SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2019 - 2020 Regular

Bill No:	SB 1120	**Hearing Date:**	5/28/20
Author:	Atkins	**Tax Levy:**	No
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SUBDIVISIONS: TENTATIVE MAPS

Requires ministerial approval of duplexes and specified parcel maps; allows an extension of subdivision map validity by one year.

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Housing Committee and the Senate Environmental Quality Committee.

Background

Planning and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Planning and Zoning Law. 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, among other requirements. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Cities and counties must provide a path to appeal a decision to the planning commission and/or the city council or county board of supervisors.

Zoning and approval processes. Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

Local governments have broad authority to define the specific approval processes needed to satisfy these considerations. Typically, most large housing projects require "discretionary" approvals from local governments, such as a conditional use permit or a change in zoning laws. This process requires hearings by the local planning commission, public notice, and may require additional approvals. City or county planning staff can permit some housing projects "ministerially" or "by right": without discretionary approval from elected officials.

Accessory dwelling units. In recent years, the Legislature has taken large strides to facilitate the development of accessory dwelling units (ADUs), also known as granny flats or second units. Chief among these steps was to require local agencies to ministerially permit the creation of certain types of ADUs within the space of a single family home or in a new or converted structure in the rear of the property, regardless of what local zoning provides. Under this provision of law, a property owner may construct both a junior ADU within the single-family home and a new construction ADU on the same property. ADU law places numerous limitations on the ability of local governments to impose requirements on ADUs, such as requirements for minimum ADU sizes, impact fees, and owner-occupancy. ADU law also limits the parking that local agencies may require for ADUs to one space per unit, and provides that that no parking can be required if the ADU is located within one-half mile walking distance of public transit, the ADU is located within an architecturally and historically significant historic district, or there is a car share vehicle located within one block of the ADU.

Subdivision Map Act. The Subdivision Map Act governs how local officials regulate the division of real property into smaller parcels for sale, lease, or financing. Cities and counties adopt local subdivision ordinances to carry out the Map Act and local requirements. City councils and county boards of supervisors use the Map Act to control a subdivision's design and improvements. Local subdivision approvals must be consistent with city and county general plans.

Under the Subdivision Map Act, cities and counties can attach scores of conditions. The Map Act allows local officials to require, as a condition of approving a proposed subdivision, the dedication of property within a subdivision for streets, alleys, drainage, utility easements, and other public easements and improvements. Once subdividers comply with those conditions, local officials must issue final maps. For smaller subdivisions that create four or fewer parcels, local officials usually use parcel maps, but they can require tentative parcel maps followed by final parcel maps. The Map Act also constrains the dedications and improvements that local cities and counties can require as a condition of a subdivision of four or fewer lots to only the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created.

In good economic times, an experienced subdivider can comply with a tentative map's conditions in a few years. Scarce financing, complex settings, and inexperience can drag out the time between a tentative map's approval and the filing of a final map. If a tentative map expires, the subdivider must start over, complying with any new required conditions.

California's housing challenges. California faces a severe housing shortage. In its most recent statewide housing assessment, the California Department of Housing and Community Development (HCD) estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. Prior to the onset of COVID-19, California was building approximately 100,000 to 115,000 units a year in recent years, but many analysts expect homebuilding activity to drop.

A variety of causes have contributed to the state's lack of housing production. Recent reports by the Legislative Analyst's Office (LAO) and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members who may not want new neighbors. The building industry also points to California Environmental Quality Act (CEQA) review, and housing advocates note a lack of a dedicated source of funds for affordable housing.

This shortage has driven up housing prices and resulted in overcrowding within existing homes. According to a January 2020 report by the Public Policy Institute of California, "the share of Californians with excessive housing costs is quite high: 38 percent of mortgaged homeowners and 55 percent of renters spend more than 30 percent of their total household income on housing, compared with 28 percent and 50 percent nationwide. California's rate of overcrowding—the share of housing units with more than one resident per room—was 8.3 percent in 2018, well above the national rate of 3.4 percent. Overcrowding is especially high for rental units: at 13.4 percent, it is more than twice the national rate and the highest in the nation."

The author wants to increase the number of units that can be permitted in residential areas.

Proposed Law

Senate Bill 1120 requires cities and counties to permit ministerially either or both of the following, as long as they meet specified conditions:

- A housing development of up to two units (a duplex).
- The subdivision of a parcel into two equal parcels (urban lot split).

