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SB-1037 Planning and zoning: housing element: enforcement. (2023-2024)

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Senate Bill No. 1037

CHAPTER 293

An act to add Section 65009.1 to the Government Code, relating to housing.

[Approved by Governor September 19, 2024. Filed with Secretary of State September 19, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1037, Wiener. Planning and zoning: housing element: enforcement.

Existing law, the Planning and Zoning Law, requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. The Planning and Zoning Law requires the Department of Housing and Community Development (HCD) to determine whether the housing element is in substantial compliance with specified provisions of that law. The Planning and Zoning Law requires HCD to notify a city, county, or city and county, and authorizes HCD to notify the office of the Attorney General, that the city, county, or city and county is in violation of state law if the local government has taken action in violation of specified provisions of law. The Planning and Zoning Law also requires, among other things, that an application for a housing development be subject to a specified streamlined, ministerial approval process if the development satisfies certain objective planning standards. The Planning and Zoning Law requires a city or county to bring its general plan into substantial compliance with provisions regulating general plans and specifies timelines under which the city or county is required to bring its zoning ordinance into consistency if the court finds in favor of a plaintiff in an action challenging the validity of a general plan, or any mandatory element thereof, as specified.

This bill, in any action brought by the Attorney General or HCD to enforce the adoption of housing element revisions, as specified, or to enforce any state law that requires a city, county, or local agency to ministerially approve any planning or permitting application related to a housing development project, as specified, would subject the city, county, or local agency to specified remedies, including a civil penalty of, at minimum, \$10,000 per month, and not exceeding \$50,000 per month, for each violation, as specified. The bill would require that the penalties set forth in its provisions only apply when the local agency's acts or omissions, as described, are arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, or procedurally unfair. The bill would require a court to modify certain of its prior orders, including an order directing a city or county to substantially comply with provisions regulating general plans and to bring its zoning ordinance into consistency, to impose, among other things, the maximum penalty specified in these provisions, as provided. The bill would require these civil penalties, as specified, to be deposited into the Building Homes and Jobs Trust Fund for the sole purpose of supporting the development of affordable housing located in the affected jurisdiction, except as provided, and would require that expenditure of any penalty moneys deposited into the fund under these provisions be subject to appropriation by the Legislature. In the event a city, county, or local agency fails to pay civil penalties imposed by the court, the bill would authorize the court to require the Controller to intercept any available state and local funds and direct those funds to the Building Homes and Jobs Trust Fund to correct the jurisdiction's failure to pay, as specified.

The bill would make a related statement of legislative findings and declarations.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) California has a statewide housing shortage crisis.

(b) California's housing crisis stifles economic growth, contributes to the homelessness epidemic, consumes an ever-growing share of the paychecks of working families, and holds millions of households back from realizing the California dream of achieving housing security or home ownership. Conversely, new construction of residences, particularly multifamily homes, induces a chain of moves, ultimately adding more housing units affordable to middle- and low-income households.

(c) Restrictive zoning, land use planning, and burdensome residential permitting practices and policies, at the local level in particular, are a major cause of the shortfall between California's housing needs and the available supply of housing. For example, despite the obligations of local governments under the Housing Element Law to update their general plans, including required rezoning for additional sites to address projected housing needs, numerous cities and counties continue to delay and, at times even refuse, to undertake required actions to encourage, promote, and facilitate the development of housing to accommodate the established regional housing need. The absence of updated housing elements that are substantially compliant with state law causes unnecessary uncertainty and delay in approving housing development applications. This cumulative delay causes many local governments to continue to fall behind in meeting their share of regional housing need.

(d) These restrictive practices and policies continue to persist despite other statewide reforms to expedite, streamline, and ministerially approve the planning and construction of housing of all types, including housing affordable to persons and families of lower income. While not exhaustive, these reforms can be found in the following provisions:

(1) Accessory dwelling units, as described in Chapter 13 (commencing with Section 66310) of Division 1 of Title 7 of the Government Code.

(2) By-right housing, in which certain multifamily housing is designated a permitted use, as described in Section 65589.4 of the Government Code.

(3) Reduced time for action on affordable housing applications under the approval of the development permits process, as described in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code.

(4) Streamlining housing approvals during a housing shortage, as described in Section 65913.4 of the Government Code.

(5) Streamlining agricultural employee housing development approvals, as described in Section 17021.8 of the Health and Safety Code.

(6) The Housing Crisis Act of 2019, as described in Chapter 654 of the Statutes of 2019 (Senate Bill 330).

(7) Allowing four units to be built on single-family parcels statewide, as described in Chapter 162 of the Statutes of 2021 (Senate Bill 9).

(8) The Middle Class Housing Act of 2022, as described in Section 65852.24 of the Government Code.

(9) The Affordable Housing and High Road Jobs Act of 2022, as described in Chapter 4.1 (commencing with Section 65912.100) of Division 1 of Title 7 of the Government Code.

(10) Housing element law requirements and required rezoning to address unmet housing needs, as described in Chapter 974 of the Statutes of 2018 (Senate Bill 828) and Chapter 358 of the Statutes of 2021 (Assembly Bill 1398).

(11) Small infill starter home subdivisions, as described in Sections 65913.4.5 and 66499.41 of the Government Code.

