

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1174 (Grayson) – As Amended April 6, 2021

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

**SUMMARY:** Makes changes to the streamlined, ministerial process created by SB 35 (Wiener, Chapter 366, Statutes of 2017). Specifically, **this bill**:

- 1) Requires, for a development project approved pursuant to the SB 35 process that submits a modification to the project, the following:
  - a) The time-period for which the project approval is valid must 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. If litigation is filed relating to the modification request, the time must be further extended while the litigation is pending. This change applies retroactively to developments approved prior to January 1, 2022; and
  - b) Any objective building standards adopted after the application for modifications was submitted must be agreed to by the development proponent if the modification application is submitted after the first building permit application. This change applies retroactively to developments approved prior to January 1, 2022.
- 2) 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 development proponent agrees to a change in objective standards. This change applies retroactively to subsequent permits submitted prior to January 1, 2022.
- 3) Clarifies the law regarding the expiration of project approvals by removing a redundant paragraph.
- 4) Provides that the Legislature finds and declares this act addresses a matter of statewide concern rather than a municipal affair, and therefore applies to all cities, including charter cities.
- 5) Provides that no reimbursement is required by this act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

**EXISTING LAW:** Establishes a process for a housing development to be approved and modified through a streamlined, ministerial approval process (Government Code Section 65913.4), as follows:

- 1) The development must contain two or more residential units and satisfies specified objective planning standards, including being located on an urban infill site that is zoned for residential

or residential mixed-use, with at least two-thirds of the square footage designated for residential use;

- 2) The development must be located in a jurisdiction that has been determined by the state Department of Housing and Community Development (HCD) to have issued insufficient building permits to meet its share of the regional housing need assessment (RHNA), as specified;
- 3) For projects over 10 units, the development must include units that are affordable to lower income households, and the development proponent must record a long-term affordability covenant on the units, as specified;
- 4) For projects over 10 units, the development proponent must certify to the locality that either the entirety of the development is a public work, or that all construction workers employed by the project will be paid at least prevailing wage, as specified. For specified developments, a skilled and trained workforce must be used;
- 5) The development must not be located in environmentally unsafe or sensitive areas, including a coastal zone, wetlands, a high or very fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement;
- 6) If a local government approves a development pursuant to this section, that approval must remain valid for three years from the date of the final action establishing that approval and must remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress;
- 7) The local government may apply objective building standards contained in the California Building Standards Code to all modifications; and
- 8) A local government must issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

**Author's Statement:** According to the author, "The legislature has made enormous effort 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.”

**SB 35 (Wiener, 2017):** 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. To access the streamlined process for housing developments, the developer must demonstrate that the development meets a number of requirements including that the development includes a percentage of affordable housing units, meets specified labor standards, is not on an environmentally sensitive site, and would not result in the demolition of housing that has been rented out in the last ten years. Localities must provide written documentation to the developer of a failure to meet the specifications for streamlined approval, within a specified a period of time. If the locality does not meet those deadlines, the development is deemed to satisfy the requirements for streamlined approval and must be approved by right.

Existing law requires 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 local governments submit each year as part of housing elements. This determination occurs at the half way and end of the eight-year housing element planning period. If HCD determines that a local government has not permitted enough units to meet its above moderate- and its lower income regional housing needs, a development must dedicate 10 percent of the units to lower income in the development to receive streamlined, ministerial approval. If the jurisdiction has permitted its share of above moderate-income housing but not its share of the lower income housing, then developments must dedicate 50 percent of the units for lower income to have access to streamlining.

**SB 35 Projects:** There is currently no reliable data available on the utilization of SB 35 since its implementation in 2018. However, anecdotal evidence suggests that it has become an effective tool for facilitating the development of projects that are at least 50 percent affordable to lower income households. By contrast, evidence also suggest that SB 35 has not been widely utilized for market-rate housing that are less than 50 percent affordable to lower income households. One possible explanation is that HCD has determined that SB 35 currently does not apply to such market-rate housing in many cities in expensive coastal markets, where projects could absorb the additional costs associated with this process.

Because SB 35 created a new development process, there has been a learning curve for both the local governments and the developers. At times the process has turned contentious, resulting in multiples lawsuits. Since adoption of SB 35, several bills have been passed to provide further clarity and address areas of contention. This includes AB 831 (Grayson, Chapter 194, Statutes of 2020), which added a process for projects to be modified after their approval.

This bill would amend the modification process created by AB 831 by extending the project approval period to reflect the time necessary to approve the modification, the need for any new building permit, as well as any litigation that might occur. It would also allow a developer that has already submitted their first building permit application to determine whether to apply an updated building code or the previous building code to their modification. Finally, this bill would

also allow a developer to 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 three of these changes would be retroactively applicable to existing projects, enabling them to address the challenges that have arisen as they navigate this still relatively new process.

**Arguments in Support:** Supporters of this bill argue that SB 35 was a key solution to addressing the housing crisis, and that this bill is necessary to ensure its successful implementation. According to the Bay Area Council (one of the bill's sponsors), "ambiguities in the law have created loopholes that anti-growth community groups can exploit through litigation to delay or halt housing projects. AB 1174 closes these loopholes to ensure that the law functions as intended."

**Arguments in Opposition:** This bill has no opposition on file.

### **Related Legislation:**

SB 35 (Wiener), Chapter 366, Statutes of 2017: This bill requires in jurisdictions that have not met their Regional Housing Needs Assessment to allow for a ministerial, streamlined process for housing approvals as long as the project meets specified affordable housing and labor provisions.

AB 831 (Grayson), Chapter 194, Statutes of 2020: This bill makes changes to the process for development projects approved by the streamlined, ministerial process created by SB 35 (Wiener), Chapter 366, Statutes of 2017. The change provide a path to modify approved development projects prior to the issuance of the final building permit required for construction, including provisions on how local governments must treat such an application for a modification. This bill also specifies how local governments must approve and construct public improvements provided in conjunction with the streamlined, ministerial development project in a manner that would not inhibit, chill, or preclude the development.

**Double referred:** This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Bay Area Council (Co-Sponsor)  
 San Francisco Bay Area Planning and Urban Research Association (SPUR) (Co-Sponsor)  
 California Association of Realtors  
 California YIMBY  
 Casita Coalition  
 California Business Industry Association  
 California Community Builders  
 Council of Infill Builders  
 Greenbelt Alliance  
 Habitat for Humanity California  
 Hello Housing

Housing Action Coalition  
LISC San Diego  
MidPen Housing  
Sand Hill Property Company  
SPUR  
SV@Home Action Fund  
The Two Hundred  
TMG Partners

**Opposition**

None on file.

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