To be eligible, a development or parcel to be subdivided must be located within an urbanized area or urban cluster, as defined by the United States Census and cannot be located on any of the following:

- Prime farmland or farmland of statewide importance;
- Wetlands;
- Land within the very high fire hazard severity zone, unless the development complies with state mitigation requirements;
- A hazardous waste site;
- An earthquake fault zone;
- Land within the 100-year floodplain or a floodway;
- Land identified for conservation under a natural community conservation plan, or lands under conservation easement;
- Habitat for protected species; or
- A site that has been placed on a national, state, or local historic register.

Duplex provisions. SB 1120 requires a housing development containing two units to be considered ministerially in single family zones if the development meets certain conditions, including the requirements on eligible parcels above. The project also cannot require demolition or alteration that would require the evacuation or eviction of an existing housing unit of any of the following types of housing:

- Rent-restricted housing, including deed-restricted affordable housing and housing subject to rent or price control by a public entity's police power;
- Housing that has been the subject of an Ellis Act eviction within the past 15 years; or
- Housing that has been occupied by a tenant in the last three years.

A city or county may impose objective zoning and design standards that do not conflict with the provisions of the bill, and a city or county cannot require a project to comply with any standard that would prevent two units from being built.

SB 1120 prohibits demolition of more than one exterior wall of an existing structure unless the local ordinance allows greater demolition or if the site has not been occupied by a tenant in the last three years.

SB 1120 allows a local government to adopt an ordinance to implement its duplex provisions and provides that the adoption of such an ordinance is not subject to CEQA.

Urban lot splits. SB 1120 requires a city or county to ministerially approve or deny a parcel map for an urban lot split that meets specified requirements, in addition to the requirements for eligible parcels that apply to both duplexes and urban lot splits. Specifically, the urban lot split must meet the following requirements:

- The parcel map subdivides an existing parcel to create two new parcels of equal size.
- Both newly created parcels are no smaller than 1,200 square feet, unless the local agency adopts a smaller minimum lot size.
- The parcel being subdivided is zoned for residential use.
- The parcel does not contain rent-restricted housing, housing where an owner has exercised their rights under the Ellis Act within the past 15 years, or housing that has been occupied by tenants in the past three years.
- The parcel being subdivided was not previously created through an urban lot split, and none of the adjoining parcels were created by an urban lot split and owned by the same owner.

SB 1120 prohibits a local agency from imposing regulations that require dedications of rights-of-way or the construction of reasonable offsite and onsite improvements for parcels created through an urban lot split. However, a local agency may require easements and that the parcel have access to, provide access to, or adjoin the public right-of-way. A local agency can impose objective zoning and design standards that do not conflict with the bill, so long as those standards do not reduce the buildable area, as defined, on each newly created parcel to less than 50 percent of the buildable area on the parcel being subdivided. SB 1120 allows a local agency to adopt an ordinance to implement the urban lot split requirements and provides that such an ordinance is not a project under the California Environmental Quality Act.

SB 1120 prohibits the development of accessory dwelling units on parcels that use both the urban lot split and duplex provisions of the bill, and it applies the limitations on parking requirements from ADU law to both duplexes and urban lot splits under the bill.

Other provisions. SB 1120 allows local governments to extend the life of subdivision maps by one year, up to a total of four years. The bill also includes findings and declarations to support its purposes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "SB 1120 promotes small-scale neighborhood residential development by streamlining the process for a homeowner to create a duplex or subdivide an existing lot in all residential areas. This policy builds upon existing prior successful housing policies such as the state's Accessory Dwelling Unit (ADU) law, which led to a 63% increase in ADU permit requests statewide in the first two years alone. Additionally, the policy leverages valuable but previously untapped resources, such as developed but underutilized land, while building valuable equity for homeowners. The bill also respects the priorities of local governments in local land use decisions: such applications must meet a specific list of qualifications that ensure protection of local zoning and design standards, historic districts, environmental quality, and existing tenants vulnerable to displacement.

"COVID-19 has dramatically exacerbated California's already-severe housing crisis. Essential workers are more likely to live in overcrowded housing, which is linked to an increased risk of contracting (and dying from) the disease. Among households facing COVID-related loss of income, half were already struggling to afford rent pre-COVID and now face eviction, housing instability, and homelessness. Finally, estimates show that homeless individuals are two to three times more likely to die from COVID than their housed counterparts. The best way to address these issues is to provide more housing that is affordable to low- and moderate-income families by creating the environment and opportunity for small-scale neighborhood development."

