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

Bill No: SB 8 **Hearing Date:** 4/29/2021
Author: Skinner
Version: 3/18/2021
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Housing Crisis Act of 2019

DIGEST: This bill extends the sunset on the Housing Crisis Act of 2019 by five years, to January 1, 2030, and makes other changes.

ANALYSIS:

Existing law, pursuant to the Housing Crisis Act (HCA) of 2019, places restrictions on certain types of development standards, amends the Housing Accountability Act (HAA), and makes changes to local approval processes and the Permit Streamlining Act. Specifically, the HCA:

- 1) Defines “housing development project” as:
 - a) Residential units only.
 - b) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.
 - c) Transitional housing or supportive housing.
- 2) Defines “affected city or county” as a city, including a charter city, that is an urbanized area or urban cluster and defines affected county to mean a census designated place that is wholly located within an urbanized area, as specified, and provides that these terms include the electorate of those jurisdictions.
- 3) Prohibits an affected city or county, with respect to land where housing is an allowable use, from enacting a development policy, standard, or condition that would have the effect of limiting housing development in several ways, including, but not limited to the following effects:

- a) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city as in effect January 1, 2018. Less intensive uses means reductions in height, density, floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements or maximum lot coverage limitations or anything that would lessen the intensity of housing.
 - b) Imposing or enforcing design review standards established after January 1, 2020, if the standards are not objective.
- 4) Authorizes an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.

Development Application Processes and Timelines

- 5) Provides that if a housing development project complies with the applicable objective general plan and zoning standards in effect at the time an application is deemed complete, a city or county shall not conduct more than five hearings as specified, in connection with the approval of that housing development project, consistent with the timelines under the Permit Streamlining Act.
- 6) Requires the city or county to consider and either approve or disapprove the application at any of the five hearings.
- 7) Establishes a procedure for filing an initial application and provides that a housing development project shall be deemed to have a complete initial application upon providing specified information, as specified.
- 8) Requires a development proponent to submit a full development application within 180 days of the submittal of a preliminary application.
- 9) Defines “Protected units” as any of the following:
 - a) units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.

- b) Units that are or were subject to any form of rent price control within the past five years.
 - c) Units that are or were occupied by lower- or very low- income households within the past five years.
 - d) Units that were withdrawn from rent or lease pursuant to the Ellis Act within the past 10 years.
- 10) Prohibits an affected city or county from approving a housing development project that will require the demolition of residential units unless the project will create at least as many units as demolished. A project shall not be approved if it will demolish protected units, unless all of the following apply:
- a) The project will replace all existing or demolished protected units.
 - b) Any existing tenants will be allowed to occupy their unit until six months before the start of construction activities with proper notice.
 - c) The developer agrees to provide both of the following to the occupants of any protected units:
 - i) Relocation benefits.
 - ii) A right of first refusal for a comparable unit available in the new housing development affordable to the household at an affordable rent or an affordable cost.
- 11) Sunsets these provisions pertaining to the development application processes and timelines on January 1, 2025.

This bill amends the HCA in the following ways:

- 1) Authorizes a local government to subject a housing development project to ordinances, policies, and standards after the preliminary application is submitted if the development has not commenced construction within two and a half years following the date the project received final approval. Defines “commenced construction” as the construction pursuant to a building permit having progressed to the point that at least one inspection has been requested.
- 2) Expands the definition of “housing development project” to include projects that involve no discretionary approvals and projects that involve both

discretionary and nondiscretionary approvals. It also includes in the definition of “housing development project” a proposal to construct a single dwelling unit.

