

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 821 (Grayson)
Version: June 22, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
ID

SUBJECT

Planning and zoning: general plan: zoning ordinance: conflicts

DIGEST

Requires local agencies that have zoning ordinances that are inconsistent with their general plan, and that receive a development application, to apply the objective development standards in the general plan or to rezone within 180 days to create consistency between the zoning ordinance and general plan, and allows for residents or property owners to sue the jurisdiction to enforce the bill's provisions.

EXECUTIVE SUMMARY

Current law under the Government Code requires cities' and counties' general plans and their local zoning ordinances to be consistent. If the plan and a zoning ordinance is inconsistent, and the inconsistency is due to an amendment or enactment of a zoning ordinance, any resident or property owner can sue the local planning agency to require it to amend its general plan and zoning ordinances to make them consistent. However, if the inconsistency is a result of an amendment to the general plan, current law simply requires that the city or county amend the inconsistent zoning ordinance within a reasonable time. AB 821 amends these provisions of the Government Code to require that, if the inconsistency is the result of an amendment to a city or county's general plan, and the planning agency receives a development application consistent with the general plan, the planning agency must amend the zoning ordinance within 180 days to make it conform to the development project and general plan, or process the development application according to law. AB 821 allows that a resident or property owner may sue to enforce compliance with these provisions of the law as long as the resident or property owner provides notice to the city or county within 90 days of a variety of occurrences.

AB 821 is sponsored by San Francisco Bay Area Planning and Urban Research Association (SPUR), and is supported by the California Apartment Association,

California Housing Consortium, California YIMBY, and a number of other organizations, local government leaders, and companies. It is opposed by the City of San Marcos and Pleasanton. This bill passed out of the Senate Governance and Finance Committee on a vote of 7 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires each city and county to prepare, adopt, and administer a general plan for their jurisdiction, which must include a housing element, to shape the future growth of its community. (Gov. Code §§ 65300 – 65404).
- 2) Enables the legislative body of any county or city to adopt zoning ordinances that regulate the use of land and the size, shape, location, and intensity of any buildings and structures on that land. (Gov. Code § 65850.)
- 3) Specifies the following regarding the consistency of a local government’s general plan and zoning ordinance:
 - a) requires that both be consistent as of January 1, 1974;
 - b) specifies that a zoning ordinance is consistent with a city or county general plan only if both of the following conditions are met:
 - i. the city or county has officially adopted such a plan; and
 - ii. the various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.
 - c) provides that, in the event that a zoning ordinance becomes inconsistent with a general plan because of an amendment to the plan, or to any element of the plan, the local government must amend the zoning ordinance within a reasonable time so that it is consistent with the general plan as amended;
 - d) allows any resident or property owner within a city or a county to bring an action or proceeding in the superior court to enforce the requirement that zoning ordinances are consistent with the general plan, as long as such an action or proceeding occurs within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance. (Gov. Code § 65860.)

This bill:

- 1) Provides that, if a zoning ordinance becomes inconsistent with the general plan due to an amendment to the general plan or to any element of the general plan, and a local agency receives a development application that is consistent with the general plan but is inconsistent with the zoning ordinance, the local agency must either:

- a) process the development application and apply the objective general plan standards, but not inconsistent zoning standards, to the proposed development project, as specified; or
 - b) amend the zoning ordinance to make it consistent with the general plan within 90 days. If a local agency fails to amend its zoning ordinance within 90 days, then the local agency must process the development application pursuant to a).
- 2) Specifies that, a development application will not be deemed inconsistent with any zoning ordinance and shall not be required to be rezoned, if there is substantial evidence that would allow a reasonable person to conclude that the proposed agreement is consistent with objective general plan standards.
- 3) Allows a resident or property owner within a city or county to bring a suit against the jurisdiction for failure to comply with statute, if the suit is filed within 90 days of any of the following:
- a) the enactment of any new zoning ordinance;
 - b) the amendment to any existing zoning ordinance;
 - c) the failure of a local agency to comply with the statute.
- 4) Finds and declares that lowering costs by preventing delays in the development process is a matter of statewide concern and is not a municipal affair and therefore applies to all cities, including charter cities.

COMMENTS

1. Author's statement

According to the author:

California is in a severe housing crisis. Several actions have been taken to remove barriers that slow down the production of housing in California. One barrier that has not yet been addressed for mixed-use developments are instances where local governments must amend a zoning ordinance to be in compliance with a general plan. Under existing law, a local government must amend its zoning ordinance 'within a reasonable time,' but that time is undefined. This could result in allowing local governments to take many months or years to complete a required rezoning. AB 821 would help provide a clearer definition to what constitutes a "reasonable time". Under the bill, if an application is submitted for a development that is consistent with a general plan but not a local jurisdiction's zoning ordinances, the local jurisdiction would either need to amend the zoning ordinances to make them consistent with the general plan in order to accommodate the specific development within 180 days, or allow the development to move forward. AB 821 will help prevent costly delays, and facilitate the much needed housing that California needs.

