



# SAN FRANCISCO PLANNING DEPARTMENT

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## Memo to the Planning Commission INFORMATIONAL HEARING DATE: JUNE 27, 2019

*RE:* **Senate Bill 330: Housing Crisis Act of 2019**

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### BACKGROUND

This memo is in response to the Commission's request for an analysis and informational hearing on State Senate Bill 330 ("SB 330") and its potential effects in San Francisco. SB 330, referred to as the "Housing Crisis Act of 2019," was introduced by Senator Nancy Skinner on February 19, 2019. The bill passed the Senate on May 29, 2019 and was sent to the Assembly. The bill was heard in the Assembly Housing and Community Development Committee on June 19, 2019. Several amendments appear to have been made at the hearing, though the analysis in this memorandum is based on the prior version of the bill dated June 12, 2019 as the full text of the Committee amendments were not available in time for publication. The attached analysis from the Committee provides an outline of the amendments to be considered in Committee, and these are also summarized at the end of the report. Planning staff will provide an updated analysis based on these amendments at the informational hearing. The bill is now pending before the Assembly Local Government Committee, where it is scheduled to be heard July 10, 2019.

The following analysis reflects the Department's best understanding of the contents of the bill at this time, and in no way reflects any definitive conclusion on the part of the City as to how the bill may affect any local planning processes or existing regulations and policies.

### SUMMARY OF LEGISLATION

The bill would establish a statewide housing emergency until 2025. During this time certain localities, designated as "affected" cities or counties, would be generally prohibited from undertaking legislative action to reduce zoned capacity for housing, reducing the density of a proposed residential project below what is permitted under existing zoning and the General Plan, or imposing certain new parking requirements or design standards. In these jurisdictions, the demolition of existing affordable housing would be prohibited unless certain conditions are met. In all localities, the bill would appear to generally limit the number of public hearings for housing projects that meet all applicable objective zoning standards, shorten some required permit review timeframes, guarantee the zoning regulations in place at the time of a first development application for up to three years, and allow for localities to delay enforcement of certain building code violations for "occupied substandard buildings."

### **Where and how SB 330 may apply**

The bill would be in effect until January 1, 2025. Some of its provisions would apply to all localities statewide, while others would only apply in “affected cities” and “affected counties,” as defined:

- “Affected City” is a city in which both a) the average rental rate differs from 130 percent of the national median rental rate in 2017, and b) the residential rental vacancy rate differs from the national vacancy rate in 2017, according to the American Community Survey. Cities with populations of less than 5,000 and not located in an urban core would not be designated.
- “Affected County” refers to the unincorporated portions of counties located within an urban area, as defined by the US Census, that meet the above definition.

The State Department of Housing and Community Development (HCD) would be charged with identifying which localities meet this definition by June 30, 2020. This designation would remain in effect until the end of the crisis period in 2025. Planning Department analysis of the 2017 American Community Survey data indicates that San Francisco would be designated as an “affected city” for the purposes of the bill<sup>1</sup>.

While the bill would impact a number of areas related to zoning actions and the development approval process, there are a number of areas that would *not* be affected by the bill. For clarity, these are summarized below:

- The bill does not supersede requirements of the California Environmental Quality Act (CEQA), or provide any new ministerial approval programs
- The bill does not mandate any up-zoning or rezoning actions
- Localities would retain the ability to impose new or expanded requirements on short-term rentals
- The California Coastal Act would not be superseded by the bill
- Sites within a “very high fire hazard severity zone” would not be subject to the bill
- Exceptions to the bill are permitted when necessary to protect public health and safety

### **Local zoning actions**

In affected jurisdictions, the bill would generally prohibit a locality from changing the zoning or land use designation of the General Plan on any site that permits housing to a less intensive use as compared with what was permitted in the zoning or General Plan on January 1, 2018. This appears to include legislative action taken by initiative ordinance. An exception would be provided if the action is taken concurrently with an increase in zoned capacity for housing on other sites such that there is no net loss in residential capacity, such as through an Area Plan process. “Less intensive use” is defined to include actions including, but not limited to: reductions in height, density, or floor area ratio; new or increased open space, lot size, or setback requirements; or minimum frontage or maximum lot coverage limitations.

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<sup>1</sup> The 2013-2017 ACS reports a median gross rent in San Francisco of \$1,709, which is higher than 130 percent of the national average, or \$1,277. The reported rental vacancy rate in San Francisco was 3.6 percent, lower than the national rate of 6.1 percent.

Affected jurisdictions would also be generally prohibited from imposing new, or enforcing any existing, moratoriums or caps on housing approvals after January 1, 2018; imposing new or enforcing any existing minimum parking requirements after January 1, 2018 within ¼-mile of a rail stop in cities with a population of over 700,000, or requirement of over 0.5 spaces per unit in all other affected jurisdictions; or imposing new design standards that are not “objective design standards” as defined.<sup>2</sup>

### **Approval of projects per existing density and zoning**

#### *Maximum allowable density under current zoning*

Affected jurisdictions would be generally required to approve a housing project at up to the highest level of intensity allowable under the General Plan or zoning in effect as of January 1, 2018. The bill explicitly prohibits the imposition of conditions of approval that would reduce residential density below these levels via a conditional use permit. The bill would amend the Housing Accountability Act (HAA) to lower the legal threshold for filing suit against jurisdictions for denying the maximum allowable residential density.