- 3) Clarifies that receipt of a density bonus is not a basis for finding a project out of compliance with local zoning rules.
- 4) Expands the definition of “hearing” to include any appeal, or any meeting related to density bonus law. Specifies “hearing” does not include an appeal related to a legislative approval required for a proposed housing development project.
- 5) Includes technical changes regarding the limitation on a local government’s ability to reduce the intensity of land use in its jurisdiction.
- 6) Defines the word “concurrently” as the same meeting or within 180 days of the downzoning if the downzoning was requested by an applicant for a housing development project.
- 7) Authorizes a developer to offer a unit that is subject to the local jurisdiction’s rent control ordinance in lieu of offering a unit in the development at an affordable cost. The right of first refusal provided to residents does not apply to certain types of protected housing units including:
 - a) Transitional housing or supportive housing units;
 - b) Units in a nursing home, residential care facility, or assisted living facility;
 - c) Affordable units that cannot be replaced because replacing them would violate requirements to provide units to even lower-income residents than the existing tenants.
- 8) Extends the sunset from January 1, 2025 to January 1, 2030.

COMMENTS

- 1) *Author’s Statement.* “California continues to face a severe housing shortage and affordability crisis. Rent and home prices remain too high because we’ve failed to build enough housing for decades. The good news is SB 330, the Housing Crisis Act of 2019, is working, and more housing is getting built. However, the Act is scheduled to expire in 2025. SB 8 allows the success of SB 330 to continue for five additional years by extending SB 330’s provisions until 2030, and adding clarifying language to ensure that the bill’s original

intent of streamlining the production of housing that meets a local jurisdiction's existing zoning and other rules is met.”

- 2) *Planning and zoning generally.* State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory “elements,” including a housing element that establishes the locations and densities of housing, and a land use element that describes the general categories of uses (such as multifamily residential, single family residential, retail commercial, and open space) that are allowed in specific portions of a jurisdiction. Cities’ and counties’ major land use decisions—including zoning ordinances and other aspects of development permitting—must be consistent with their general plans.

The Permit Streamlining Act requires public agencies to act fairly and promptly on applications for development permits, including housing. Public agencies must compile lists of information that applicants must provide 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; failure to act results in an application being "deemed complete." However, local governments may continue to request additional information, potentially extending the time before the 30-day clock begins running.

- 3) *Housing Crisis Act of 2019.* To build on recent housing legislation intended to streamline development, the Legislature enacted SB 330 (Skinner, Chapter 654, Statutes of 2019) which sunsets on January 1, 2025. The HCA had several main components, including but not limited to the following:
 - a) Prohibits certain local actions that would reduce housing capacity. The HCA prohibits downzoning unless the city or county concurrently upzones an equal amount elsewhere so that there is no net loss in residential capacity.
 - b) Prohibits a local agency from applying new rules or standards to a project after a preliminary application containing specified information is submitted.
 - c) Establishes a cap of five hearings that can be conducted on a project that complies with objective local standards in place at the time a development application is deemed complete;
 - d) Establishes certain anti-displacement protections. Under the HCA, projects cannot require the demolition of housing unless the project creates at least as many new homes, and cannot demolish affordable housing units protected

by law unless the project replaces the units and allows existing residents to occupy their units until six months before construction starts. The developer must also provide relocation assistance and a right of first refusal to the residents in the new development at affordable rates.

- 4) *Changes to the HCA.* This bill makes several technical clarifying changes to the HCA, as well as the following:
 - a) Expands the definition of “housing development project” to include both discretionary and non-discretionary projects, as well as projects to construct single family dwelling units.
 - b) Clarifies that receipt of a density bonus is not a basis for finding a project out of compliance with local zoning rules.
 - c) Defines “concurrently,” for the purposes of the requirement to upzone concurrently with a downzone, to mean at the same meeting, or within 180 days of the downzoning if the downzoning was requested by an applicant for a housing development project.
 - d) Adds two definitions related to compliance with additional ordinances when a project has not commenced construction within 2 ½ years of receiving final approval.
 - e) Clarifies that appeals and public meetings related to density bonus law are counted for the purpose of the five hearing limit.
- 5) *Exceptions to the right of return protections.* The HCA enacted robust anti-displacement protections in cases in which a developer proposes to demolish an existing occupied protected housing units. Specifically, the HCA states that projects cannot require the demolition of housing unless the project creates at least as many new homes, and cannot demolish affordable housing units protected by law unless the project replaces the units and allows existing residents to occupy their units until six months before construction starts. The developer must also provide relocation assistance and a right of first refusal to the residents in the new development at affordable rates.

