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## SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair  
2021 - 2022 Regular

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**Bill No:** SB 8  
**Author:** Skinner  
**Version:** 3/18/21 Amended  
**Consultant:** Favorini-Csorba

**Hearing Date:** 3/25/21  
**Tax Levy:** No  
**Fiscal:** Yes

### *HOUSING CRISIS ACT OF 2019*

*Extends the sunset on the Housing Crisis Act of 2019 by five years, to January 1, 2030, and makes other changes.*

#### **Background**

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. The California Constitution also 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.

**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, 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.

**Zoning and approval processes.** Local governments use their police power to enact zoning ordinances that establish the types of land uses that are allowed or authorized in an area. Zoning often identifies a primary use for parcels in the area, as well as other uses that are allowed if they meet conditions imposed by the local government. For example, an agricultural area may be zoned to allow agricultural uses “by right”—without local discretion—but also allow development of a single-family home as an ancillary use, so that the farmer has a house to inhabit. Zoning ordinances also contain provisions to physically shape development and impose other requirements, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks, and lot coverage ratios. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

**State housing laws.** The Legislature has enacted a variety of statutes to facilitate and encourage the provision of housing, particularly affordable housing and housing to support individuals with disabilities or other needs. Among them is the Housing Accountability Act (HAA), enacted in 1982 in response to concerns over a growing rejection of housing development by local governments due to not-in-my-backyard (NIMBY) sentiments among local residents (SB 2011, Greene). The HAA, also known as the “Anti-NIMBY” legislation, restricts a local agency’s ability to disapprove, or require density reductions in, housing projects that devote at least 2/3rds of their floor area to residential units.

The 1977 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 clock begins running.

**Housing Crisis Act of 2019.** To build on the HAA and other recent housing legislation intended to streamline development, the Legislature enacted SB 330 (Skinner, 2019): the Housing Crisis Act of 2019 (HCA). The HCA had several main components:

- 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. It also voids certain local policies that limit growth, including building moratoria, caps on the numbers of units that can be approved, and population limits;
- Prohibits a local agency from imposing design standards that are not objective if those standards were adopted after January 1, 2020.
- Prohibits a local agency from applying new rules or standards to a project after a preliminary application containing specified information is submitted. The local agency must also make any required determinations on whether a project site is a historic site when a complete preliminary application is filed. However, if the project significantly changes, local agencies may apply new rules;
- Requires local agencies to exhaustively list all information needed to make a development application complete under the Permit Streamlining Act, limits that list to only those items on the checklist for application required by state law, and prohibits the local agency from requiring additional information. The checklist information must also be posted online;
- 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; and
- 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.

The HCA sunsets on January 1, 2025. The author wants to extend the sunset and clarify other provisions of the law.

### **Proposed Law**

Senate Bill 8 extends the sunset on the Housing Crisis Act of 2019 by five years, to January 1, 2030.

SB 8 expands on the definition of “housing development project” for the purposes of the Housing Crisis Act to include both discretionary and ministerial projects, as well as projects to construct single dwelling units. The bill also says that adding single-family homes to the definition does not affect the interpretation of the scope of the HAA. SB 8 clarifies that the receipt of a density bonus is not a basis for finding a project out of compliance with local zoning rules, and says that this change along with the changes to the definition of housing development project are declaratory of existing law.

SB 8 also adds two definitions related to compliance with additional ordinances when a project has not commenced construction within 2.5 years of receiving final approval, specifically:

- “Commenced construction” to mean that certain preliminary inspections under the building code have been requested.
- “Final approval” to mean that the project applicant has received notice from the local agency that they are eligible to pull a building permit.

SB 8 defines, for the purposes of the requirement to upzone concurrently with a downzone, “concurrently” 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.

SB 8 makes additional technical changes and clarifications to the Housing Crisis Act. Specifically, it clarifies that appeals and public meetings related to density bonus law are counted for the purposes of the five hearing limit in the Housing Crisis Act and includes technical changes to the limitation on a local government’s ability to reduce the intensity of land use in its jurisdiction.

Finally, SB 8 allows a developer to offer a unit that is subject to the jurisdiction’s rent control ordinance in lieu of offering a unit in the development at affordable cost. The bill also provides that the right of first refusal provided to residents doesn’t apply to certain types of units for which the right of first refusal would be inapplicable, specifically:

- Transitional housing or supportive housing units;
- Units in a nursing home, residential care facility, or assisted living facility; or
- Certain affordable housing units where replacing them would violate requirements to provide units to even lower income residents than the existing tenants.

### **State Revenue Impact**

No estimate.