#### *Projects subject to the zoning applicable at time of “preliminary application”*

In all jurisdictions the bill would require that a housing project remain subject only to the zoning regulations in effect at the time a complete “preliminary application” is submitted, except under any of the following circumstances:

- The development has not commenced construction within 3 years from project approval
- The number of residential units or floor area in the proposed development is increased by more than 20 percent at any point
- The imposition of new requirements is necessary to avert an adverse impact to public health and safety, as defined narrowly, or to lessen the impact of the project under CEQA
- The amount of impact fees owed by the project are updated pursuant to regular annual indexing

The bill defines a “preliminary application” as one that includes certain specific information, including basic property and applicant information; site plans, height and massing, materials, floor area calculations, dwelling unit and parking counts; and whether the site is located in certain sensitive areas such as a high fire hazard severity zone, wetland area, or flood zone. Jurisdictions would have 30 days to accept a preliminary application as complete, or issue a written explanation of what information is required. An applicant would then have 180 days to submit a development application, or would have to submit a new “preliminary application” subject to the regulations in effect at that time.

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<sup>2</sup> “Objective design standard” means a design standard that involves no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application.

## **Permit review process and timeframes**

### *Permit Streamlining Act amendments*

The bill would amend the Permit Streamlining Act to reduce the time period for jurisdictions to approve or disapprove a housing project from 180 days to 90 days after the certification of an Environmental Impact Report (EIR), or to 60 days in the case of an affordable housing development. The required time period for projects subject to a Negative Declaration, Mitigated Negative Declaration, or Exemption would remain at 60 days.

### *Limit of five public hearings conforming housing projects*

Under the bill, a housing project in any jurisdiction that complies with all applicable objective standards may not be subject to more than five public hearings for approval. Each continuance and appeal would be counted as one of these five hearings.

### *Historic Resource Determinations*

Under the bill, all jurisdictions would be required to determine whether a historic resource is present at the site of a proposed housing development at the time an application for development is deemed complete, if such determination is otherwise required. This determination would remain in effect for the duration of application review, unless any archeological, paleontological, or tribal cultural resources are subsequently discovered.

## **Replacement of affordable housing units**

In affected jurisdictions, the demolition of certain existing affordable or below-market-rate dwelling units would be prohibited unless certain conditions are met. These conditions would apply where any of the following apply:

- Units where the household is assisted through the federal Section 8 Housing Choice Voucher program
- Units subject to any form of valid rent of price control (including rent-controlled or deed-restricted affordable units)
- Units affordable to households earning equal to or less than 80 percent of Area Median Income (AMI)
- Units currently occupied by tenants, or where the unit was vacated through Ellis Act eviction

In all such cases, the affected jurisdiction may only approve the demolition of the existing structure if all of the following conditions are met:

- The proposed replacement project increases the residential density beyond the existing density, and results in no net loss of units affordable to households earning at or below 60 percent of AMI
- Current residents are allowed to remain on site until six months prior to the start of construction

- The project developer provides relocation benefits to the occupants of any affordable units to be demolished and a right of first refusal for units in the replacement development at an affordable rent

Any units for which relocation benefits or a right of first refusal is provided would count toward the replacement project's local inclusionary housing requirement obligations.

### **Occupied substandard buildings or units**

The bill defines an "occupied substandard building or unit" as an occupied building or unit that has been found to be in violation of the state of local building code. In such cases, if the building or unit is located in a zone that allows residential use the jurisdiction shall notify the property owner that they may request a delay in enforcement of the violation for up to seven years. The jurisdiction may grant the extension, provided that a correction of the violation is not necessary to protect public health and safety.

### **POTENTIAL EFFECTS IN SAN FRANCISCO**

San Francisco would be designated as an "affected city" and would be subject to all the provisions of the bill described above. These provisions would likely impact the San Francisco development review process in a number of ways. On balance, the bill would likely expedite the approval process in San Francisco for some housing projects and preserve the current level of zoned capacity for housing over the next five years, while impacting various current practices related to project review and some local planning efforts. The bill would also enhance tenant protections in some instances and potentially discourage new development on sites with existing residential uses and affordable housing units.

As drafted, the bill may inhibit implementation of some recent and pending changes within San Francisco. Notably, SB 330 would likely hamper implementation of the Urban Design Guidelines (UDGs) adopted in March 2018<sup>3</sup> and referenced in both the Central SoMa and the pending update to the Market & Octavia Plan (i.e. the "Hub")<sup>4</sup>. The City would also need to revisit the pending Calle 24 Design Guidelines<sup>5</sup> and Polk/Pacific Special Area Design Guidelines so as to rely upon objective standards. The Department is currently developing a proposal to rezone some outdated Heavy Industrial (M) zoned sites, which allow a combination of heavy industry and housing among other uses, to Production Distribution Repair (PDR) zoning, which focuses on lighter industrial uses that continue to serve our city's economy.

