includes anti-displacement measures."
- 4) **Arguments in Support.** According to the California Chamber of Commerce, "Many cities and counties – while likely well intentioned – have exacerbated the housing shortage by creating barriers to new housing construction. We believe SB 330 takes meaningful steps to re-establish good government standards for permitting zoning compliant housing projects. This bill would streamline the development of more housing in California by amending local land use approval processes and the PSA for certain defined local jurisdictions by requiring the timely processing of permits, preventing unreasonable delays in the approval of new housing projects, providing a more fairer playing field by preventing local governments from

imposing new fees or exactions in excess of the amounts that would have been applicable at the time the initial application was submitted, and ensuring that residential housing applicants are consistent with city general plans.”

- 5) **Arguments in Opposition.** The League of California Cities writes that this bill essentially bans project-specific fees, after the submittal of a preliminary application, because these fees cannot be determined until a city fully analyzes the project. The California State Association of Counties and Urban Counties of California are concerned that the information required to be submitted via the preliminary application may be insufficient to determine the development’s impacts at the local level, especially in new growth areas located in counties, where new development may require project-specific fees under the Mitigation Fee Act to ensure that essential community services can be provided to new residents.
- 6) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on June 19, 2019, and passed with a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council
Bridge Housing Corporation
Building Industry Association - Los Angeles/ Ventura Chapter
Building Industry Association of Orange County
Building Industry Association of San Diego
Building Industry Association of Southern California, Baldy View Chapter
Building Industry Association of the Bay Area
California Apartment Association
California Association of Realtors
California Building Industry Association
California Business Roundtable
California Chamber of Commerce
California Community Builders
California Council for Affordable Housing
California Hawaii State Conference of The NAACP
Central City Association
Chan Zuckerberg Initiative
Eden Housing
Equality California
Leading Builders of America
Los Angeles Area Chamber of Commerce
Martin Luther King Jr Freedom Center
Mayor Inga Miller, City of Orinda
Midpen Housing Corporation
Natural Resources Defense Council
Non-Profit Housing Association of Northern California
North Bay Leadership Council
Planning And Conservation League
Related California
Salesforce.Com
Save The Bay
Silicon Valley At Home (Sv@Home)
SPUR (in concept)
Technet
Tmg Partners
Up For Growth
Western Center on Law & Poverty, Inc.
Working Partnerships USA

Opposition

AIDS Healthcare Foundation
Boyle Heights Community Partners

Opposition (continued)

California State Association of Counties (unless amended)
Cities of: Beaumont, Camarillo, Beverly Hills, Burbank, Chino Hills, Colma, Cupertino Cypress,
Del Mar, El Centro, Glendora, La Habra, La Mirada, Lafayette, Laguna Hills, Los Alamitos,
Mission Viejo, Moorpark, Morgan Hill, Murrieta, Orinda, Pasadena, Pinole, Rancho
Cucamonga, San Dimas, Santa Barbara, Sunnyvale, Thousand Oaks, Tulare, Ventura, Vista,
West Hollywood
Coalition for Economic Survival
Coalition for San Francisco Neighborhoods (CSFN)
Coalition to Preserve LA
Corbett Heights Neighbors
Cow Hollow Association
East Mission Improvement Association
Endangered Habitats League (unless amended)
Environmental Defense Center
Grayburn Avenue Block Club
Keep Sunnyvale Beautiful
League of California Cities
Livable California
Los Angeles City Councilmember Paul Koretz
Los Angeles County Division, League of California Cities
Marin County Council of Mayors and Council Members
Mayor Robert Whalen, City of Laguna Beach
Mission Economic Development Agency
Raise The Balloon
San Francisco Tenants Union
San Gabriel Valley Council of Governments
San Mateo County-City/County Association of Governments
Save Our Heritage Organization
SF Ocean Edge
Sherman Oaks Homeowners Association
Spaulding Square Neighborhood Association
Sunset-Parkside Education and Action Committee (SPEAK)
Sustainable Tamalmonite
Urban Counties of California (unless amended)
Ventura Council of Governments
127 Individuals

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