
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No:	SB 477	Hearing Date:	3/18/2021
Author:	Wiener		
Version:	2/17/2021		
Urgency:	No	Fiscal:	Yes
Consultant:	Erin Riches		

SUBJECT: General plan: annual report

DIGEST: This bill adds a number of requirements to the annual progress report (APR) that local governments are required to submit to the state Department of Housing and Community Development (HCD) each year in relation to their housing elements.

ANALYSIS:

Existing law:

Housing elements

- 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. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.
- 2) Provides that each community's fair share of housing be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and HCD develop regional housing needs estimates; (b) councils of government (COGs) allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and (c) cities and counties incorporate their allocations into their housing elements.
- 3) Requires each city and county to submit an annual progress report (APR) to HCD and the Office of Planning and Research that includes all of the following:
 - a) Progress in meeting its share of regional housing need.

- b) Local efforts to remove governmental constraints to the maintenance, improvement, and development of housing.
 - c) Actions taken by the city or county towards completing programs contained within the housing element and the status of compliance with deadlines in the housing element.
 - d) The number of housing development applications received in the prior year, as well as the number of units included in these applications and the number of units approved and disapproved.
 - e) A list of sites rezoned to accommodate the city's or county's RHNA allocation for each income level that could not be accommodated on sites identified in the housing element's site inventory, and any additional sites that may be necessary to accommodate the city's or county's share of regional housing need.
 - f) The number of net new units of housing, with a unique site identifier including but not limited to the parcel number, including both rental and for-sale housing, that have been issued a completed entitlement, building permit, or certificate of occupancy in the housing element cycle, and the income category that each unit satisfies.
 - g) The number of SB 35 (Wiener, Chapter 366, Statutes of 2017) applications submitted and the total number of developments approved, the number of building permits issued, and the total number of units including both rental and for-sale housing by area median income, constructed through the SB 35 process.
 - h) The number of density bonus applications received, and approved, by the city or county.
- 2) Requires HCD to post APRs on its website within a reasonable time of receiving them.
- 3) Authorizes a court, if it finds that a city or county failed to submit a substantially compliant APR within 60 days of the statutory deadline, to issue an order or judgment to compel compliance within 60 days. Authorizes the court to grant sanctions for further failure to comply, as specified.

Streamlining for housing projects

- 4) Establishes the California Environmental Quality Act (CEQA), which generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those impacts to the extent feasible. CEQA applies when a development project requires discretionary approval from a local government. (See “Comments” below for more information.)
- 5) Provides for the following CEQA exemptions and streamlining:
 - a) *Streamlined ministerial approval for certain housing projects.* SB 35 (Wiener, Chapter 366, Statutes of 2017) established a ministerial approval process, not subject to CEQA, for certain multifamily affordable housing projects proposed in local jurisdictions that have not met their RHNA allocation. [GOV 65913.4]
 - b) *Streamlining for permanent supportive housing.* AB 2162 (Chiu, Chapter 753, Statutes of 2018) streamlined affordable housing projects that include supportive housing and onsite supportive services, by providing that supportive housing shall be a use by right in all zones where multifamily and mixed uses are allowed. [GOV 65651]
 - c) *Streamlining for homeless shelters.* AB 101 (Committee on Budget, Chapter 159, Statutes of 2019), among other provisions, defined low-barrier navigation centers as high-quality, low-barrier service-enriched shelters focused on moving people into permanent housing while connecting them with services. AB 101 required, until January 1, 2027, low-barrier navigation centers to be a use by right in areas zoned for mixed uses and non-residential zones permitting multifamily uses if the development meets certain requirements. [GOV 65662]
 - d) *CEQA exemption for Project Roomkey projects.* AB 83 (Committee on Budget, Chapter 15, Statutes of 2020) included, among other provisions, an exemption from CEQA requirements, until July 1, 2021, for Project Roomkey projects if certain requirements are met. Project Roomkey is an initiative announced by Governor Newsom in April 2020 to provide hotel and motel rooms for individuals who are experiencing homelessness and have been exposed to, or at high risk of contracting, COVID-19. [HSC 50675.1.2]