2. One size fits all? California is a geographically and demographically diverse state, and that is reflected in its 482 cities and 58 counties. Local elected officials for each of those municipalities are charged by the California Constitution with protecting their citizens' welfare. One chief way local governments do this is by exercising control over what gets built in their community. Local officials weigh the need for additional housing against the concerns and desires of their constituents. Where appropriate, those officials enact ordinances to shape their communities based on local conditions and desires. SB 1120 allows duplexes to be built in many single-family zones, even if local officials and residents have said they don't want them, and it allows for the creation of smaller parcels than local governments would allow on their own. However, the bill provides that local zoning standards that don't conflict with the bill still apply and limits the situations where demolition can take place, so the duplexes allowed under the bill couldn't take up more space than a single family home in the same area and will retain much of the look and feel of the neighborhood. Is SB 1120 a flexible enough bill to account for the variation in local communities?

3. Land rush. First adopted in 1907, the Subdivision Map Act is now the result of dozens of amendments that reflect changing legislative concerns. In the 1920s, legislators added consumer protections to the Map Act after land speculators fleeced buyers. For most of the past century, local officials have had the power to require subdividers to dedicate land for streets and easements. Additional requirements for public improvements and other conditions have been layered on over the years, such as easements for sunlight to power solar energy systems, and dedication of land for parks, transit facilities, and bike trails. These dedications and conditions serve an important purpose: to protect future buyers of land by ensuring that each parcel has the necessary services and improvements to make it functional and accessible. Conditions are

imposed at the map level because it becomes much harder for a local government to implement rational development patterns and adequate public infrastructure after a parcel is broken up into smaller parcels with different owners. Local subdivision ordinances also further other important goals: they determine lot sizes, which can affect the feel of a neighborhood or preserve certain types of land uses. For example, in agricultural areas, minimum lot sizes prevent the creation of parcels that are too small to farm, and in urban areas, standardized parcel sizes contribute to the overall look and feel of a neighborhood. SB 1120 shrinks minimum parcel sizes in many parts of the state and limits the conditions that local governments can require, contrary to past legislation and practices on subdivisions. Some local governments may be concerned about the impact that these restrictions will have on their ability to promote orderly development.

On the other hand, the difference between splitting a single lot into two parcels that border a right-of-way and a large subdivision with hundreds of parcels (or even smaller subdivisions of just four lots) may be more than just a difference of degree; they may be different kinds of subdivisions that simply do not give rise to the same concerns that arise when creating a greater number of parcels. For example, street layout becomes much less important, especially if a lot split occurs in a previously developed area. Furthermore, SB 1120 includes important safeguards to limit the extent to which these smaller parcels deviate from other parcels in the area and head off negative unintended consequences. These bumpers include prohibiting serial urban lot splits on the same parcel to create smaller and smaller parcels and requiring the lot to be split into two equal parts, rather than creating one very small parcel and one large parcel.

4. Location, location, location. Because SB 1120 changes local zoning in communities statewide, it impacts some areas of the state that Californians have traditionally considered to be worthy of special treatment. In particular:

- California voters adopted the Coastal Act of 1976, which regulates development in the coastal zone to protect coastal resources and ensure coastal access. SB 1120 applies to parcels in the coastal zone.
- SB 1120 borrows from an existing prohibition on developing in the Very High Fire Hazard Severity Zone (enacted by SB 35, Wiener, 2017). However, that prohibition allows development if the project meets state fire mitigation requirements, so SB 1120's provisions are not a blanket ban on duplexes in these areas.
- SB 1120's provisions apply to both infill and greenfield parcels, as long as they meet the other requirements in the bill.

Some previous legislation in the housing production space, such as SB 50 (Wiener, 2019), excluded these areas from some parts of the bill. On the other hand, SB 50 allowed for much larger developments than contemplated by SB 1120 that have the potential for larger impacts in these areas. In addition, current ADU law, which SB 1120 follows in several ways, does not prohibit the development of ADUs in any of these areas. Moreover, SB 1120 requires residential zoning for its provisions to be applicable. This requirement means that the local government has already decided that these areas are suitable for residential use and, as long as the city or county rezones elsewhere to make up for the lost capacity, it can shift where these projects are allowed by restricting residential uses. In addition, automatically excluding parcels in these areas at the state level would reduce the overall housing production that is likely to result from the bill and may force development into poorer communities while carving out wealthier ones. The Committee may wish to consider the manner in which SB 1120 balances the need for local control, housing production, and equity.

5. Let's be clear. A few provisions of SB 1120 lack clarity. Moving forward, the author may wish to consider revising certain portions of the bill, specifically:

- SB 1120 allows an urban lot split if the parcel is "zoned for residential use." This provision could be interpreted as either a zone where residential is the primary purpose and allowed use, or zoning that allows residential use at all, whether or not it is the primary allowable use.
- The bill allows local governments to impose objective zoning and design standards, as long as they are not in direct conflict with the bill. However, it also says that locals cannot impose standards that would preclude building a duplex. It is unclear what it means to prevent construction of a duplex. For example, if a city requires a duplex to connect to an existing water system, but the cost of that connection makes it financially infeasible to build the duplex, would the city be unable to impose that requirement?
- SB 1120's definition of "buildable area" includes provisions that refer to onsite and offsite improvements, but the bill specifically disallows imposition of most improvements.