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<sup>3</sup> <https://sfgov.org/sfplanningarchive/urban-design-guidelines>

<sup>4</sup> <https://sfplanning.org/market-street-hub-project>

<sup>5</sup> <https://sfplanning.org/event/calle-24-special-area-design-guidelines>

## **Local zoning actions**

### *Design Standards*

The bill's prohibition on new design standards after January 1, 2018 that do not meet the definition of "objective standards" would pose a significant disruption to the City's design review process during the next five years. Specifically, the Urban Design Guidelines (UDGs), which were adopted in March 2018, would become more difficult to implement under the bill, as such guidelines generally are not quantitative in nature and require a level of context-specific review that are difficult to convert into "objective" standards. The Central SoMa plan, adopted in late 2018 generally applies the UDGs and would be similarly challenged by the bill, as would design guideline efforts currently underway in the Hub, in the Calle 24 cultural district, and in the Polk/Pacific Special Area pending before the Board of Supervisors [BF 190661]<sup>6</sup>. The City would still be able to apply design guidelines and requirements that were in place prior to January 1, 2018, and would also have the ability to modify existing guidelines or add new standards, provided that those standards are objective.

### *Rezoning efforts for non-residential uses*

The bill would prohibit zoning actions that constitute a net "downzoning" for housing, but preserve the City's ability to rezone some sites away from residential use provided that such actions are balanced by concurrent actions to increase zoned capacity for housing elsewhere. For instance, the Planning Commission has largely rezoned an older zoning district "M" (Industrial), which allows for a combination of heavy industrial uses and some residential uses, to the contemporary "PDR" (Production, Distribution, and Repair) zoning, which preserves PDR uses while prohibiting residential uses. These changes largely occurred in the eight-year Eastern Neighborhoods Community Planning effort. Similar rezonings would still be allowed as Eastern Neighborhoods paired the change of PDR to M zoning (decrease in housing capacity) with increases in housing capacity elsewhere in the plan area. At this time, very little "M" zoning exists outside of Port jurisdiction. The Department is in the process of changing the remaining "M" zoned parcels outside of the Port to PDR zoning, which would have to be balanced with concurrent "upzoning" actions for housing in order to advance under the bill.

## **Approval of projects per existing density and zoning**

The bill establishes a mechanism by which housing projects may submit a "preliminary application" and essentially vest the project under the zoning regulations in effect at that time. This would be a significant change to current practice in San Francisco, where projects review is often delayed and complicated by new or changing local requirements that can apply retroactively. The regulatory certainty and predictability provided under the bill would likely be an effective means of streamlining the review and approval process for many housing projects, and allow City staff to implement applicable requirements more efficiently.

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<sup>6</sup> <https://sfgov.legistar.com/LegislationDetail.aspx?ID=3975470&GUID=A6EE50F4-B5C8-4A5C-932A-1E1C7B1F032D>

The bill provides several important caveats, including the provision that projects would lose this guarantee if expanded by more than 20 percent, if construction does not commence in 3 years after approval, or if a full development application is not submitted within 6 months of the “preliminary application.” These provisions would allow for the City to continue to adjust zoning and development standards as appropriate to respond to changing context, while allowing for projects already in the development pipeline to proceed in providing new market rate and affordable housing units to the City’s constrained housing supply.

### **Permit review process and timeframes**

#### *Permit Streamlining Act amendments*

The amendments to the Permit Streamlining Act and Housing Accountability Act generally strengthen or expedite certain requirements that are already in effect in San Francisco. These changes may necessitate some modifications to the project application and review process.

#### *Limit of five public hearings conforming housing projects*

The limit of five public hearings for certain housing projects would have an important, but limited, impact in San Francisco. Projects proposing re-zonings via a Development Agreement or legislative change would not be subject to the limit, nor would projects seeking standard exceptions via the Large Project Authorization, Downtown Project Authorization, or Planned Unit Development approvals. Projects requiring a Conditional Use Authorization and seeking no exceptions would be subject to the limit. Additionally, affordable housing projects that qualify for administrative approvals as well as State Density Bonus projects and other projects that do not seek standard exceptions would generally be subject to the limit. For these projects, modifications to current practices for project approval hearings would likely be necessary to ensure adequate project review and preserve appropriate avenues for appeal. In some cases project approvals would likely be expedited and the number of possible appeals reduced.

#### *Historic Resource Determinations*

In San Francisco, an historic resource determination is required as part of a development application when the property is classified as a “Category B,” or potential resource. In such cases, an Historic Resource Evaluation Part 1 application is required, which provides property history information which Planning staff evaluate to determine whether a resource is present. Under SB 330, this determination would have to be concluded by the time the development application is deemed complete. The Permit Streamlining Act requires that projects either be deemed complete within 30 days, or a written statement be provided indicating what further materials must be provided. Accordingly, for most projects the bill would in effect require the historic resource determination to be reached in 30 days, while in some cases this period would be slightly longer.

### **Replacement of affordable housing units**

The bill would bar the approval of any housing project that involves the demolition of certain affordable units or units where an Ellis Act eviction has previously occurred, unless certain conditions are met, including relocation benefits and a right of first refusal for replacement units. This may have the effect of discouraging proposed housing developments on sites with existing residential uses, thus reducing instances of direct displacement, while also increasing the number of such cases in which relocation benefits and a right of first refusal are guaranteed to existing tenants.

The bill further requires that any units for which these benefits are provided must be counted toward the project's local inclusionary housing requirement. This would potentially reduce the number of new below-market-rate units provided in such projects. At the same time, this may provide a more financially feasible alternative for some projects where the relocation benefits and right of first refusal prove a cost-effective means of preserving existing affordable housing units and protecting existing tenants, while also providing some new inclusionary units.

