

Date of Hearing: August 30, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1561 (Cristina Garcia) – As Amended August 25, 2020

SUBJECT: Planning and zoning: housing element and entitlement extensions.

SUMMARY: Authorizes the Department of Housing and Community Development (HCD) to require a local government's housing element to include an analysis of governmental constraints upon the development of housing for individuals identified under the Unruh Civil Rights Act as a member of a protected class; extends the response period for Native American tribes to request consultation on a housing development project, and provides an 18-month extension for housing development project entitlements, as specified. Specifically, **this bill:**

- 1) Authorize, on or after January 1, 2024, the Department of Housing and Community Development (HCD), upon appropriation of funding, to require a local government's housing element to include an analysis of governmental constraints upon the development of housing for individuals identified under the Unruh Civil Rights Act as a member of a protected class.
- 2) Remove provisions requiring a local government to examine impacts on persons belonging to a protected class, as identified in the Unruh Civil Rights Act, when performing an update to the housing element of their general plan.
- 3) Extend, by 30 days, the timeframes under the California Environmental Quality Act (CEQA) for a Native American tribe to respond to a lead agency and request consultation relating to a housing development project application that is determined or deemed complete by the lead agency on or after March 4, 2020, and prior to December 31, 2021.
- 4) Provide an 18-month extension to certain housing entitlements that were issued prior to March 4, 2020, and would otherwise expire prior to December 31, 2021.
- 5) Add chaptering amendments for SB 1138 (Weiner).

EXISTING LAW:

- 1) Planning and Zoning Law requires every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element.
- 2) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans.
- 3) The Subdivision Map Act (SMA) provides a statewide regulatory framework for controlling the subdividing of land, which generally requires a subdivider to submit, and have approved by the city, county, or city and county in which the land is situated, a tentative map. The SMA provides for the expiration of tentative maps after specified periods of time, and authorizes cities and counties to grant discretionary map extensions
- 4) The PSA sets forth time limits and procedures for some types of land use decisions, including tentative maps. It also prohibits a local agency, after it approves or conditionally approves a

tentative map for a residential unit, from requiring conformance with any condition the local agency could have imposed as a condition to the issuance of any building permit for five years after the recordation of that subdivision's final map or parcel map. A city or county also can't refuse to issue a building permit for failing to conform with or perform any conditions that the city or county could have imposed as a condition to the previously approved tentative or parcel map.

- 5) Requires the California Building Standard Commission (CBSC) to adopt regulations setting forth procedures for the adoption of building standards in consultation with the public and pertinent state agencies to facilitate the adoption of the State Building Codes on a triennial basis.
- 6) Provides that only building standards approved by the CBSC, and that are effective at the local level at the time an application for a building permit is submitted, may apply to plans and construction performed under that building permit.
- 7) The Housing Crisis Act, among other provisions, allows an applicant for a housing development project to submit a preliminary application containing certain information about the proposed project. Provides that, if a building permit is submitted within 180 days of a preliminary application, the project is subject to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted

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

COMMENTS: *Housing Element and Unruh Civil Rights Act:* Every city and county is required to prepare and adopt a housing element to help plan how to address its share of the regional need for housing. Existing law requires a housing element to include a program that sets forth a schedule of actions during the planning period to provide for the housing needs of all economic segments of the community. This program must meet a number of specified requirements. This bill authorizes HCD to require a local government to analyze any government constraints on individuals identified under the Unruh Civil Rights Act to be members of a protected class. Existing law defines constraints as including land use controls, building codes and their enforcement, site improvements, development and impact fees, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development.

Housing Entitlements: Developers seeking to produce housing in California often need to obtain local government as well as state agency approval at various stages in the development process. Approvals are generally considered an entitlement when they lock in the regulatory standards that a local government or state agency can apply to a project. Entitlements are powerful documents as they provide certainty to developers, which can help developers secure financing for a project. However, entitlements also constrain the ability of local governments and state agencies to adjust for new conditions. Additionally, when an issued entitlement is outstanding, it alters the ability of the local government or state agency to approve other projects that could be potentially impacted by the pending project. Therefore, various entitlements are subject to expiration, although many may be extended at the discretion of the local government or state agency.

