
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: AB 434 **Hearing Date:** 7/10/2023
Author: Grayson
Version: 3/16/2023
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Housing element: notice of violation

DIGEST: This bill adds specified housing laws to the list of laws that the Department of Housing and Community Development (HCD) is required to enforce.

ANALYSIS:

Existing law:

- 1) Attorney General, if HCD finds that a housing element does not substantially comply with state law or any local government has taken an action in violation of specified laws, or both.
- 2) Provides the following regarding accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs):
 - a) Provides a process for the ministerial approval of ADUs that meet specified conditions;
 - b) Prohibits a local agency from denying a permit for an unpermitted ADU that was constructed before January 1, 2018, except in specified circumstances; and
 - c) Provides a process for the ministerial approval of JADUs that meet specified conditions.
- 3) Requires the ministerial approval by the local government of two residential units in a single-family residential zone, under specified conditions.
- 4) Requires the ministerial approval by the local of government of a splitting of a parcel in a single-family residential zone into two parcels, under specified conditions.

- 5) Establishes the Middle Class Housing Act of 2022, which made housing an allowable use on sites zoned for residential, office, or parking uses, under specified conditions.
- 6) Requires that local governments cannot conduct more than five public hearings for a proposed housing development project that complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete.

This bill:

- 1) Requires HCD to notify a local government, and allows HCD to notify the office of the Attorney General, if HCD finds that a local government has taken an action in violation of the law regarding the following:
 - a) ADUs and JADUs.
 - b) SB 6 (Caballero, Chapter 659, Statutes of 2022), the Middle Class Housing Act of 2022.
 - c) SB 9 (Atkins, Chapter 162, Statutes of 2021), which requires ministerial approval, under certain conditions, of two residential units in single-family residential zones and the splitting of parcels containing a single-family home into two parcels.
 - d) The requirement that local governments cannot conduct more than five public hearings for a proposed housing development project that complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete.

COMMENTS:

- 1) *Author's statement.* "California has a massive and growing housing production and affordability gap: six of the nation's most expensive large metropolitan rental markets are located here. According to the Roadmap Home 2030, California needs to build 1.2 million new affordable homes, 120,000 per year to meet the needs of low-income families over the next ten years. Yet California has never produced more than 20,000 new affordable rental homes in any year.

In order to address the state's housing shortage, the legislature has enacted various state housing laws to facilitate housing development and hold local governments accountable for delaying projects. Among these, have been SB 6 & SB 9 as well as bills governing the siting of ADUs. But without clear authority to enforce these laws, there is the possibility that even if an entity is found to be in violation of these much-needed housing laws, that HCD may be unable to bring in the AG for an enforcement action.

AB 434 will harmonize the enforcement of these important housing policies by clarifying the roles of HCD and the AG in enforcing what is already current law.”

- 2) *State enforcement efforts.* In 2017, AB 72 (Santiago, Chapter 370) established a process for HCD to enforce state housing laws. That bill required HCD to notify a local government, and allows HCD to notify the office of the Attorney General, if HCD finds that a local government’s housing element does not substantially comply with state law, or if any local government has taken an action in violation of specified housing laws. AB 72 was originally limited to four statutes: the Housing Accountability Act, Density Bonus Law, fair housing law, and “no net loss” policy for implementing housing elements. Subsequent bills have added nine more statutes to the law, including four statutes to streamline both market-rate and affordable housing,¹ statutes to create more certainty for development,² and statutes that direct certain local government actions and behaviors.³

In addition, HCD has created and staffed a Housing Accountability Unit (HAU). The HAU seeks to provide technical assistance to local governments about state law and, when necessary, holds jurisdictions accountable for meeting their housing element commitments and complying with state housing laws. Violations of these state laws may lead to consequences including revocation of housing element certification and/or referral to the California Office of the Attorney General.” In addition to the HAU, in 2022, Attorney General Bonta created a Housing Strike Force within the Department of Justice. According to the Department of Justice, the Housing Strike Force is comprised of deputy attorneys general with a broad range of expertise in housing, consumer protection, tenants’ rights, land use, environmental justice, and civil rights. The goal of this team is to work with state agencies and other partners to address the housing crisis on a systemic level, and, where required, to enforce state laws aimed at increasing housing supply and providing housing security and stability to all Californians.

¹ These include SB 35 (Wiener, Chapter 366 Statutes of 2017), AB 2162 (Chiu, Chapter 753 Statutes of 2017), AB 101 (Chapter 159 Statutes of 2019) and AB 2011 (Wicks, Chapter 647 Statutes of 2022).

² These include SB 330 (Skinner, Chapter 654 Statutes of 2019), which, among other provisions, locks in the development rules at the time of application, SB 478 (Wiener, Chapter 363 Statutes of 2021), which established minimum floor-area ratios for smaller housing development projects, and AB 2097 (Friedman, Chapter 459 Statutes of 2022), which removed the ability for local governments to require parking near transit.

³ These include the longstanding requirement for local governments to submit their Annual Progress Report to the state regarding implementation of their housing elements, and AB 686 (Santiago, Chapter 958, Statutes of 2018), which requires the state and local governments to affirmatively furthering fair housing.

This bill would add eight new statutes to the list of statutes that HCD must enforce. These include laws that:

- a) Provide a process for the ministerial approval of ADUs that meet specified conditions;
 - b) Provide a process for the ministerial approval of JADUs that meet specified conditions;
 - c) Prohibit a local agency from denying a permit for an unpermitted ADU that was constructed before January 1, 2018, except in specified circumstances;
 - d) Allow an ADU to be sold or conveyed separately from the primary residence to a moderate-income or lower income household buyer under specified conditions;
 - e) Require the ministerial approval by a local government of two residential units in a single-family residential zone, under specified conditions;
 - f) Require the ministerial approval by a local of government of a parcel split in a single-family residential zone into two parcels, under specified conditions;
- 3) *Is that all there is?* The legislature is contemplating passing SB 4 (Wiener, 2023), which would authorize 100% affordable housing projects to be a use by right on land owned by religious institutions and independent institution of higher education. **The author has agreed to add SB 4 to the list of laws enforceable by HCD, similar to other housing streamlining laws.**

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

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

SUPPORT:

- California Apartment Association
- California Housing Partnership
- East Bay YIMBY
- Grow the Richmond
- Housing Action Coalition
- Housing Orange County
- How to ADU
- LeadingAge California
- Mountain View YIMBY
- Napa-Solano for Everyone
- Northern Neighbors
- Peninsula for Everyone

Progress Noe Valley
San Francisco YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
Ventura County YIMBY
YIMBY Action
YIMBY Law

OPPOSITION:

None received.

-- END --