### **Occupied substandard buildings or units**

The bill seeks to provide for a means of abating building code violations in occupied structures where residential use is permitted in a manner that does not force immediate eviction of the existing tenants, by allowing for a seven-year delay in abatement when the Department of Building Inspection can determine what such an extension would not pose a threat to public health and safety. This would potentially be beneficial in a number of local contexts, and particularly in the approval of Unauthorized Dwelling Unit legalizations of Accessory Dwelling Units, where the UDU or ADU cannot be legalized or added in a manner that is entirely consistent with the building code.

As currently drafted, the ability of property owners to delay abatement of code violations that are not required to protect public health and safety could allow for landlords to avoid providing building improvements sought by tenants that would otherwise be required.

### **OUTLINE OF RECENT AMENDMENTS**

The attached Committee analysis outlines a series of amendments that were considered in Committee on June 19, 2019. Because the final text of the bill as amended was not available in time for publication, these items are cited below for reference, and an update will be provided at the informational hearing.

- Clarify, in Government Code (GC) Section 65589.5(o), that the rules being locked into place are limited to those that cover the entitlement and construction of the dwelling units;
- Specify, in GC 65905.5(b)(2) that a public hearing would also include those conducted by any designated hearing officer or body;
- Apply the definition of affected counties that applies for purposes of the permit streamlining requirements (GC Section 65913.3(a)) to the portion that affects the development standards (GC 66300(a));
- Remove, in GC Section 65913.3(b), the language enabling affected cities and counties to charge an in-lieu fee for compliance with a local affordable housing requirement;

- Change, in GC Section 65913.3(d), “prior to” to “in effect as of”;
- Include in the demolition protections (GC 65913.3(e)) provisions to:
  - Ensure that there is no net loss of units being rented to lower income households, independent of the rent being charged;
  - Create a “look back” period for low-income renters to dis-incentivize early displacement; and
  - Require that any demolition result in no net loss of overall units.
- Enable affected cities to decrease development capacity in specified instances to help preserve affordable housing (GC 66300(b)(1)(A)).
- Remove the section regarding enforcement of buildings standards (Health and Safety Code Section 17980.12).

### **REQUIRED COMMISSION ACTION**

No official Commission action is required, as this is an informational item. Staff will continue to monitor SB 330 and other relevant state bills as they move through the legislative process, and will provide analysis and recommendations as necessary.

### **Attachments:**

Exhibit A: Assembly Housing and Community Development Committee Analysis. June 17, 2019.

Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 330 (Skinner) – As Amended June 12, 2019

**SENATE VOTE:** 28-7

**SUBJECT:** Housing Crisis Act of 2019

**SUMMARY:** Restricts, for a period of five years, actions by cities and counties that would reduce the production of housing. Specifically, **this bill:**

- 1) Establishes the Housing Crisis Act through January 1, 2025, after which time provisions below are no longer applicable.
- 2) Applies the requirements of the bill to the following “affected” cities and counties:
  - a) Defines “affected city” to mean:
    - i) A city that the Department of Housing and Community Development (HCD) determines that the average of the following metrics is greater than zero: (1) the percentage the average rate of rent differed from 130% of the national median rent in 2017, and (2) the percentage by which the vacancy rate for rental units differs from the national rate; and
    - ii) A city that does not have a population of 5,000 or fewer and is not located in an urban core.
  - b) Defines “affected county” to mean:
    - i) For purposes of permit streamlining, as being the unincorporated portion of any county that is wholly within the boundaries of an urbanized area or urban cluster and qualifies based on the same metrics as affected cities; and
    - ii) For purposes of development standards, as a county in which at least 50 percent of the cities located within the territorial boundaries of the county are affected cities.
  - c) Specifies that an affected city or county includes the electorate of an affected city or county exercising its local initiative or referendum power; and
  - d) Requires that HCD must determine which cities and counties are affected cities and counties no later than June 30, 2020.
- 3) Amends the development policies, standards, and conditions for affected cities and counties as follows:
  - a) Prohibits an affected city or county, with respect to land where housing is an allowable use on or after January 1, 2018, from enacting a development policy, standard, or condition that would have any of the following effects:

- i) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city as in effect January 1, 2018;
  - ii) Imposing or enforcing design review standards established after January 1, 2018, if the standards are not objective;
  - iii) Limiting the amount of housing or population in any of the following ways, except for specified longstanding limits in predominantly agricultural counties:
    - (1) Imposing a moratorium or similar restriction or limitation on housing development within all or a portion of the jurisdiction, other than to specifically protect against an imminent threat to health and safety;
    - (2) Limiting the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected city or county;
    - (3) Capping the number of housing units that can be approved or constructed either annually or for some other period of time; and,
    - (4) Capping the population of the affected city or county.
  - b) Allows an affected city or county to change land use designations or zoning ordinances to allow for less intensive uses if it concurrently changes the density elsewhere to ensure that there is no net loss in residential capacity.
  - c) Provides that any requirement for local voter approval, or the approval of a supermajority of any body of the affected county or affected city, be obtained to increase the allowable intensity of housing, to establish housing as an allowable use, or to provide services and infrastructure necessary to develop housing, is declared against public policy and void. This section shall not be construed to void a height limit, urban growth boundary, or urban limit established by the electorate of an affected city or county on or before January 1, 2018.
  - d) Prohibits an affected city or county from requiring minimum parking requirements of more than 0.5 spaces per unit if the housing development is:
    - i) Within one-quarter mile, unobstructed, of a rail stop that is a major transit stop; and
    - ii) The affected city has a population of 100,000 or greater or is located in a county with a population of greater than 700,000.
- 4) Amends the permitting process for housing projects in affected cities and counties as follows:
- a) Creates a process for submitting preliminary applications for housing projects, including:
    - i) That a housing development project must be deemed to have a complete preliminary application to the approving city or county upon providing specified information,

