

Date of Hearing: May 20, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 3155 (Robert Rivas) – As Amended May 12, 2020

SUBJECT: Subdivision Map Act: streamlined approval process: subdivisions

SUMMARY: Facilitates the development of housing developments of ten or fewer units. Specifically, **this bill:**

- 1) Revises the process created by SB 35 (Wiener), Chapter 366, Statutes of 2017 as follows:
 - a) Makes housing projects of ten units or fewer streamlined and ministerial in all jurisdictions, regardless of whether or not that locality is meeting its regional housing needs; and
 - b) In jurisdictions that are meeting their regional housing need for above moderate-income housing but not very low- or low-income housing, reduces the amount of affordable housing required from 50 percent for lower income households to the percentage required in a local government's inclusionary ordinance.
- 2) Makes the following changes to the Subdivision Map Act:
 - a) Requires local agencies to ministerially review and approve an application to subdivide ten lots or fewer;
 - b) Requires local agencies to waive any hearing requirement imposed on an application to subdivide ten lots or fewer;
 - c) Requires local agencies to issue a building permit for a subdivision of ten lots or fewer if the applicant for the permit has received a tentative map approval or parcel map approval for the project and has submitted proof to the satisfaction of the local agency that a covenant and agreement has been recorded, as follows:
 - i. The covenant and agreement must state that the applicant and the applicant's successors and assignees agree that the building permit is issued on the condition that a certificate of occupancy for the building will not be issued until after the final map has been recorded;
 - ii. The building permit must be based upon the approved tentative or parcel map and its conditions of approval; and
 - iii. Any dedication, improvement, and sewer requirements identified in the approved tentative or parcel map or its conditions of approval must be guaranteed to the satisfaction of the local agency at the time the building permit is issued.

- 3) Provides that no reimbursement is required by this act 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 act.

EXISTING LAW: Allows a development proponent to submit an application for a development that is subject to a streamlined, ministerial approval process, and not subject to a conditional use permit, provided that:

- a) The development is located in a jurisdiction that has been determined by the state Department of Housing and Community Development (HCD) to have issued insufficient building permits to meet its share of the regional housing need assessment (RHNA), and the development is subject to a requirement mandating a minimum percentage of below market rate housing, as specified.
 - b) The development contains two or more residential units and satisfies specified objective planning standards, including being located on an urban infill site that is zoned for residential or residential mixed-use, with at least two-thirds of the square footage designated for residential use.
 - c) The development proponent has certified to the locality that either the entirety of the development is a public work, or that all construction workers employed by the project will be paid at least prevailing wage, as specified. For specified developments, a skilled and trained workforce must be used.
 - d) The development is not located in environmentally unsafe or sensitive areas, including a coastal zone, wetlands, a high or very fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement (Government Code Section 65913.4);
- 2) Provides provisions, procedures, and requirements regarding the division of land, whether improved or unimproved, for the purpose of sale, lease, or financing (Government Code Section 66410 through 66499.38), including:
 - a) General provisions regarding the timing of building permits relative to the approval of maps (Government Code Section 66411.1)
 - b) Procedures governing the processing, approval, conditional approval or disapproval and filing of tentative, final and parcel maps and the modification thereof (Government Code Section 66451 through 66451.7).

FISCAL EFFECT: Unknown

COMMENTS: *Author's Statement:* According to the author, "AB 3155 removes legal barriers that discourage the creation of new housing for first-time homeownership. It encourages small, affordable projects by allowing buildings projects with of 10 units or fewer to move quickly through the permitting process, all while ensuring they comply with local design rules and other elements of local control. We need to remove barriers to smaller forms ownership housing so the next generation of Californians can have the hope of one day owning a home."