SEC. 2. Section 65009.1 is added to the Government Code, to read:

65009.1. (a) In any action brought by the Attorney General or the Department of Housing and Community Development to enforce the adoption of housing element revisions pursuant to the schedule set forth in subdivision (e) of Section 65588, or to enforce any state law that requires a city, county, or local agency to ministerially approve, without discretionary review, any planning or permitting application related to a housing development project, the city, county, or local agency shall be subject to the following remedies:

(1) A civil penalty of, at minimum, ten thousand dollars (\$10,000) per month, and not exceeding fifty thousand dollars (\$50,000) per month, for each violation, accrued from the date of the violation until the date the violation is cured.

(2) (A) All costs of investigating and prosecuting this action, including expert fees, reasonable attorney's fees, and costs, whenever the Attorney General or the department prevails in a civil action to enforce any state laws under this section.

(B) Awards imposed pursuant to this paragraph shall be paid to the Public Rights Law Enforcement Special Fund established by Section 12530.

(3) (A) Other relief as the court deems appropriate, including equitable and injunctive relief, provisional or otherwise.

(B) Any injunction, provisional or otherwise, ordered by the court pursuant to this paragraph shall be deemed to be prohibitory, and not affirmative.

(b) The penalties set forth in this section shall only apply when the local agency's acts or omissions described in subdivision (a) are arbitrary, capricious, entirely lacking in evidentiary support, contrary to established public policy, unlawful, or procedurally unfair. The purpose of this section is to ensure adequate remedies are available to ensure that state laws mandating streamlined, ministerial approvals related to housing development projects, and the timely adoption of housing element revisions, are promptly and faithfully followed.

(c) (1) Any civil penalty levied pursuant to this section shall be deposited into the Building Homes and Jobs Trust Fund for the sole purpose of supporting the development of affordable housing located in the affected jurisdiction. Expenditure of any penalty moneys deposited into the Building Homes and Jobs Trust Fund pursuant to this subdivision shall be subject to appropriation by the Legislature.

(2) Any penalty imposed pursuant to this section shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, very low, low-, and moderate-income households.

(3) To the extent permitted under the California Constitution, in the event a city, county, or local agency fails to pay civil penalties imposed by the court, the court may require the Controller to intercept any available state and local funds and direct those funds to the Building Homes and Jobs Trust Fund to correct the jurisdiction's failure to pay.

(4) Notwithstanding paragraph (1), if the penalty moneys have not been expended five years after deposit, the penalty moneys may be used, upon appropriation, to finance newly constructed affordable housing units in the state without any geographic restrictions.

(d) (1) The liability, penalties, and remedies imposed by this section are in addition to any other liability, penalties, and remedies imposed by any other law.

(2) For actions brought under this section to enforce the adoption of housing element revisions pursuant to the schedule set forth in subdivision (e) of Section 65588, and where a city, county, or local agency, despite a court order, fails to meet the timelines specified in Section 65754, all of the following apply:

(A) Unless already imposed by the court, the court shall modify its prior order directing a city, county, or local agency to comply with Section 65754 to impose the maximum penalty of fifty thousand dollars (\$50,000) per month, as specified in paragraph (1) of subdivision (a) of this section, for each additional month until the city, county, or local agency has substantially complied with Section 65754.

(B) Unless already imposed by the court, the court shall also modify its prior order directing a city, county, or local agency, to comply with Section 65754 to impose all of the remedial provisions set forth in subdivision (a) of Section 65755, until the local agency has substantially complied with Section 65754.

(C) An order imposing remedial provisions set forth in subdivision (a) of Section 65755, including any order entered pursuant to subparagraph (B) of this paragraph, shall not suspend the city, county, or local agency's authority to issue any type of approval identified in paragraphs (1), (2), and (3) of subdivision (a) of Section 65755 that is necessary for new housing development projects that are subject to any of the following:

(i) Subdivision (c) of Section 65755.

(ii) Subdivision (d) of Section 65589.5.

(iii) Any other statutory provision that requires a city, county, or local agency to ministerially approve, without discretionary review, a housing development project.

(iv) Any other housing development project, as defined in paragraph (2) of subdivision (h) of Section 65589.5 where the applicant establishes that approval of the project will not significantly impair the ability of the city, county, or local agency to comply with Section 65754.

(e) (1) The remedies available to the Attorney General and the department pursuant to this section apply to all cities, including charter cities, and do not limit or affect the remedies available to any other party seeking to enforce the laws enumerated in subdivision (j) of Section 65585, including, but not limited to, the remedies in Article 14 (commencing with Section 65750) of Chapter 3, and attorneys' fees pursuant to Section 1021.5 of the Code of Civil Procedure.

(2) The remedies in Article 14 (commencing with Section 65750) of Chapter 3 apply to actions against all cities, including charter cities, to enforce the requirements of Section 65585 as a mandatory element of a general plan under Article 5 (commencing with Section 65300) of Chapter 3. This paragraph is declaratory of existing law.

SEC. 3. The Legislature finds and declares that the lack of housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, the Legislature clarifies that Section 2 of this act adding Section 65009.1 to the Government Code, consistent with actions or proceedings brought under Article 14 (commencing with Section 65750) of Chapter 3 of Division 1 of Title 7 of the Government Code, applies to all cities, including charter cities.