- including site location, existing uses, proposed uses, specified environmental and cultural sensitivities and hazards, and proposed approvals process; and
- ii) That cities and counties must provide a checklist and application form for these preliminary applications which must be limited to the specified requirements. Requires HCD to adopt a standardized form that applicants for housing development projects may use if one has not been adopted by the relevant city or county.
  - iii) That, not later than 30 days after a public agency receives an application for a development project, the public agency must determine in writing whether the application is complete and immediately transmit the determination to the applicant for the development project. If the written determination of completeness is not made in 30 days, the application shall be deemed complete;
  - iv) If an application is determined to be incomplete, the lead agency must provide the development project applicant with an exhaustive list of items that were not complete. The list must be limited to those items required on the lead agency's submittal checklist and application form. If any subsequent review of the application determined to be incomplete, the local agency cannot request the applicant to provide any new information that was not stated in the initial list of items that were not complete. When determining if the application is complete, the local agency must limit its review to determining whether the application includes the missing information.
  - v) If the local agency determines that the information provided is not complete, the proponent has 90 days after receiving this determination in writing to provide the information, or their preliminary application will expire.
  - vi) Requires a development proponent to submit, within 180 days of the preliminary application, all other specified materials necessary to process the application;
- b) Prohibits a local agency from applying ordinances, policies, and standards to a development after a preliminary application is submitted, except in narrowly defined specified circumstances. Allows specified persons and entities to file a lawsuit to enforce this prohibition, including prospective residents of the development.
  - c) Provides that if a housing development project complies with the applicable objective general plan and zoning standards in effect at the time an application is deemed complete, a city or county shall not conduct more than five hearings in connection with the approval of that housing development project, and that those hearings must be consistent with the timelines under the Permit Streamlining Act.
  - d) Requires any determination that a housing project is on a historic site to occur at the time the housing application is deemed complete. This determination will remain valid throughout the development process unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.
  - e) Reduces the time period that a housing project must be approved or disapproved upon the completion of an Environmental Impact Report (EIR) by 30 days, to 60 days for specified

projects that are at least 49 percent affordable to very-low and low-income households, and 90 days for other housing projects.

- f) Provides that if a housing development project in an affected city or county requires the demolition of residential property, the city or county may only approve that housing development if all of the following apply:
    - i) There is a no net loss of units being rented at an affordable rent to lower income households;
    - ii) The proposed housing development project increases density above the density of the existing residential use of the property, including an increased number of deed-restricted low-income units;
    - iii) Existing residents are allowed to occupy their units until six months before the start of construction activities; and
    - iv) The developer agrees to provide relocation benefits to the occupants of those affordable residential rental units, and a right of first refusal for units available in the new housing development affordable to the household at an affordable rent.
  - g) Requires, if the affected city or county approves an application for a conditional use permit for a proposed housing development project and that project would have been eligible for a higher density under the affected city or county's general plan land use and zoning ordinances prior to January 1, 2018, that the affected city or county must allow the project at the higher density.
- 5) Amends the enforcement process for housing in affected cities and counties by:
- a) Requiring that any local agency notice related to the violation of a building standard for occupied housing include a statement of the owner's right to request a delay in enforcement; and
  - b) Enables a local agency, upon request of the owner, to delay enforcement for seven years, if correction is not necessary to protect health and safety.

#### **EXISTING LAW:**

- 1) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community.
- 2) Establishes the Housing Accountability Act (HAA), which provides that when a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time that the housing development project's application is complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon specified written findings.
- 3) Establishes the Permit Streamlining Act (PSA), which sets forth the rules for reviewing and processing development applications.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Purpose of the Bill:* According to the author, “California is experiencing an extreme housing shortage. We now rank 49th in the number of housing units per capita and are home to 33 of the 50 US cities with the highest rents. SB 330 is designed to address our housing crisis by asking local governments to process permits for housing that is already allowed under their existing rules, but to do it faster and not change the rules once the housing application is submitted. By requiring timely processing of permits and relaxing a limited set of rules, SB 330 employs the same approach that cities have used to help recover from fires or other disasters. And to help keep tenants and low-income families in their homes, SB 330 also includes anti-displacement measures.

*Background:* The cost of housing in California is the highest of any state in the nation. Additionally, the pace of change has far outstripped that in other parts of the county. Whereas in 1970 housing in California was 30% more expensive than the U.S. average, now it is 250% more expensive. While incomes have increased over that period, they have done so at a much slower pace. The result is that housing has become much more expensive. Only 28% of households can buy the median priced home. Over half of renters and 80% of low-income renters are rent-burdened, meaning they pay over 30% of their income towards rent. According to a 2016 McKinsey Global Institute, every year Californians pay \$50 billion more for housing than they are able to afford.