### **Comments**

1. Purpose of the bill. According to the author, “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. Things are looking up. While the homebuilding industry slowed down due to the COVID-19 pandemic, there are some indications that it may be on the rebound. First, the Legislative Analyst's Office recently reported that California recorded slightly more building permits for housing in December 2020 and January 2021 than in the same months a year before, prior to the onset of COVID-19. Additionally, in February 2021, the Congressional Budget Office projected that economic activity is expected to return to its pre-pandemic level by the middle of the year. These metrics may indicate that economic effects from COVID-19 on the homebuilding industry may be short-lived. SB 8 proposes to extend the sunset on the HCA by five additional years, which may significantly exceed the length of the homebuilding slowdown in California. Should SB 8's sunset extension tie more closely to the length of the economic downturn due to COVID-19?

3. Too soon? The Legislature typically enacts sunset clauses on bills to provide an opportunity to assess the positive and negative impacts of a policy once sufficient information is available. The HCA only became effective on January 1, 2020. Less than a year and a half later, SB 8 proposes to extend the HCA's sunset, following an atypical year that, without additional years for comparison, may yield little meaningful information on how the HCA affected homebuilding in the state. Is now the right time to extend the sunset?

4. Crisis vs. Accountability. Debate rages in planning circles over whether the HAA applies to single unit projects or just to multi-family projects, and to projects reviewed ministerially (as well as discretionary projects). Some developers argue that the HAA applies to all housing projects, while, in an unusual alliance, local governments and the Department of Housing and Community Development agree that it only applies to developments of two units or more. SB 8 muddies the waters further:

- On the one hand, SB 8 amends the definition of housing development project in some parts of the bill to include ministerial projects and single unit developments, but specifically does not amend the definition in the HAA, even though the bill makes other changes to the HAA.
- On the other hand, SB 8 says that the changes it makes to the definition of housing development project are declaratory of existing law, which developers might point to in arguing that the HAA's definition should be read broadly.

What is clear from SB 8 is that housing projects of any size, and whether ministerial or discretionary, can benefit from the Housing Crisis Act's protections related to vesting provisions, hearing limitations, determination of whether a project site is a historic site, the procedures for determining completeness of an application, and anti-displacement protections. The scope of the HAA is a much bigger conversation than the issues raised in SB 8, but legislation providing clarity on the definition of housing development project under the HAA may be beneficial down the line.

5. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 8 extends the duties of local planning officials and the time for which a housing crime can be prosecuted, Legislative Counsel says that the bill imposes a new state mandate. SB 8 disclaims the state's responsibility for providing reimbursement because the costs are due to expanding a crime, but says that any other mandates must be reimbursed according to existing statutory procedures.

6. Double referral. The Senate Rules Committee has ordered a double referral of SB 8: first to the Senate Governance and Finance Committee to hear issues of local permitting, and second to the Senate Housing Committee, which has jurisdiction over housing issues.

7. Related legislation. SB 8 is part of the Senate's housing package, along with the following bills:

- SB 5 (Atkins), which authorizes the issuance of \$6.5 billion in general obligation bonds intended to finance housing-related programs that serve the homeless and extremely low income and very low income Californians. SB 5 is currently pending in the Senate Housing Committee and is double-referred to the Senate Governance and Finance Committee.
- SB 6 (Caballero), which enacts, until January 1, 2029, the Neighborhood Homes Act, to establish housing as an allowable use on any parcel zoned for office or retail uses. The Senate Governance and Finance Committee approved SB 6 at its March 11<sup>th</sup> hearing on a vote of 5-0. SB 6 is currently pending in the Senate Housing Committee.
- SB 7 (Atkins), which reenacts the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (AB 900, Buchanan) to allow for streamlined judicial review of large projects that meet high environmental and labor standards. SB 7 also allows a housing project with at least 15% of its units affordable to lower income households and a minimum investment of \$15 million and that meets other criteria to use the same streamlining provisions. SB 7 is currently pending at the Assembly Desk.
- SB 9 (Atkins), which requires ministerial approval of duplexes and specified parcel maps. SB 9 is currently pending in the Senate Housing Committee and is double-referred to Senate Governance and Finance Committee.
- SB 10 (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 10 also provides that this zoning is not considered a project under the California Environmental Quality Act. SB 10 is currently pending in the Senate Governance and Finance Committee.

### **Support and Opposition** 3/22/21

Support: Abundant Housing LA; Abundant Housing Los Angeles; All Home; Bay Area Council; Calchamber; 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; Fieldstead and Company, INC.; Greenbelt Alliance; Greystar Development; Habitat for Humanity California; Housing Action Coalition; Non-profit Housing Association of Northern California; Sand Hill Property Company; Spur; Sv@home; Techequity Collaborative; The San Francisco Foundation; The Two Hundred; TMG Partners.

Opposition: California Alliance of Local Electeds; City of Beverly Hills; Livable California;  
One individual.

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