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

Bill No: AB 1174 **Hearing Date:** 7/1/2021
Author: Grayson
Version: 6/23/2021
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Planning and zoning: housing: development application modifications, approvals, and subsequent permits

DIGEST: This bill makes several changes to the streamlined, ministerial approval process established by SB 35 (Wiener, Chapter 366, Statutes of 2017).

ANALYSIS:

Existing law, under SB 35:

- 1) Allows a development proponent to submit an application for a development that is subject to the streamlined, ministerial approval process, and not subject to a conditional use permit if the infill development contains two or more residential units and satisfies specified objective planning standards.
- 2) Requires, among other things, for sites subject to ministerial approval to be limited to zones for residential use or residential mixed-use development, with at least two-thirds of the square footage of the development designated for residential use.
- 3) Specifies, if a local government determines that a development submitted pursuant to the bill's provisions is in conflict with any of the objective planning standards listed in 1) above, that it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:
 - a) Within 60 days of submittal of the development to the local government if the development contains 150 or fewer housing units; or,
 - b) Within 90 days of submittal of the development to the local government if the development contains more than 150 housing units.

- 4) Requires an approval for a project to remain valid for three years, provided that vertical construction of the development has begun and is in progress.
- 5) Authorizes the local government to apply objective planning standards adopted after the application was first submitted by making a determination of how much the project changes, as specified.

This bill:

- 1) Provides that if a development proponent requests a development modification, the time during which the approval shall remain valid shall be extended for the number of days between the submittal of a modification request and the date of its final approval, plus an additional 180 days to allow time to obtain a building permit. If litigation is filed relating to the modification request, the time shall be further extended during the pendency of the litigation. This change applies retroactively to developments approved prior to January 1, 2022.
- 2) Provides that any objective building standards adopted after an application for development modifications is submitted may be agreed upon by the developer if the modification application is submitted after the first building permit application. This change applies retroactively to developments approved prior to January 1, 2022.
- 3) Requires a local government to consider an application for subsequent permits based upon the objective standards specified in any state or local laws that were in effect when the original development application was submitted, unless the developer agrees to a change in objective standards. This change applies retroactively to developments approved prior to January 1, 2022.
- 4) Provides that approval for a project shall remain valid for three years provided construction activity on the development has begun and is in progress.
- 5) Provides that when determining which objective planning standards shall apply, the local government shall not include any underground space in the calculation of development changes.
- 6) Makes additional clarifying changes.

COMMENTS:

- 1) *Author's Statement.* "The legislature has made enormous efforts to dramatically increase our housing supply. However, ambiguities in the law

have been exploited by anti-growth community groups to delay and derail desperately needed housing projects. For example, SB 35 streamlining approvals are currently valid three years after the project is approved. Some jurisdictions have used lawsuits to extend the project timeline beyond this window, and then revoke the streamlining provisions. Another issue arises when jurisdictions require a project to comply with objective standards that were not in place at the time of project approval. This can compel a project proponent to seek a modification, which can further delay or derail the project. To address these challenges, AB 1174 specifies that the “shot clock” for a development or modifications is paused when a project is sued, and clarifies that subsequent permit applications must only meet the objective standards that were in place when the project was initially approved. These changes are essential to ensure to facilitate the timely construction of housing at all income levels to meet California’s critical housing needs.”

- 2) *Housing needs and approvals generally.* Every city and county in California is required to develop a general plan that outlines the community’s vision of future development through a series of policy statements and goals. A community’s general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. State law mandates seven elements: land use, circulation, housing, conservation, open-space, noise, and safety. Each community’s general plan must include a housing element, which outlines a long-term plan for meeting the community’s existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its “fair share” of its region’s housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

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. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially 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 California Environmental Quality Act, while projects permitted ministerially generally are not.