According to the Legislative Analyst’s Office, “a collection of factors drive California’s high cost of housing. First and foremost, far less housing has been built in California’s coastal areas than people demand. As a result, households bid up the cost of housing in coastal regions. In addition, some of the unmet demand to live in coastal areas spills over into inland California, driving up prices there too. Second, land in California’s coastal areas is expensive. Homebuilders typically respond to high land costs by building more housing units on each plot of land they develop, effectively spreading the high land costs among more units. In California’s coastal metros, however, this response has been limited, meaning higher land costs have translated more directly into higher housing costs. Finally, builders’ costs—for labor, required building materials, and government fees—are higher in California than in other states. While these higher building costs contribute to higher prices throughout the state, building costs appear to play a smaller role in explaining high housing costs in coastal areas.”

According to Up for Growth’s 2018 analysis, housing underproduction is rampant throughout the United States, but California’s underproduction is greater than the other 49 states combined. According to the 2016 McKinsey study, California’s housing deficit is over 2 million units, and that it would require production of 500,000 units a year (3.5 million units total) over a seven year period to normalize the state’s housing prices. According to HCD, there needs to be 180,000 units built per year to maintain housing costs. By contrast, housing production averaged less than 80,000 new homes annually over the last 10 years.

*Who is Affected by the Housing Crisis:* *Who is Affected by the Housing Crisis:* The requirements of the bill would not apply to the whole state. Instead, the bill would only apply to those cities that are experiencing a “housing crisis,” as defined generally by a formula calculated by HCD that equally factors rents and vacancy rates. The bill would also only apply to portions

of counties experiencing a “housing crisis.” For purposes of the permit streamlining requirements of the bill, this includes the unincorporated portion of any county that is wholly within the boundaries of an urbanized area or urban cluster. For purposes of the development standards requirements of the bill, this includes any county in which at least 50 percent of its cities are “affected” cities.

For purposes of clarity for both the state and counties, it would be beneficial to have a single consistent definition of “affected county,” and to focus on those areas that are more urbanized where the measures contained in this bill are more meaningful. As such, the Committee may consider amending the bill to apply the definition of affected counties that applies for purposes of the permit streamlining requirements to the portion that is affected by the development standards.

*Planning for Housing:* 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.

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.

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, certain types of residential projects. The HAA limits the ability of local governments to reject or render infeasible housing developments based on their density without a thorough analysis of the economic, social, and environmental effects of the action. Specifically, when a proposed development complies with objective general plan and zoning standards, including design review standards, a local agency that intends to disapprove the project, or approve it on the condition that it be developed at a lower density, must make written findings based on substantial evidence that the project would have a specific, adverse impact on the public health or safety and that there are no feasible methods to mitigate or avoid those impacts other than disapproval of the project.

SB 330 makes a number of changes to how “affected” cities and counties plan for housing in the next five years. These strategies are intended to prevent these jurisdictions from reducing the allowable amount of housing during this time-period of the housing crisis. This includes that the

bill prohibits them, through January 1, 2025, from enacting a development policy, standard, or condition that would:

- Reduce the housing development capacity of a parcel to less than was in effect in effect January 1, 2018, unless there is a concurrent change elsewhere to ensure that there is no net loss in residential capacity;
- Impose or enforce any non-objective design review standards on housing that were established after January 1, 2018;
- Limit the amount of housing or population in any of the following ways, except for specified longstanding limits in predominantly agricultural counties:
  - Impose a moratorium or similar restriction or limitation on housing development within all or a portion of the jurisdiction, other than to specifically protect against an imminent threat to health and safety;
  - Limit the number of land use approvals or permits necessary for the approval and construction of housing to meet the Regional Housing Needs Allocation (RHNA);
  - Cap the number of housing units that can be approved or constructed; and
  - Limit the population of the affected city or county.

There are occasions on which decreasing the development capacity of a piece of land may help preserve housing that serves low-income residents, such as mobilehomes and single-room occupancy hotels. As such, the Committee may wish to consider an amendment that would enable affected cities to decrease development capacity in specified instances to help preserve affordable housing.

The bill also establishes that within one-quarter mile of major rail stops in larger cities and counties, minimum parking requirements cannot exceed 0.5 space per unit. As such, local jurisdictions could not force developers to “over-park” near mass transit, facilitating more space for housing (and potentially less traffic congestion and greenhouse gas emissions) for developers who choose to provide these reduced amounts.

The bill includes language permitting affected cities and counties to charge an in-lieu fee for compliance with a local affordable housing requirement. This language appears to be vestigial to a previous version of the bill that limited increases in fees. As such, the Committee may wish to amend this language out of the bill.

*Permitting Housing:* The 1977 Permit Streamlining Act (PSA) requires public agencies to act fairly and promptly on applications for development permits. 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.