- e) *Streamlining for ADUs and JADUs.* The Legislature has passed a number of measures in recent years to streamline approval of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). For example, SB 1069 (Wieckowski, Chapter 720, Statutes of 2016) required ministerial approval by a local agency for a building permit to create an ADU provided the ADU was contained within an existing single-family home and met other specified requirements. Subsequently, AB 68 (Ting, Chapter 655, Statutes of 2019) required a local agency to ministerially approve an ADU or JADU, or both, as specified, within a proposed or existing structure or within the same footprint of the existing structure, provided certain requirements are met. [GOV 65852.2 and GOV 65852.22]
- f) *CEQA exemption for interim motel conversions.* SB 450 (Umberg, Chapter 344, Statutes of 2020) exempted interim motel conversion projects from CEQA, until January 1, 2025, provided the project does not result in an expansion of more than 10% of the floor area of any individual living unit in the structure or does not result in any significant effects relating to traffic, noise, air quality, or water quality. “Interim motel housing project” is defined as conversion of a motel, hotel, residential hotel, or hostel into supportive or transitional housing. [PRC 21080.50]
- g) *CEQA exemption for aesthetic impacts of certain infill housing.* AB 2341 (Mathis, Chapter 298, Statutes of 2018) eliminated, until January 1, 2024, consideration of aesthetic effects under CEQA for specified projects involving the refurbishment, conversion, repurposing, or replacement of existing abandoned, dilapidated, or vacant buildings, provided the new structure does not substantially exceed the height of the existing structure or create a new source of substantial light or glare. [PRC 21081.3]
- h) *CEQA streamlining for urban infill housing.* SB 226 (Simitian, Chapter 469, Statutes of 2011) provided streamlined CEQA review procedures for a broad set of urban infill projects, including retail, commercial, and public buildings. [PRC 21094.5]
- i) *CEQA exemption for aesthetic and parking impacts of infill projects.* SB 743 (Steinberg, Chapter 386, Statutes of 2013) required OPR to propose revisions to the CEQA guidelines for transportation impacts to better support infill development. This requirement included a provision that aesthetic and parking impacts of residential, mixed use, and employment center projects on infill sites shall not be considered significant impacts on the environment for purposes of CEQA. [PRC 21099]

- j) *CEQA exemption for transit oriented housing projects.* SB 743 of 2013 also established a CEQA exemption for residential, mixed use, and employment center projects located within a half mile of a major transit stop, if the project is consistent with an adopted specific plan. [PRC 21155.4]
- k) *CEQA exemption for transit priority projects.* SB 375 (Steinberg, Chapter 728, Statutes of 2008) provided a CEQA exemption for a narrow set of eligible residential projects in infill areas adjacent to transit. [PRC 21155.1 and 21155.2]
- l) *Streamlining for EIRs for infill housing.* SB 375 of 2008 also provided relief for environmental impact reports (EIRs) required for qualifying infill housing. [PRC 21159.28]
- m) *Affordable housing exemption.* SB 1925 (Sher, Chapter 1039, Statutes of 2002) established CEQA exemptions for: certain residential projects providing affordable urban or agricultural employee housing; low-income housing projects; and certain infill housing in urbanized areas, not more than five acres in area and fewer than 100 units. AB 1804 (Berman, Chapter 670, Statutes of 2018) added a limited CEQA exemption for multifamily residential and mixed use housing projects in unincorporated areas or counties that meet specified conditions, expanding on the existing categorical exemption for infill projects with cities. [PRC 21159.22, 21159.23, and 21159.4]

Transparency

- 6) *Local measures.* Existing law establishes, under the Mitigation Fee Act, specific requirements a city must follow in establishing or imposing development fees and sets forth a process by which a developer may challenge the imposition of a fee. AB 1483 (Grayson, Chapter 662, Statutes of 2019) required a city, county, or special district that has an Internet website to post on its website the following information as applicable [GOV 65940.1(a)(1)]:
 - a) A current schedule of mitigation fees, exactions, and affordability requirements imposed by the city, county, or special district applicable to a housing development project, in a manner that clearly identifies the fees that apply to each parcel.
 - b) All zoning ordinances and development standards, including which standards apply to each parcel.