6. Also brought to you by… According to the Senate Housing Committee, "the Senate Housing Committee is supportive of measures that increase the supply of housing for all income levels. While the bill in print excludes developments on sites that are on a national, state, or local historic register, the intent is to exclude developments from historic districts. The Senate Housing Committee is concerned that this limitation is overly expansive, because the definition of "district" is dramatically broader and more subjective than sites or structures that have been placed on a "register." By going beyond 'registers,' this exemption has the potential to create unintended consequences and allow anti-housing advocates to use the broad definition to defeat the purpose of the bill. The Senate Housing Committee strongly recommends this exemption be limited to historic sites or structures that appear on registers."

7. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. SB 1120 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding that it ensuring access to affordable housing is a matter of statewide concern.

8. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 1120 adds to the duties of local planning officials, Legislative Counsel says that the bill imposes a new state mandate. SB 1120 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

9. Related legislation. SB 1120 is part of the Senate's housing package, along with the following bills:

- SB 902 (Wiener), which allows a local government to adopt an ordinance to allow up to 10 units per parcel, notwithstanding local voter initiatives, in infill, transit-rich, or high opportunity areas. SB 902 also provides that this zoning is not considered a project under the California Environmental Quality Act. SB 902 is currently pending in the Senate Housing Committee.

- SB 995 (Atkins), which expands the streamlined judicial review provisions of AB 900 (Buchanan, 2011) to a project with at least 15% of its units affordable to lower income households and a minimum investment of $15 million. SB 995 is currently pending in the Senate Environmental Quality Committee.
- SB 1085 (Skinner), which grants a density bonus to a project with at least 20% of its units affordable to moderate income households and increases the density bonus from 35% to 40% for projects that include the maximum amount of very low income households under density bonus law. SB 1085 is currently pending in the Senate Housing Committee.
- SB 1385 (Caballero), which establishes residential use as an allowable use on any parcel zoned for office or retail uses. The Senate Governance and Finance Committee will also hear SB 1385 at its May 28th hearing.

SB 1120 is not the only recent bill in the Legislature to increase the number of units that can be developed ministerially in areas traditionally reserved for single family use. SB 50, which died on the Senate Floor, authorized the development of up to four units per parcel in many parts of the state. Until recently amended, SB 902 allowed between two and four units per parcel, depending on population size. The chart below compares the three bills. SB 50 also included provisions to allow buildings of up to 55 feet tall in certain areas; neither SB 902 nor SB 1120 include similar provisions.

	SB 50 (Wiener, 2019): Fourplex Provisions	**SB 902 (Wiener): 3/9/2020 version**	**SB 1120 (Atkins)**
Number of allowable units per parcel	Up to four units	Two units in unincorporated areas and cities < 10,000 population; three units in cities between 10,000 and 50,000 population; four units in cities above 50,000 population	Two units per parcel (four units total if parcel is split into two parcels first)
Exclusion for environmental areas	List from SB 35 (Wiener), except applies to coastal zone in cities with population > 50,000	Only exempts very high fire hazard severity zones	List from SB 35 (Wiener), except applies to entire coastal zone
Infill requirements	Infill parcels only	All parcels where residential use is allowed	Parcels zoned for single-family use
Historic districts	No demolition of structure listed on state, federal, or local registers	No demolition of structure on state or federal (not local) register	Cannot be on a site listed on a state, federal, or local register

Demolition	Vacant parcel; substandard building unoccupied for five years; or conversion that doesn't demolish 25% of exterior walls, and doesn't increase square footage by more than 15%	Cannot demolish sound rental housing, but otherwise demolition is allowed if local ordinance allows	Vacant parcel; demolition of one exterior wall; full demolition if not occupied by a tenant in the past 3 years
Local zoning standards	Must meet all objective local zoning and design standards that don't conflict with the bill; up to 0.5 parking spaces per unit	Must meet local standards for height, setbacks, impact fees, and demolition	Must meet all local zoning and design standards that don't conflict with the bill; locals cannot impose standards that would preclude duplex; up to 1 parking space per unit, except as specified

Support and Opposition (5/26/20)

Support: California Apartment Association; California Association of Realtors; Schneider Electric.

Opposition: Livable California.

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