Background:

Housing Crisis: The cost of housing in California is twice the national average, and higher than any state but Hawai'i. Only 28 percent of households can buy the median priced home. Over half of renters and 80 percent of low-income renters are rent-burdened, meaning they pay over 30 percent of their income towards rent. According to a 2016 McKinsey Global Institute report, every year Californians pay \$50 billion more for housing than they are able to afford. According to Up for Growth's 2018 analysis, housing underproduction is rampant throughout the United States, but California's underproduction is greater than the other 49 states combined. According to the 2016 McKinsey study, California's housing deficit is over two million units, and it would require production of 500,000 units a year (3.5 million units total) over a seven year period to normalize the state's housing prices. According to HCD, the state needs 180,000 units built per year to maintain housing costs. By contrast, housing production averaged less than 80,000 new homes annually over the last ten years.

Medium-Density Housing: One of the many reasons that housing is too expensive is the type of housing that is being built, which is predominantly single-family (which can be an inefficient use of land) and mid- and high-rise construction (which are expensive to build). One strategy to lower the cost of housing is to facilitate the construction of "missing-middle" housing types that accommodate more units per acre, but are less expensive to build. This includes medium-density typologies such as duplexes, four-plexes, garden apartment, and town homes. In addition to being land-efficient while being less expensive to build, these housing types have several other benefits, including that they are:

- More contextually similar to existing single-family neighborhoods,
- Provide sufficient density to support the shops, restaurants, and transit that are associated with walkable neighborhoods,
- Expand the pool of homebuilders, since the construction and building materials are comparatively less complicated than larger mid- and high-rise structures, and
- Naturally less expensive in the market because they are typically smaller than single-family homes, thereby helping increase access to opportunity and facilitate neighborhood equity and inclusion.

Entitlement Process: 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. Cities and counties enforce this power through zoning regulations, as well as through an "entitlement process" for obtaining a building permit. In most cities, the entitlement process requires multiple discretionary decisions regarding the subdivision of land, environmental review per the California Environmental Quality Act (CEQA), design review, and project review through such bodies as a planning commission and city council. These processes are often time consuming, redundant, and risky. Additionally, they vary greatly between jurisdictions. Both of these factors make it very difficult for smaller, less well-resourced developers, to feasibly develop medium-density housing.

Recognizing this, in recent years the Legislature has enacted several measures to help streamline projects and increase certainty. One example is the process created by SB 35 (Wiener, 2017) that

requires the streamlined, ministerial approval of housing projects that meet certain conditions, including that the development is not located in environmentally unsafe or sensitive areas, and that larger projects meet affordability and construction wage standards. SB 35 applies in jurisdictions that are not meeting their RHNA production targets. In jurisdictions that are meeting their RHNA target for above moderate-income units but not lower income units, a new development applying for a streamlined, ministerial approval per SB 35 is required to make at least 50 percent of the units affordable to lower-income households.

Utilizing their land use authority, some local jurisdictions have also made efforts to streamline the development process. For example, the City of Los Angeles adopted a small lot subdivision program in 2005 to expedite the development of medium-density housing. In 2013, they amended the process to rectify inefficiencies with the subdivision mapping process. The summary of the city's recommendation report for the amendment states "After a small lot subdivision project has received approval from the Department of City Planning, it can take up to two years for the final subdivision map to record. Unlike apartments and condominiums, building permits for small lot subdivisions cannot be issued until the map records. Therefore, to begin construction applicants must choose between waiting for the map to record (which is risky due to increased market uncertainty and holding costs) or filing for deviations to allow construction on the lot that is not yet technically subdivided. Both options are inefficient and unnecessary."

Purpose of the Bill: This bill would facilitate the development of medium density housing contained in housing projects of ten units or less. It amends the process created by SB 35 to make such developments ministerial and streamlined, even if the jurisdiction is on pace to meet its RHNA targets. The effect is that, in jurisdictions that are currently on pace to meet their RHNA target for above moderate income housing, housing projects of ten units or fewer would no longer be required to make at least 50 percent of the units affordable to lower-income households, but instead will only subject to the local inclusionary standard.