- c) A list that cities and counties must develop under existing law of projects located within military use airspace or low-level flight path.
- d) The current and five previous annual fee reports, or the current and five previous financial reports, that local agencies must compile under existing law.
- e) An archive of impact fee nexus studies, cost of service studies, or equivalent, conducted by the city, county, or special district on or after January 1, 2018.

Incentives

- 7) *Density bonus law (DBL)*. Existing law requires cities and counties to grant a “density bonus” when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain a specified percentage of units for at least one of the following: lower income households; very low income households; transitional foster youth, disabled veterans, or homeless persons; lower-income students in a student housing development; or a senior citizen development or mobile home park. The “density bonus” means that in exchange for providing the affordable units, the city or county must allow the development to include more total units than would otherwise be allowed by the local zoning ordinance (in order to help the developer spread the cost of the affordable units over the entire project). In addition, the city or county must provide all of the following benefits: incentives or concessions; a waiver of any development standards preventing the developer from utilizing the density bonus or incentives; and reduced parking standards. The Legislature has passed a number of bills in recent years related to DBL, most recently AB 2345 (Gonzalez, Chapter 197, Statutes of 2020), AB 1763 (Chiu, Chapter 666, Statutes of 2019), and SB 1227 (Skinner, Chapter 937, Statutes of 2018). [GOV 65915]

This bill:

- 1) Adds to the APR reporting requirements, beginning January 1, 2023, the following:
 - a) *Streamlining for permanent supportive housing*. The number of applications submitted, the location and total number of developments approved, the total number of building permits issued, and the total number of units including both rental and for-sale housing by AMI constructed, pursuant to AB 2162 of 2018.

- b) *Project Roomkey*. The number of applications submitted, the location and total number of developments approved, the total number of building permits issued, and the total number of units including both rental and for-sale housing by AMI constructed, pursuant to AB 101 of 2019.
 - c) *Low barrier navigation centers*. The number of applications submitted, the total number of building permits issued, and the location and total number of developments approved, pursuant to AB 101 of 2019.
- 2) Adds to the APR reporting requirements, beginning January 1, 2023, the following information for each project:
- a) *Local measures*. A current schedule of mitigation fees, exactions, and affordability requirements imposed on each parcel by the city, county, or special district; zoning ordinances and development standards that apply to each parcel; a list of projects located within military use airspace or low-level flight path; current and five previous annual fee reports; and an archive of impact fee nexus studies. Existing law requires cities and counties to post all of this information on their websites pursuant to AB 1483 of 2019.
 - b) *ADUs and JADUs*. Whether the application was submitted pursuant to ADU or JADU statute, or both.
 - c) *Density bonus law*. Whether the project is seeking any bonus, concession, or waiver under density bonus law and if so, each bonus, concession, or waiver as requested and as approved.
 - d) *SB 35*. Whether the project was submitted pursuant to SB 35 of 2017.
 - e) *Project Roomkey*. Whether the project was submitted pursuant to Project Roomkey.
 - f) *CEQA categorical exemptions*. Whether the project was submitted pursuant to a list of specified CEQA exemptions.
 - g) *CEQA*. Whether the project was submitted pursuant to CEQA.
- 3) Authorizes HCD to assess the accuracy of the information submitted pursuant to (1) and (2) above. Authorizes HCD, if it determines that an APR contains inaccurate information, to require the planning agency to correct that information.