SB 330 changes the permitting process for housing projects in affected cities and counties over the next five years. These changes are designed to provide more certainty to housing developers and prevent undue delay or cost increases. This change is implemented through the bill’s creation of a “preliminary application,” a new first step in the PSA process. After submittal of this application, the bill prohibits a local agency from applying ordinances, policies, and standards to a development, except in narrowly defined specified. The application is deemed

“complete,” many key aspects of the project are locked into place, including its zoning, fees, and historic status. As written, it could be implied that the rules being locked into place last the lifetime of the housing, rather than just through the completion of the housing itself. Such an interpretation would preclude a city from implementing rules in the future meant to maintain the housing, such as code enforcement requirements. As such, the Committee may wish to consider amendments that would clarify that the rules being locked into place are limited to those that cover the entitlement and construction of the dwelling units.

The information required in the preliminary application is specified in the bill, and includes only objective information, such as site location, existing uses, proposed uses, specified environmental and cultural sensitivities and hazards, and proposed approvals process. Local jurisdictions are precluded from requiring additional information and must deem the application to be complete if all of the required information is provided. If the required information is not provided, then the bill delineates a protocol for both the applicant and the jurisdiction. Failure to comply by the application results in the voiding of their application. Failure to comply by the jurisdiction results in the application being deemed “complete.”

The bill requires that housing projects that receive a conditional use permit and would have been eligible for a higher density under the affected city or county’s general plan land use and zoning ordinances prior to January 1, 2018, that the affected city or county must allow the project at the higher density. As written, the bill is unclear about when “prior to” January 1, 2018 a project could have been eligible. To clarify the intent, and to align with language used elsewhere in the bill, the Committee may wish to consider changing “prior to” to “in effect as of.”

Once a complete application for a development has been submitted, the PSA requires local officials to act within a specific time period after completing any environmental review documents required under the California Environmental Quality Act (CEQA). The bill shortens by 30 days the review period, to 60 days for specified projects that are at least 49 percent affordable to very-low and low-income households, and 90 days for other housing projects.

*Anti-Demolition Provisions:* To streamline the public process, for those projects that comply with the applicable objective general plan and zoning standards in effect at the time an application is deemed complete, no more than five public hearings can occur in connection with the approval of that housing development project. These hearings must be consistent with the timelines under the PSA. The bill specifies the government bodies to whom this applies, including the legislative body, planning agency, or other agency, department, board, or commission. However, some local jurisdictions have additional designated hearing officers and bodies. To provide completeness to this list, the Committee may wish to amend the bill to specify that a public hearing would also include those conducted by any designated hearing officer or body.

SB 330 also provides provisions to limit the impact of demolition of rental housing on lower-income residents in affected cities and counties. It does so by requiring that, for housing projects that would demolish residential property, the city or county may only approve that housing development if all of the following apply:

- There is a no net loss of units being rented at an affordable rent to lower income households;

- The proposed housing development project increases density above the density of the existing residential use of the property, including an increased number of deed-restricted low-income units;
- Existing residents are allowed to occupy their units until six months before the start of construction activities;
- The developer agrees to provide relocation benefits to the occupants of those affordable residential rental units, and a right of first refusal for units available in the new housing development affordable to the household at an affordable rent.

As written, these demolition controls would not effectively protect the majority of low-income residents. While the bill would protect low-income residents paying affordable rents, over 80 percent of the state's low-income residents do not have affordable rents, in that they are paying over 30 percent of their income in rent. As such, the Committee may wish to consider amending the bill to ensure there is no net loss of units being rented to lower income households, independent of the rent being charged. The Committee may also wish to consider amending the bill to provide a "look back" period for low-income renters (such as contained in 2017's SB 35 (Wiener)), so as to dissuade landlords from displacing such tenants in anticipation of demolishing their building.

Additionally, the bill in general focuses on ensuring that there is no loss of production capacity within cities. Yet, regarding demolition, the bill only seeks to ensure there is no net loss of units for low-income residents. In keeping with the intent of the bill, the Committee was wish to consider an amendment that would require that any demolition result in no net loss of overall units.

#### *Enforcement of Building Standards for Housing:*

The bill amends the enforcement process for housing in affected cities and counties for building code violations that are not necessary to protect health and safety. It would enable cities and counties, upon request of the owner, to delay enforcement of non-critical violations by up to five years. This change would reduce cost burdens that are often passed through to low-income residents and result in eviction from non-standard housing. However, this provision also makes it much easier for landlords to substantially delay improvements that may not be defined as something that would protect health and safety, but could still greatly impact a resident's quality of life. This is particularly worrisome in those jurisdictions that may have a very narrow definition of "health and safety" focused on imminent risks rather than long-term ones. As such, the Committee may wish to recommend removal of the entire section regarding enforcement of buildings standards.

*Arguments in Support:* According to the California Chamber of Commerce, "Many cities and counties—while likely well intentioned—have exacerbated the housing shortage by creating barriers to new housing construction. We believe SB 330 takes meaningful steps to re-establish good government standards for permitting zoning compliant housing projects. This bill would streamline the development of more housing in California by amending local land use approval processes and the Permit Streamlining Act for certain defined local jurisdictions by requiring the timely processing of permits, preventing unreasonable delays in the approval of new housing projects, providing a more fairer playing field by preventing local governments from imposing new fees or exactions in excess of the amounts that would have been applicable at the time the initial application was submitted, and ensuring that residential housing applicants are consistent

with city general plans. Notably, the bill still preserves significant local authority to control its housing element, general plans, zoning and other local land use provisions.”