This bill also amends the Subdivision Map Act to remove three potential barriers to the development of housing projects of ten units or less. First, local agencies would be required to ministerially review and approve an application to subdivide. Second, local agencies would be required to waive any hearing requirement imposed on an application. Third, local agencies would be required to expedite the mapping process itself, allowing a one-step process, modeled after the process used in Los Angeles that enables development to proceed faster as long as the appropriate legal assurances and protections are provided to the local jurisdiction.

Arguments in Support: Arguments in support of this bill focus on its capacity to create more moderate-income homes and increasing homeownership for moderate-income households. According to the California Black Chamber of Commerce, "We need to quickly harness best practices to provide badly needed homes that are feasible in the current recession. This bill follows the path of Los Angeles that passed a series of small lot streamlining measures to kick-start their housing and job recovery at the onset of the 2000 and 2009 recessions, with naturally affordable homes that did not require scarce public dollars."

Arguments in Opposition: Arguments in opposition include concerns that value projects benefitting from this bill's streamlined, ministerial process would not commensurately address housing concerns for lower-income households, and also that they could exacerbate displacement concerns in sensitive communities. According to PolicyLink, "streamlining the development of

housing that is unaffordable to existing residents ... can exacerbate the housing challenges experienced by the very populations being hit hardest by California's affordability crisis, by creating new pressures and incentives for displacement."

Another argument provided against this bill is that it would facilitate sprawl, and allow projects larger than ten units. According to the Sierra Club, "The bill does not require these lots to be infill plots or located in urbanized areas. And because subdivision applications are subject to local zoning requirements prescribing the number of units allowed on each lot -- some of which allow for 4-5 units per lot -- AB 3155 would require local governments to approve development projects that could potentially be 40-50 units and in sprawl areas that encroach on wildlands and have undergone no environmental review."

A third argument in opposition is that this bill facilitates expedited housing development for moderate-income and above-moderate income housing in jurisdictions that are meeting their RHNA requirements for above-moderate income housing. According to the California State Association of Counties, "We are concerned that this bill undermines one of the core premises of SB 35, which applies a streamlined ministerial process to qualifying development applications, but only when development in a jurisdiction lags behind planned allocations in specified income categories, or a local government fails to submit their housing element annual progress report."

Staff Comments:

In jurisdictions that are currently meeting their RHNA target for above moderate-income households, to access the benefits from the streamlined, ministerial process created by SB 35 developments must restrict 50 percent of their units to low-income households. For projects of ten units or less, this threshold is challenging to achieve, as they are typically not the beneficiaries of the public subsidy necessary to achieve such high levels of affordability. As proposed, the bill would reduce the affordability requirement to that set by the local government. However, many local governments do not have an inclusionary housing requirement, and others that do exempt projects of ten units or less. To ensure that the small projects that would benefit from the changes proposed by this bill would contribute their fair share to affordable housing, **the committee may wish to consider amending the bill to require that, if there is not a local applicable inclusionary requirement for these projects, that they pay an affordable housing fee to the local jurisdiction.** The specifics of the fee will need to subsequently be determined by the author, potentially in conjunction with a similar effort occurring to determine the fee structure for AB 1279 (Bloom).

This bill makes the process of subdividing land substantially easier by removing any oversight provided by CEQA or a public hearing process. However, it does so without applying the commensurate environmental protections included in SB 35. Because the subdivision process facilitates the provision of site infrastructure, this could result in preparatory work occurring in hazardous sites. This bill also does not include a locational provision for the subdivision as is included in SB 35, which would lead to the facilitation of sprawl development. Additionally, this bill enables an expedited process for projects that would result in ten parcels or fewer. However, it is not uncommon for multiple units to be built on a single parcel. To ensure that subdivisions are subject to proper environmental review and oversight, are limited to infill areas, and result in no more than ten units of housing, **the committee may wish to consider amending the bill as follows:**