COMMENTS

- 1) *Author's statement.* "SB 477 significantly expands California's data collection on the effects of state housing laws – to ensure they're working and to be able to fix any deficiencies. California has adopted several laws to help the state resolve its historic 3.5 million home shortage, but with sporadically-reported and limited data, we struggle to quantify exactly how effective they are. It is important that we strengthen California's housing data collection so the state and public can better understand the impact of state housing laws and determine the progress made by various cities and counties in meeting regional housing goals. We currently lack statewide data that would give a clear picture of where and how many units of housing is being built, and if this housing is advancing or reversing racial segregation in California. Without proper data collection standards, we have no way to track how the housing laws passed in the California Legislature are being used."
- 2) *Background: housing elements and APRs.* Existing law requires every city and county to prepare a housing element as part of its general plan. This is done every eight years by local governments located within the territory of an MPO and every five years by local governments in rural non-MPO regions. Each community's fair share of housing is determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (1) the Department of Finance and HCD develop regional housing needs estimates; (b) councils of government (COGs) allocate housing within each region based on the estimates; and (c) cities and counties incorporate their allocations into their housing elements. The housing element must contain an inventory of land suitable for residential development, which is used to identify sites that can be developed for housing within the planning period and are sufficient to provide for the locality's share of the regional housing need for all income levels. Each jurisdiction must submit an APR to HCD by April 1st of each year that documents its progress toward meeting its RHNA allocation and the plans outlined in its housing element.
- 3) *CEQA, discretionary review, and by-right approval.* CEQA applies when a development project requires discretionary approval from a local government agency. If a project is "as of right" (also known as "by-right") because it complies with local zoning and planning regulations, CEQA compliance is generally not required. When a local agency has the discretion to approve a project, its CEQA evaluation begins with deciding whether an activity qualifies as a project subject to CEQA review. If an activity is deemed a project, the agency decides whether it is exempt from compliance with CEQA under either a statutory or a categorical exemption. Statutory exemptions are activities the

Legislature has excluded from CEQA despite potential environmental impacts. If a project is statutorily exempt, it can be implemented without a CEQA evaluation.

In addition to statutory exemptions, the Legislature specifically directed the Secretary of the California Natural Resources Agency to designate categorical exemptions from CEQA. Categorical exemptions include projects that the Secretary deems do not have a significant impact on the environment. The CEQA Guidelines, found in Title 14 of the California Code of Regulations, set forth more than two dozen categorical exemptions covering a wide range of projects, from minor alterations of existing facilities to construction of certain types of buildings. As with statutory exemptions, if the project is categorically exempt, no formal evaluation is required, and the project can be implemented without a CEQA evaluation. Despite the creation of new by-right and development streamlining measures that bypass the CEQA process, if a city chooses not to grant the permits – in violation of state law – a developer’s only recourse is to sue.

- 4) *Expanding APR reporting requirements.* The Legislature has approved a number of measures, particularly in recent years, aimed at streamlining housing development. However, only two of these measures are currently included in any form in the APR requirement: SB 35 and density bonus law. By adding a number of streamlining measures to the APR, this bill seeks to obtain additional data to demonstrate how these measures are being implemented.
- 5) *Opposition concerns.* Opponents state that this bill will increase the burden on planning and community development departments.

RELATED LEGISLATION:

SB 581 (Atkins, 2021) — requires each city and county to report in its APR whether it is a party to a court action related to a violation of state housing law, and the disposition of that action. *This bill will be heard in the Senate Housing Committee in April.*

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

POSITIONS: (Communicated to the committee before noon on Friday, March 12, 2021.)

SUPPORT:

California Yimby (Co-Sponsor)
San Francisco Bay Area Planning and Urban Research Association (SPUR) (Co-Sponsor)
California Association of Realtors
California Narcotic Officers' Association
Circulate San Diego
Council of Infill Builders
Councilmember Zach Hilton, City of Gilroy
Greenbelt Alliance
Habitat for Humanity California
Housing Action Coalition
Sand Hill Property Company
Silicon Valley Community Foundation
South Pasadena Residents for Responsible Growth
Silicon Valley @ Home
Turner Center for Housing Innovation At the University of California, Berkeley
The Two Hundred
TMG Partners

OPPOSITION:

A Better Way Forward to House California
California Cities for Local Control
Catalysts
Councilmember Dawn Murdock, City of Palos Verdes Estates
Hollywoodland Homeowners Association
Livable California
Mission Street Neighbors
Riviera Homeowners Association
Sherman Oaks Homeowners Association
South Shores Community Association
Verdugo Woodlands West Homeowners Association
7 Individuals

-- END --