

- iv) Permits for minor or standard excavation and grading.
 - b) Excludes discretionary or ministerial planning permits, among others.
 - c) Excludes a permit required and issued by the California Coastal Commission, a special district, or a utility that is not owned and operated by a local agency, or any other entity that is not a city or county.
- 4) Requires a local agency, defined to include a city or county, to compile one or more lists of information that will be required from any applicant for a postentitlement phase permit, as specified.
 - 5) Specifies a process for approving postentitlement permits, as specified.

This bill:

- 1) Expands the postentitlement permits subject to the expedited review process and timelines to include all building permits and other permits cities and counties issue under the California Building Standards Code, or any applicable local building code for the construction, demolition, or alteration of buildings, whether discretionary or nondiscretionary.
- 2) Prohibits a city or county from subjecting the postentitlement phase permit to any appeals or additional hearing requirements once a local agency determines a postentitlement permit is compliant with applicable permit standards.
- 3) Makes other technical clarifying changes.

COMMENTS:

- 1) *Author's statement.* "In San Francisco it can take almost two years to issue a post-entitlement building permit, partly because it's the only city in California where one person can appeal a building permit after a project has already been approved by the Board of Supervisors or Planning Commission. Because of this unique process, San Francisco is struggling to build housing and is falling behind the rest of the State on its affordable housing goals. AB 1114 will address the post approval appeals problem and help build more housing in San Francisco by clarifying that building permits for projects that have already received approval from the local agency are not subject to additional appeals."
- 2) *Zoning and land use approvals, generally.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments

and must also obtain approval from local planning commissions, city councils, or county board of supervisors. A zoning ordinance may be subject to the California Environmental Quality Act (CEQA) if it will have a significant impact upon the environment. The adoption of accessory dwelling unit (ADU) ordinances, however, are explicitly exempt from CEQA. There are also several statutory exemptions that provide limited environmental review for projects that are consistent with a previously adopted general plan, community plan, specific plan, or zoning ordinance. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially, or by-right, require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the CEQA, while projects permitted ministerially generally are not.

The scale of the proposed development, as well as the existing environmental setting determine the degree of local review that occurs. For larger developments, the local entitlement process commonly requires multiple discretionary decisions regarding the subdivision of land, environmental review per CEQA, design review, and project review by the local agency's legislative body (city council or county board of supervisors) or by a planning commission, the legislative body has delegated to.

- 3) *The Permit Streamlining Act (PSA)*. The PSA requires public agencies to act fairly and promptly on applications for development proposals, including housing developments. Public agencies must develop lists of the information that applicants must provide in order for a development application, including an application for housing, to be complete 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 and request additional information; failure to act results in an application being "deemed complete." If an application is incomplete, the PSA requires local agencies to exhaustively list all information needed to make a development application complete and prohibits local agencies from asking for additional information that was not initially required.

Once a complete application for a development has been submitted, the PSA requires local officials to act within a specific time-period after completing any environmental review documents required under CEQA, ranging between 60

and 180 days. If the local government fails to approve or disapprove the application in the applicable time-period, the application is deemed approved.

- 4) *Nondiscretionary Postentitlement Permits.* The PSA establishes timelines for agencies to determine whether a permit for an entitlement is complete and timelines for approving or denying a development proposal that is deemed complete. Once a development proposal is approved by the local agency, the developer is still required to submit a range of nondiscretionary permits to the local agency for approval in order to actually complete the work to construct the building. These permits can include building permits and other permits for: demolition, grading, excavation, electrical, plumbing, or mechanical work; encroachment in the public right-of-way; roofing; water and sewer connections or septic systems; fire sprinklers; and home occupations.

The PSA applies to the discretionary approval phase of a development review process, this is the phase where the local agency, in its discretion, decides whether or not it approves of the concept outlined in the development proposal. Because the local agency is exercising discretion, these approval decisions are subject to CEQA. Once the development proposal is approved by the local agency, the next phase of review involves the ministerial review of objective permits associated with the development proposal that ensure the proposal is compliant with state and local building codes and other measures that protect public health, safety and the environment. The timelines established in the PSA do not apply to these nondiscretionary permits.

- 5) *Timelines for postentitlement permits.* AB 2234 (Rivas, Chapter 651, Statutes of 2022) required cities and counties to process non-discretionary permits in an expedited manner. First, the city or county must determine whether an application is complete, and notify the applicant within 15 days after receiving the application. If the local agency determines an application is incomplete, the local agency must provide the applicant with a list of incomplete items and a description of how the application can be made complete. After receiving a notice the application was incomplete, an applicant may cure and address the items that are deemed to be incomplete by the local agency. Upon receipt of a corrected application, the local agency must notify the applicant within 15 business days whether the additional application has remedied all incomplete items. If a local agency does not meet the timelines required for determining whether an application is complete, and the application or resubmitted application states it is for a postentitlement phase permit, AB 2234 deems complete the application or resubmitted application.

Cities and counties must then complete review of the application within 30 days for projects with 25 units or less, and 60 days for projects 26 units or more,

unless the city or county makes a finding the permit might have a specific, adverse impact on public health or safety, within the applicable time limit. Cities and counties must also establish an appeals process. If an applicant appeals, the local agency must make a final determination within specified timelines.

- 6) *Discretionary postentitlement permits.* While the PSA requires specific timeframes for the entitlement phase of development approval, and AB 2234 requires specific timeframes for nondiscretionary postentitlement phase permits, discretionary postentitlement permits are not subject to these requirements. For example, San Francisco issues several postentitlement phase permits on a discretionary basis. The San Francisco Planning Code (SF Planning Code) subjects permits issued under the California Building Standards Code for the construction, demolition, or alteration of buildings (as well as other permits that are typically non-discretionary) to additional discretionary review procedures.

This bill would expand the postentitlement permits subject to the expedited review process and timelines to include all building permits and other permits cities and counties issue under the California Building Standards Code, or any applicable local building code for the construction, demolition, or alteration of buildings, whether discretionary or nondiscretionary. Once a local agency determines a postentitlement permit is compliant with applicable permit standards, this bill would prohibit a city or county from subjecting the postentitlement phase permit to any appeals or additional hearing requirements.

- 7) *Here, there, and everywhere.* This bill was heard in the Senate Governance and Finance Committee on June 21 and received a vote of 8-0.

RELATED LEGISLATION:

AB 2234 (Rivas, Chapter 651, Statutes of 2022) — required cities and counties to process non-discretionary permits in an expedited manner, as specified.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, July 5, 2023.)

SUPPORT:

Bay Area Council (Co-Sponsor)
Housing Action Coalition (Co-Sponsor)

Silicon Valley Leadership Group (Co-Sponsor)
California Apartment Association
California Building Industry Association (CBIA)
California Housing Partnership

OPPOSITION:

None received.

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