

---

## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

---

### AB 215 (Chiu) - Planning and Zoning Law: housing element: violations

**Version:** August 16, 2021

**Urgency:** No

**Hearing Date:** August 23, 2021

**Policy Vote:** HOUSING 5 - 2

**Mandate:** No

**Consultant:** Mark McKenzie

**Bill Summary:** AB 215 would provide the Department of Housing and Community Development (HCD) with additional enforcement authority for local agency violations of specified housing laws.

#### **Fiscal Impact:**

- HCD estimates costs of approximately \$96,000 annually for 0.3 PY of in-house attorney staff time to complete investigations of alleged violations of specified housing laws and refer cases to the Attorney General (AG). (General Fund)
- The AG estimates costs in the low tens of thousands annually related to an increase in workload to handle additional HCD referrals of alleged violations of specified housing laws. (General Fund, in the form of reimbursements from HCD)

**Background:** Existing law requires cities and counties to prepare a general plan comprised of seven mandatory elements, including a housing element that includes an identification of existing and projected housing needs. The housing element must identify an inventory of adequate sites zoned for housing at all income levels and to accommodate a jurisdiction's share of the Regional Housing Need Assessment (RHNA) over the planning period. If the city or county does not have enough sites within its existing inventory of residentially zoned land to accommodate its entire RHNA, it must adopt a program to rezone land within the first three years of the planning period. Existing law requires each jurisdiction's RHNA plan to further five statutory objectives, including Affirmatively Furthering Fair Housing (AFFH), which is defined as taking meaningful actions, in addition to combatting discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Housing elements must be updated every eight years in urban areas, and every five years in more rural areas. Every city and county must submit a report to HCD and the Governor's Office of Planning and Research annually on its implementation and progress towards meeting its RHNA amount and removing governmental obstacles to housing development.

Existing law authorizes HCD to adopt and revise guidelines for the preparation of a housing element. The planning agency of a city or county submits a draft housing element or an amendment to a housing element to HCD for review prior to adoption. HCD is required to review the housing element or amendment and make written findings as to whether or not the draft element or amendment substantially complies with state law (within 90 days for a housing element or within 60 days for an amendment). If HCD finds a housing element or amendment is not in substantial compliance, the local entity can either make revisions to bring it into compliance or

adopt it without any changes along with a resolution detailing why the local government believes that it is in compliance. Ultimately, the city or county submits its final housing element to HCD, and the department is required to review it and report its findings to the local planning agency within 90 days.

Existing law requires HCD to review city and county actions and failures to act that it determines to be inconsistent with an adopted housing element and associated requirements, including failures to implement any required program actions. Existing law also requires HCD to notify a city or county, and authorizes HCD to notify the Attorney General (AG), that the local entity is in violation of state law if it finds that the housing element or an amendment, or any specified action or inaction, does not substantially comply with housing element law, or that the local government has taken an action in violation of any of the following:

- The Housing Accountability Act, as specified.
- The “no-net-loss-in” zoning density law, as specified.
- The Density Bonus Law, as specified.
- Specified provisions prohibiting discrimination against affordable housing.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most housing projects that require discretionary review and approval are subject to California Environmental Quality Act (CEQA) review, while projects permitted ministerially are not. The following provisions have been enacted in recent years to provide for ministerial approvals of specified housing developments:

- SB 35 (Wiener), Chap. 366/2017, provided for a streamlined, ministerial process for approving infill multifamily affordable housing developments that are in compliance with the applicable objective local planning standards—including the general plan, zoning ordinances, and objective design review standards. SB 35 streamlining applies in local jurisdictions that have not met their RHNA targets.
- AB 2162 (Chiu), Chap. 753/2018, streamlined affordable housing projects that include supportive housing and onsite supportive services, as specified.
- AB 101 (Committee on Budget), Chap. 159/2019, required, until January 1, 2027, low-barrier and high quality navigation centers, as defined, to be a “use by right” in areas zoned for mixed uses and non-residential zones permitting multifamily uses if the development meets certain requirements.

Existing law, the Housing Crisis Act (SB 330), Skinner, Chap. 654/2019, enacted numerous temporary changes to housing laws until January 1, 2025 to facilitate housing construction, including the following:

- Prohibiting downsizing unless concurrently upzoning an equal amount elsewhere so that there is no net loss in residential capacity.
- Prohibiting a local agency from applying new rules or standards to a project after a preliminary application containing specified information is submitted.
- Requiring local agencies to exhaustively list all information needed to make a development application complete under the Permit Streamlining Act, limiting that list to only those items on the checklist for application required by state law, and prohibiting the local agency from requiring additional information, as specified.

- Establishing specified anti-displacement protections.

**Proposed Law:** AB 215 would provide HCD with enhanced enforcement authority for specified violations of housing law. Specifically, this bill would:

- Require HCD to notify a local agency, and authorize the department to notify the AG, if the local agency has taken an action in violation of any of the following, in addition to specified provisions in current law:
  - The Housing Crisis Act, as specified.
  - Affirmatively Furthering Fair Housing, as specified.
  - SB 35 (streamlined ministerial approval for specified housing projects).
  - AB 2162 (streamlining for permanent supportive housing).
  - AB 101 (streamlining for low-barrier navigation centers).
- Specify that the bill does not limit the AG's authority to bring a suit to enforce state law in an independent capacity.
- Authorize HCD to appoint or contract with other counsel if the AG declines to represent the department in specified actions related to the department's enforcement authority.
- Specify that existing statutes of limitation of three years apply to any action or proceeding brought by the AG or HCD.
- Clarify housing element review provisions by requiring HCD to report findings to a jurisdiction within 90 days of reviewing the first draft of a housing element (rather than 60 days), or within 60 days for each revision or subsequent draft amendment (rather than 90 days).

**Related Legislation:** AB 72 (Santiago), Chap. 370/2017 , required HCD to review local inconsistencies with housing elements and other housing inventory requirements, make determinations of substantial compliance with housing elements, and notify a city or county if a housing element is out of compliance or if it is in violation of other specified housing laws. The bill also authorized HCD to refer specified housing law violations to the AG.

-- END --