Housing Roundup: New Housing Bills Signed by Governor Newsom

AB 1561 –Extensions of Time for Housing Entitlements, Tribal Consultation

AB 1561 extends by 18 months the life of "housing entitlements" issued before and in effect on March 4, 2020, and that will expire before December 31, 2021. Qualifying housing entitlements that received an extension of time of at least 18 months from a local agency between March 4, 2020, and the effective date of AB 1561 (January 1, 2021), will not be eligible to receive an additional 18-month extension of time on top of what the local agency approved. A "housing entitlement" includes most approvals, permits or other entitlements issued by a local agency for housing development projects, including tentative tract maps and any approval subject to the Permit Streamlining Act, and ministerial approvals that are prerequisites for a building permit, except as otherwise stated in AB 1561. Exceptions include development agreements and preliminary applications.

AB 1561 also amends the Housing Element Law to authorize (but not require) the Housing Element's analysis of actual and potential constraints on the maintenance, improvement, or development of housing to also address constraints on housing for persons due to their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.

This new law also extends the time in the California Environmental Quality Act (CEQA) for California Native American Tribes to respond in writing to a lead agency's consultation request by an additional 30 days (for a total of 60 days). This extension of time is only for housing development projects with a project application completed between March 4, 2020, and December 31, 2021.

AB 168 & 831 –Changes to Streamlined Ministerial Multifamily Housing Approvals

AB 168 and AB 831 make changes to the law that allows developers of multi-family housing in urban areas to pursue a streamlined, ministerial process to obtain entitlements under certain circumstances.

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AB 168 requires that a development proponent submit a notice of intent to apply to a local government agency before pursuing a streamlined development. The parties are then required to engage in a consultation with any Native American tribe that is "traditionally and culturally affiliated with the geographic area [of the proposed development]." If no agreement is reached, then the development proponent cannot obtain streamlined approval. This new provision does not apply to projects that were previously approved before the bill was enacted.

AB 831 adds a mechanism for a development proponent to request a modification to a development that has been previously approved under the streamlined, ministerial process, but where a final building permit has not yet issued. Subject to certain limited exceptions, local governments must evaluate such requested modifications "for consistency with the objective planning standards using the same assumptions and analytical methodology that the local government originally used to assess consistency for the development that was approved from streamlined, ministerial approval" of the project to begin with. Local governments will have 60 days to make this determination, or 90 days if design review is required.

The new law further provides that local governments "may apply objective planning standards adopted after the development application was first submitted" under certain circumstances when considering a request for modification. These include instances where:

(A) "a development is revised such that the total number of residential units or total square footage of construction changes by 15% or more";

(B) "The development is revised such that the total number of residential units or total square footage of construction changes by 5% or more and it is necessary to subject the development to an objective standard beyond those ineffective when the development application was submitted in order to mitigate or avoid a specific, adverse impact . . . upon the public health and safety and there is no feasible alternative to satisfactorily mitigate or avoid the adverse impact"; and

(C) necessary to apply objective building standards in the California building code.

AB 725 – Regional Housing Needs & Multifamily Housing

Planning and Zoning laws require that cities and counties adopt a general plan that includes a housing element, including an inventory of land suitable for residential development, to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional

housing needs. The rules concerning the housing element vary depending on whether the city or county at issue is located in a metropolitan, nonmetropolitan, or suburban area.

In an effort to encourage multifamily and infill development, AB 725 requires would require that, in metropolitan areas, at least 25% of a metropolitan jurisdiction's share of the regional housing need for moderate residential development to be zoned such that parties are permitted to build more than four units of housing per acre on those sites but no more than 100 units per acre of housing and at least 25% of the jurisdiction's share of the regional housing need for above moderate-income housing. These requirements would not apply to an unincorporated area.

AB 725 also clarifies certain defined terms and makes changes to the jurisdictions that may qualify as a "suburban" jurisdiction.

AB 2553 – Homeless Shelter Crisis Declarations

Under existing law, all cities within Alameda, Orange, and Santa Clara counties, as well as the cities of Los Angeles and San Francisco and some other local jurisdictions were given authority, upon declaring a shelter crisis, to adopt by ordinance "reasonable local standards and procedures for the design, site development, and operation of homeless shelters and the structures and facilities therein." These local standards and procedures apply in lieu of state and local health, habitability, planning and zoning, or safety procedures and laws to the extent the public agency determined that strict compliance with these would hinder or delay attempts to mitigate the effects of the shelter crisis. AB 2553 expands this program to all cities and counties statewide.

AB 2553 also requires local agencies that declare a shelter crisis to create a public plan to address it, including the development of homeless shelters and permanent supportive housing, as well as onsite supportive services, and a plan to transition residents from homeless shelters to permanent housing. It provides a timeframe under which these plans need to be adopted. If the shelter crisis is declared within a jurisdiction before January 1, 2021, the public plan is due on or before July 1, 2021. If the shelter crisis is declared after January 1, 2021, the public plan is due on or before July 1 of the year after the shelter crisis is declared.

AB 2553 makes other changes to the shelter crisis declaration law, including expanding the definition of "homeless shelter" to include parking lots "owned or leased by a city, county, or city and county specifically identified as one allowed for safe parking by homeless and unstably housed individuals."

AB 2345 – Density Bonuses

AB 2345 makes several changes to the Density Bonus Law. This bill decreases the percentage of total units that must be for lower-income households to qualify for two or three incentives or concessions, and increases the density bonuses awarded to certain projects.

However, AB 2345 provides that any city or county that has adopted an ordinance or housing program that allows for density bonuses that exceed what is required by AB 2345 are not required to amend its ordinances or programs to comply with the changes to the density bonus law made by AB 2345 and are exempt from complying with the incentive and concession calculation amendments made by AB 2345.

AB 1851 – Parking for Religious Institution Affiliated Housing

AB 1851 prohibits local agencies from requiring the replacement of required parking spaces for a place of worship when those parking spaces are being eliminated as a part of a religious institution affiliated housing development project, provided that no more than 50% of the required parking spaces are proposed for elimination. A local agency must allow the remaining parking spaces for the place of worship to be counted toward the number of parking spaces required for the housing development project. A local agency may require up to one parking space per unit in the housing development project notwithstanding any other provision of AB 1851 unless the project is within one-half mile of public transit or there is a car share vehicle within one block.

The law prohibits a local agency from requiring that an existing parking deficiency be cured as a condition of approval of a religious institution affiliated housing development. AB 1851 also specifies that the parking reduction provided therein is not a “concession” for the purposes of the Density Bonus Law.