- **Strike the provision that a local agency must ministerially review and approve an application to subdivide ten lots or fewer;**
- **Strike the provisions that a local agency must waive any hearing requirement imposed on an application to subdivide ten lots or fewer;**
- **Require that the benefitting subdivision only occurs on a site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses; and**
- **Specify that the covenant and agreement required for the expedited subdivision process must state that the building permit will not be issued if the total number of units created by the subdivision exceeds ten.**

Committee Amendments: The committee may wish to consider amending the bill as follows to address the concerns outlined above:

- Require that, if there is not a local applicable inclusionary requirement for these projects, that they pay an affordable housing fee to the local jurisdiction;
- Strike the provision that a local agency must ministerially review and approve an application to subdivide ten lots or fewer;
- Strike the provisions that a local agency must waive any hearing requirement imposed on an application to subdivide ten lots or fewer;
- Require that the benefitting subdivision only occurs on a site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses; and
- Specify that the covenant and agreement required for the expedited subdivision process must state that the building permit will not be issued if the total number of units created by the subdivision exceeds ten.

Related Legislation:

SB 35 (Wiener, Mitchell), Chapter 366, Statutes of 2017: This bill creates a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers.

AB 1279 (Bloom) (2019): This bill would require certain development sites in high resource areas to allow for more density and height and makes these sites subject to “use by-right” approval. This bill is pending hearing in the Senate Committee on Housing

AB 2580 (Eggman) (2020): This bill would create a streamlined, ministerial approval process for the conversion of motels and hotels into multifamily residential buildings. This bill is pending hearing in this committee.

AB 2666 (Boerner Horvath) (2020): This bill would create a process to facilitate small lot subdivision for smaller single-family homes. This bill is pending hearing in this committee.

AB 3107 (Bloom) (2020): This bill would allow the housing to be built in areas designated by a general plan element to allow commercial development, as long as the housing has at least 20 percent of its units reserved for low income households.

AB 3234 (Gloria) (2020): This bill would enable jurisdictions to have a simplified subdivision mapping process for small lot subdivisions. This bill is pending hearing in the Assembly Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

Habitat for Humanity California (Co-Sponsor)
The Two Hundred (Co-Sponsor)
Abundant Housing LA
All Home
Bay Area Council
Bay Area Housing Advocacy Coalition
California Black Chamber of Commerce
California Building Industry Association
California Chamber of Commerce
California Hispanic Chambers of Commerce
California Journal for Filipino Americans
California YIMBY
Casita Coalition
Chan Zuckerberg Initiative
Chicano Federation of San Diego County
Community Housing Improvement Systems and Planning Association
Community Housing Opportunities Corp
East Bay for Everyone
El Concilio of San Mateo County
Facebook
Hollywood YIMBY
House Sacramento
Inland Empire Latino Coalition
Jobs and Housing Coalition
League of Women Voters of California
Monterey Peninsula Renters United
Mountain View YIMBY
Non-Profit Housing Association of Northern California
Peninsula for Everyone
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Foundation
Santa Cruz YIMBY
SV@HOME
Silicon Valley Community Foundation
SLO County YIMBY
South Bay YIMBY
TELACU
The Unity Council
TMG Partners
Up for Growth Action California
Ventura County Community Development Corporation

YIMBY Action
5 Individuals

Opposition

California League of Conservation Voters
California State Association of Electrical Workers
California State Council of Laborers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Coalition of California Utility Employees
District Council of Iron Workers of The State of California and Vicinity
International Union of Elevator Constructors, Local 18
International Union of Elevator Constructors, Local 8
International Union of Operating Engineers, Cal-Nevada Conference
Sherman Oaks Homeowners Association
Sierra Club
State Building and Construction Trades Council of California
Western States Council Sheet Metal, Air, Rail and Transportation
3 individuals

Oppose Unless Amended

California Rural Legal Assistance Foundation
PolicyLink
Public Advocates
Public Interest Law Project
Western Center on Law & Poverty

Concerns

California State Association of Counties
Urban Counties Caucus

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