The author became aware of instances in which protected housing units were being proposed to be demolished and replaced with housing for specific populations, such as permanent supportive housing or units in a nursing home. In such cases, those presently occupying those units might not meet the requirements for the replacement units. For this reason, this bill states that in

instances in which a developer is replacing protected units for a specific population, that developer is not required to provide a first right of refusal.

- 6) *Sunset extension.* Due to the COVID pandemic, housing construction across the state was slowed or even halted. In order to ensure the full effects of this bill are realized, the author is extending the sunset in the HCA an additional five years, from 2025 to 2030.
- 7) *Proposed author's amendments.* **Due to time constraints, the following author's amendments will be crossed as committee amendments. These amendments propose to do the following:**
 - a) Reverts the word "tenant" back to "occupant" in several places in the section related to anti-displacement protections. According to the author, this change was originally made to conform with the rest of the bill. However, the term "tenant" has a specific legal definition, and changing the application from "occupant" to "tenant" would therefore limit those who would be entitled to protections under this bill. This change therefore reverts the universe of those eligible for anti-displacement protections back to those contemplated under SB 330.
 - b) Provides that a right of first refusal and relocation benefits are not available to an occupant of a short-term rental rented for a period of fewer than 30 days.
 - c) Clarifies that when a developer is required to provide relocation benefits or a first right of refusal to occupants, those protections are limited to occupants who are persons or families of low- or moderate-income only.
 - d) Strikes out language related to the replacement of protected units and replaces it with a cross-reference to the exact same language contained within a different code section.
- 8) *Housing Production Package.* This bill has been included in the Senate's 2021 Housing Production Package.
- 9) *Opposition.* Several cities and neighborhood groups are opposed to this bill, largely due to the extension of the sunset date.
- 10) *Double-referral.* This bill was heard in the Senate Governance and Finance Committee on March 25, 2021, and was passed out on a 5-0 vote.

RELATED LEGISLATION:

SB 330 (Skinner, Chapter 654, Statutes of 2019) — established the Housing Crisis Act of 2019, which, until January 1, 2025, places restrictions on certain types of development standards, amended the Housing Accountability Act (HAA), and made changes to local approval processes and the Permit Streamlining Act.

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

POSITIONS: (Communicated to the committee before noon on Friday, April 23, 2021.)

SUPPORT:

Abundant Housing LA
All Home
Bay Area Council
Bridge Housing Corporation
CalChamber
California Apartment Association
California Association of Realtors
California Building Industry Association
California Hispanic Chamber of Commerce
California YIMBY
Casita Coalition
Chan Zuckerberg Initiative
Circulate San Diego
Council of Infill Builders
Eden Housing
Facebook
Fieldstead and Company, INC.
Greenbelt Alliance
Greystar Development
Habitat for Humanity California
Housing Action Coalition
Midpen Housing Corporation
Modular Building Institute
Non-profit Housing Association of Northern California
Oakland Firesafe Council
San Diego Regional Chamber of Commerce
San Francisco Bay Area Planning and Research Association (SPUR)
Sand Hill Property Company

Schneider Electric
Silicon Valley @ Home
Silicon Valley Leadership Group
Techequity Collaborative
The Green Lining Institute
The San Francisco Foundation
The Two Hundred
TMG Partners
Zillow Group

OPPOSITION:

California Cities for Local Control
Catalysts
City of Dublin
City of Livermore
City of Pleasanton
City of San Ramon
City of Torrance
Latino Alliance for Community Engagement
Livable California
Los Altos Residents
Mission Street Neighbors
Sustainable Tamalmonite
Town of Danville
3 Individuals

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