*Arguments in opposition:* According to the Aids Healthcare Foundation, “While we agree that many local governments have not done enough to meet the housing needs of low income Californians, we assert that bills like SB 330 are equally unlikely to positively affect productive housing development for the vast majority of our citizens and will result in a substantial detraction from existing efforts to create more affordable housing. SB 330 retroactively invalidates many local housing reforms, takes away the right of citizens to engage as robustly in public hearings as they can under current law, shields bad actor landlords from code enforcement, and is insufficiently responsive to the affordable housing crisis in our state.”

*Committee Amendments:* To address the issues raised above, the Committee may wish to consider the following amendments:

- Clarify, in Government Code (GC) Section 65589.5(o), that the rules being locked into place are limited to those that cover the entitlement and construction of the dwelling units;
- Specify, in GC 65905.5(b)(2) that a public hearing would also include those conducted by any designated hearing officer or body;
- Apply the definition of affected counties that applies for purposes of the permit streamlining requirements (GC Section 65913.3(a)) to the portion that affects the development standards (GC 66300(a));
- Remove, in GC Section 65913.3(b), the language enabling affected cities and counties to charge an in-lieu fee for compliance with a local affordable housing requirement;
- Change, in GC Section 65913.3(d), “prior to” to “in effect as of”;
- Include in the demolition protections (GC 65913.3(e)) provisions to:
  - Ensure that there is no net loss of units being rented to lower income households, independent of the rent being charged;
  - Create a “look back” period for low-income renters to dis-incentivize early displacement; and
  - Require that any demolition result in no net loss of overall units.
- Enable affected cities to decrease development capacity in specified instances to help preserve affordable housing (GC 66300(b)(1)(A)).
- Remove the section regarding enforcement of buildings standards (Health and Safety Code Section 17980.12).

*Related Legislation:*

SB 4 (McGuire, 2019): This bill creates a streamlined approval process for eligible projects within ½ mile of fixed rail or ferry terminals in cities of 50,000 residents or more in smaller counties and in all urban areas in counties with over a million residents. It also allows creates a streamlined approval process for duplexes and fourplexes, as specified, in residential areas on vacant, infill parcels. *This bill was help in the Senate Environmental Quality Committee.*

SB 50 (Wiener, 2019): requires a local government to grant an equitable communities incentive, which reduces specified local zoning standards in “jobs-rich” and “transit rich areas,” as defined, when a development proponent meets specified requirements. *This bill was held in the Senate Appropriations Committee.*

*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  
Bridge Housing Corporation  
Building Industry Association of the Bay Area  
California Apartment Association  
California Association of Realtors  
California Building Industry Association  
California Chamber of Commerce  
California Community Builders  
California-Hawaii State Conference of the NAACP  
California YIMBY  
Chan Zuckerberg Initiative  
East Bay for Everyone  
East Bay Leadership Council  
Eden Housing  
Emerald Fund  
Enterprise Community Partners  
Facebook  
Hamilton Families  
Local Government Commission  
Martin Luther King Jr. Freedom Center  
MidPen Housing Corporation  
Non-Profit Housing Association of Northern California  
North Bay Leadership Council  
Oakland Metropolitan Chamber of Commerce  
Orange County Business Council  
PICO California  
Related California  
The San Francisco Foundation  
San Francisco Housing Action Coalition  
Santa Cruz YIMBY  
Silicon Valley At Home  
Silicon Valley foundation  
SPUR  
Turner Center for Housing Innovation  
TMG Partners  
Urban Displacement Project, UC-Berkeley  
Working Partnerships USA

**Opposition**

AIDS Healthcare Foundation

Association of California Cities - Orange County  
Boyle Heights Community Partners  
Cities Association Of Santa Clara County  
City of Bellflower  
City of Beverly Hills  
City of Burbank  
City of Camarillo  
City of Cloverdale  
City of Clovis  
City of Cupertino  
City of Downey  
City of Garden Grove  
City of Glendale  
City of La Mirada  
City of Laguna Hills  
City of Los Alamitos  
City of Mountain View  
City of Novato  
City of Orinda  
City of Paramount  
City of Pasadena  
City of Rancho Cucamonga  
City of San Carlos  
City of San Dimas  
City of San Marcos  
City of Solana Beach  
City of Thousand Oaks  
City of Torrance  
City of Tulare  
City of Ventura  
City of Vista  
Coalition for Economic Survival  
Coalition for San Francisco Neighborhoods  
Coalition for Valley Neighborhoods  
Coalition to Preserve LA  
Cultural Action Network  
Dolores Heights Improvement Club  
East Mission Improvement Association  
Environmental Defense Center  
Grayburn Avenue Block Club  
Individuals Opposed to SB 330  
Jorge Castaneda  
Keep Sunnyvale Beautiful  
League of California Cities  
Livable California  
Los Angeles County Division, League of California Cities  
Marin County Council of Mayors and Council Members  
Paul Koretz, Councilmember, City of Los Angeles  
San Gabriel Valley Council of Governments

Save our Heritage Organization  
Solano County Board of Supervisors  
South Bay Cities Council of Governments  
Spaulding Square Neighborhood Association  
Sustainable TamAlmonte  
Town of Colma  
Ventura Council of Governments  
Individuals - 96

*Oppose Unless Amended*

California State Association of Counties  
City of Morgan Hill  
Urban Counties of California

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