- 3) *SB 35*. In 2017, SB 35 (Wiener) created a streamlined approval process for infill projects with two or more residential units in localities that have failed to produce sufficient housing to meet their regional housing needs allocation. The streamlined approval process requires some level of affordable housing to be included in the housing development. To receive the streamlined process for housing developments, the developer must demonstrate that the development meets a number of requirements including that the development is not on an environmentally sensitive site or would result in the demolition of housing that has been rented out in the last ten years. Localities must provide written documentation to the developer if there is a failure to meet the specifications for streamlined approval, within specified a period of time. If the locality does not meet those deadlines, the development shall be deemed to satisfy the requirements for streamlined approval and must be approved by right.

Existing law requires the Department of Housing and Community Development (HCD) to determine when a locality is subject to the streamlining and ministerial approval process in SB 35 (Wiener) based on the number of units issued building permits as reported in the annual production report that local governments submit each year as part of housing elements. Streamlining can be turned on at the beginning of the term of housing element (generally eight years but in some cases five) and turned off halfway through if a local government is permitting enough units to meet a proportional share of the RNHA at all income levels (low-, moderate-, and above moderate-income). If a local government is not permitting enough units to meet its above moderate and its lower income regional housing needs assessment (RHNA), a development must dedicate 10% of the units to lower income in the development to receive streamlined, ministerial approval. If the jurisdiction is permitting its above moderate income and not the lower income RHNA, then developments must dedicate 50% of the units for lower income to have access to streamlining.

- 4) *Modifying existing SB 35 applications*. According to the sponsors, as housing projects evolve, developers sometimes need to make modifications to projects. This is because residential projects by their nature are complex and, for example, can involve building out lobbies, corridors, back of house spaces, storage, parking, amenity facilities, and outdoor areas, in addition to the units themselves. Many of these cannot be figured out until the completion of the design for the project for the building permit and final applications.

Additionally, the time between the initial application and the first building permit can take one to two years, sometimes longer, during which time market conditions, which drive project decisions can change. For example, some potential changes may include: the cost of materials which may lead to a change in construction type or architecture; building codes; housing financing and securing of public subsidies; and the imposition of impact fees, which may impact the overall project. Some jurisdictions use this opportunity to change the planning standards that are applied to a project as a means to invalidate a project.

AB 831 (Grayson, Chapter 194, 2020) authorized an SB 35 project to make modifications to the project prior to the issuance of the final building permit required for construction so long as the project continues to meet specified objective standards that were in place when the original application was submitted to the local jurisdiction. This bill would amend the process by extending the project approval period to reflect the time needed to approve the modification, the need for any new building permit, and any litigation that may occur. It would also allow a developer who has submitted their first building permit application to determine whether to apply an updated building code or previous building code to their modification. Further, a developer could agree to updated objective standards for any subsequent permits required for the project, rather than the objective standards that were in effect when the original development application was submitted. All of these changes would be retroactively applicable to existing projects.

In addition, this bill clarifies that when determining which objective planning standards shall apply if a developer proposes a modification, the local government shall not include underground space in the calculation of development changes. Lastly, this bill states that approval for a project shall remain valid for three years provided construction activity has begun, as opposed to vertical construction.

- 5) *Double referral.* This bill was also referred to the Governance and Finance Committee.

RELATED LEGISLATION:

AB 831 (Grayson, Chapter 194, Statutes of 2020) — made several changes to SB 35 (Wiener, Chapter 366, Statutes of 2017).

SB 35 (Wiener, Chapter 366, Statutes of 2017) — created a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers.

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

POSITIONS: (Communicated to the committee before noon on Friday, June 25, 2021.)

SUPPORT:

Bay Area Council (Co-Sponsor)
San Francisco Bay Area Planning and Research Association (SPUR) (Co-Sponsor)
California Apartment Association
California Association of Realtors
California Building Industry Association
California Community Builders
California YIMBY
Council of Infill Builders
Fieldstead and Company
Greenbelt Alliance
Habitat for Humanity California
Hello Housing
Housing Action Coalition
LISC San Diego
MidPen Housing Corporation
Sand Hill Property Company
Silicon Valley @ Home
The Two Hundred
TMG Partners

OPPOSITION:

None received.

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