SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 1120 (Atkins) - Subdivisions: tentative maps

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Urgency: No
Hearing Date: June 9, 2020

Policy Vote: GOV. & F. 7 - 0
Mandate: Yes
Consultant: Mark McKenzie

Bill Summary: SB 1120 would require cities and counties to provide for the ministerial consideration of a proposed housing development containing two residential units (a duplex), and ministerial approval of a parcel map dividing a lot into two equal parts for residential use (an urban lot split), as specified.

Fiscal Impact:

- The Department of Housing and Community Development (HCD) estimates it would incur costs of $105,000 in the first year and $99,000 annually thereafter for 0.5 PY of staff time to provide technical assistance and outreach education to local agencies and affordable housing developers. (General Fund)

- Unknown local costs to establish streamlined project review processes for proposed duplex housing developments and tentative maps for urban lot splits, and to conduct expedited design reviews of these proposals. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates. (local funds).

Background: 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 seven 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. Zoning ordinances establish the type of land uses that are authorized in a designated area, often identifying a primary use for parcels in an area, as well as other uses that may be allowed if they meet conditions imposed by the local agency to address aesthetics, community impacts, or other site-specific considerations.

Some local ordinances provide "ministerial" processes for approving projects that are permitted "by right"—the zoning ordinance clearly states that a particular use is allowable, and local government does not have any discretion regarding approval of the permit if the application is complete. Local governments have two options for providing landowners with relief from zoning ordinances that might otherwise prohibit or restrict a particular land use: variances and conditional use permits. A variance may be granted to alleviate a unique hardship on a property owner because of the way a generally-applicable zoning ordinance affects a particular parcel, and a conditional use permit allows a land use that is not authorized by right in a zoning ordinance, but may be authorized if the property owner takes certain steps, such as to mitigate the potential

impacts of the land use. Both of these processes require hearings by the local zoning board and public notice.

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 discretionary and vetted through both public hearings and administrative review, including design review and appeals processes. Most housing projects that require discretionary review and approval are subject to California Environmental Quality Act (CEQA) review, while projects permitted ministerially are not.

Existing law requires local agencies to ministerially permit the development of accessory dwelling units (ADUs) on residential parcels, either within the space of an existing single family home or in a new or converted structure in the rear of a property, or both, regardless of local zoning restrictions. ADU law places numerous specified limitations on the ability of local governments to impose requirements on ADUs to encourage small-scale neighborhood development.

The Subdivision Map Act establishes a statewide regulatory framework for controlling the subdividing of land into parcels for sale, lease, or financing. Local subdivision approvals must be consistent with city and county general plans. 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.

Proposed Law: SB 1120 would require cities and counties to provide for the ministerial consideration of a proposed housing development containing two residential units (a duplex), and ministerial approval of a parcel map dividing a parcel into two equal parts for residential use (an urban lot split), under specified conditions.

To be eligible, a proposed duplex or parcel proposed for subdivision 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. The bill would also allow a local government to adopt an ordinance to implement its duplex provisions, and specify 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. The bill would also allow a local government to adopt an ordinance to implement the urban lot split requirements, and specify that the adoption of such an ordinance is not subject to CEQA.

SB 1120 prohibits the development of ADUs 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.

SB 1120 allows local governments to extend the life of subdivision maps by one year, up to a total of four years.

Related Legislation: SB 1120 is part of the Senate's 2020 Housing Production Package, which also includes the following bills:

- SB 902 (Wiener), which is currently pending in this Committee, would allow 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 995 (Atkins), which is currently pending in this Committee, would expand the streamlined judicial review provisions of the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (AB 900) to a project with at least 15% of its units affordable to lower income households and a minimum investment of $15 million, and extend AB 900 provisions until 2025.
- SB 1085 (Skinner), which is currently pending in this Committee, would grant 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 1385 (Caballero), which is currently pending in this Committee, would enact the "Neighborhood Homes Act," which establishes a housing development project as an authorized use on a parcel currently zoned for office or retail commercial use, as specified in a local agency's zoning code or general plan.

Staff Comments: The bill's mandated local costs would not be subject to state reimbursement because local agencies have the authority to charge and adjust planning and permitting fees as necessary to cover administrative costs. Existing law authorizes planning and zoning fees to "include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations." Case law and previous decisions by the Commission on State Mandates support the position that local governments' planning costs are not reimbursable when the state imposes new planning mandates.

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