This bill extends planning level and pre-building permit entitlements for housing developments that are issued by the state or by cities and counties. This bill automatically extends by 18 months certain planning level entitlement that were:

- a) Issued prior to the State of Emergency the Governor declared on March 4, 2020; and,
- b) Set to expire prior to December 31, 2021.

Previous extensions authorized in response to economic crises focused on a narrow set of entitlements (i.e. subdivision maps). This bill would extend a broader set of locally- and state-issued entitlements; however, the extended entitlements are specific to housing development projects. This bill generally extends planning-level entitlements, such as subdivision maps, and entitlements that are prerequisites to the issuance of a building permit, as well as entitlements issued by state agencies. This bill excludes building permits, development agreements, preliminary applications, SB 35 ministerial approvals, and subdivision maps that receive a discretionary extension after March 4, 2020. Entitlements that were granted an 18-month extension by a local government prior to the date this bill takes effect are also excluded from the extension granted by the bill.

CEQA Review Timelines: Under CEQA, lead agencies are required to notify Native American Tribes that are traditionally and culturally affiliated with the geographic area of a proposed project. Upon receiving a notification, a California Native American tribe has 30 days to request consultation on the pending project.

In April of this year the Governor signed Executive Order N-54-20. The Executive Order suspended for 60 days tribal consultation timeframes specified in CEQA. This bill increases the timeframe under which a California Native American tribe must request consultation from 30 days to 60 days for any for any housing development project application determined or deemed to be complete on or after March 4, 2020, and prior to December 31, 2021.

According to the Author: “Even before the COVID-19 pandemic, California was in the midst of a housing affordability crisis caused by consistent failure to supply enough housing for Californians. The current pandemic-induced recession has only compounded the housing crisis as many housing projects have come to a screeching halt, and many others are limping along. For decades, the systemic underproduction of housing and the long-standing government constraints on the development of housing for protected classes has disproportionately affected communities of color, and COVID-19 has only compounded this crisis. AB 1561 seeks to bring some relief to marginalized communities by encouraging local government to consider in its housing element any potential and actual government constraints upon the development of housing for protected classes of people included in the Unruh Civil Rights Act. Additionally, this important measure ensures that the pipeline housing stock that will be critical to pulling California out of this recession remains ready to break ground. Allowing these critical projects to expire will only drive up housing costs and delay the state’s ability to bring housing supply to the market, neither of which Californians can afford. AB 1561 keeps critical projects in the pipeline while creating opportunities to review and understand how to better plan housing for oppressed and marginalize minority communities.”

Arguments in Support: The California Building Industry Association writes in support, “This important measure has two critical components. First, it encourages local governments to consider the impacts their zoning decisions have on communities of color, and second, extends

the expiration date of building permits or other entitlements necessary for, or pertaining to, a housing development project. This proposed legislation recognizes the extreme health and financial devastation due to this pandemic-induced recession has had on Californians and proposes a measured and time-limited response.”

Arguments in Opposition: None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association (Sponsor)
American Council of Engineering Companies
Bay Area Builders Exchange
Builders Exchange of Santa Clara County
Building Industry Association of Orange County
Building Industry Association of Fresno and Madera Counties
Building Industry Association of San Diego County
Building Industry Association of Southern California
Building Industry Association of Southern California, Los Angeles & Ventura Chapter
Building Industry Association of The Bay Area
Building Industry Association of Tulare/kings County
Building Owners and Managers Association of California
Cal Chamber
California Apartment Association
California Association of Realtors
California Builders Alliance
California Business Properties Association
California Community Builders
Central Coast Builders Association
Home Builders Association of The Central Coast
Homebuilders Association of Kern County
International Council of Shopping Centers
Kern County Builders' Exchange
NAIOP of California
Nevada County Contractors Association
Non-profit Housing Association of Northern California
North State Building Industry Association
Placer County Contractors Association
Sacramento Regional Builders Exchange
Shasta Builders Exchange
Stockton Builders Exchange
The Two Hundred
Tulare Kings Counties Builders Exchange
Valley Builders Exchange
Valley Contractors Exchange
Ventura County Contractors Association

Opposition

None on file

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