2. General Plans

State law requires each city and county to develop and adopt a comprehensive, long-term general plan for the physical development of the county or city and any lands outside that bear relation to the city or county's planning. (Gov. Code § 65300.) This plan must include a statement of development policies and a description of the objectives, principles, standards, and plan proposals. (Gov. Code § 65302.) It must also include certain elements, including transportation, housing, conservation, open-space, noise, safety, environmental justice, and land use elements. For the housing element of the general plan, the law specifies a variety of components that must be included, such as a statement of the community's goals, objectives, and policies for furthering fair housing and the maintenance, preservation, improvement, and development of housing. (Gov. Code § 65583.)

The planning agency can include additional elements to the plan, and the general plan may address each element to the extent to which that element exists in the planning area. How a city can adopt or amend a city or county's general plan is likewise described by statute. The statute requires that the planning body drafting the general plan share it with numerous stakeholders, and consult a variety of groups and related planning documents (like a groundwater sustainability plan). (Gov. Code § 65350.5.) The housing element of a city or county's general plan must be revised every four years, but otherwise state law does not specify exactly how regularly cities or counties must revise their general plans. (Gov. Code § 65588(e)(4)(A).)

Despite these rather specific enumeration of elements and subparts to each element, the statute also provides planning agencies with great latitude. It states that the general plan "shall address each of the elements ... to the extent that the subject of the element exists in the planning area. The degree of specificity and level of detail of the discussion of each element shall reflect local conditions and circumstances." (Gov. Code § 65301(c).)

3. Local zoning ordinances

The California Constitution provides cities and counties with broad powers to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const. Art. XI, Sec. 7.) This provision, commonly called the police power, gives cities and counties broad authority to regulate behavior to preserve the health, safety, and welfare of the public.

Cities and counties use this police power to enact zoning ordinances to restrict the use or development of specific areas or blocks within their jurisdiction. Such ordinances can set maximum building heights, mandate density requirements for housing units, or proscribe the appropriate or designated uses for particular zones or blocks.

4. Sometimes General Plans and Zoning Ordinances conflict

Sometimes the zoning ordinances in a city or on certain areas of the city may conflict with the city's general plan. For example, the general plan may state that a high-density residential building be built, but a local zoning ordinance for a lot eligible for a high-density residential building is subject to an ordinance limiting its density or residential use. State law requires a county or city's zoning ordinances to be consistent with the general plan of the city or county. (Gov. Code § 65860.) A zoning ordinance is not consistent with a general plan if the land uses authorized by it are not compatible with the objectives, policies, general land uses, and programs in their general plan.

If a zoning ordinance becomes inconsistent with a general plan because the city or county amends the zoning ordinance, the law allows any resident or property owner within a city or county to bring an action to enforce compliance with the law, as long as the resident or property owner files their suit within 90 days of the zoning ordinance being enacted or amended. (Gov. Code § 65860(b).)

However, if the zoning ordinance and general plan becomes inconsistent by reason of an amendment to the general plan, the city or county is required to amend the zoning ordinance within a reasonable time. (Gov. Code § 65860(c).)

5. AB 821 creates strict processes for dealing with conflicts between the General Plan and a Zoning Ordinance

The proponents of AB 821 assert that this provision, while requiring that general plans and zoning ordinances be consistent, does not provide much of a remedy. They claim that is because "within a reasonable time" is not specific enough to place much of a requirement on cities or counties at all, allowing them to drag on the process of amending their zoning ordinances to align with a new general plan, and in the meantime, deny the development of housing that is otherwise consistent with the general plan.

To resolve this issue, AB 821 adds provisions to the Government Code stating that, if the inconsistency develops because of an amendment to the general plan, and a development application is submitted to the city that is consistent with the general plan, the local planning agency has two choices: it can amend the inconsistent zoning ordinance within 180 days from receipt of the development application so that the ordinance is consistent with the development and general plan, or it can simply process the development application and apply the general plan over the inconsistent zoning ordinance. For option two, a proposed development will not be deemed inconsistent with the zoning ordinance and required to be rezoned if there is "substantial evidence" that would allow a reasonable person to conclude that the proposed development is consistent with the objective general plan standards.

If the planning agency does not amend the inconsistent zoning ordinance within 180 days from the receipt of the development application, AB 821 requires that the planning agency process the development application under option two.

AB 821 also amends the process for suing a city or county when the inconsistency occurs due to an amendment to or enactment of the zoning ordinance. AB 821 allows for the lawsuit to be filed within 90 days of any occurrence: the enactment of any new zoning ordinance, the amendment of any existing zoning ordinance, or the failure of the local planning agency to comply with the requirements of that section.

By so doing, AB 821 allows for a concrete timeline to come into force for a city or county to amend their inconsistent zoning ordinance, and prohibits cities and counties from blocking a development application otherwise consistent with the city or county's general plan. While the "within a reasonable time" standard will still exist for a city or county to amend a zoning ordinance made inconsistent through amendment of the general plan, AB 821 clarifies that, when a development application is submitted to the city or county, it must promptly act, despite the inconsistency or the city's failure to fix it. By amending the 90 day timeline limitation on suits to enforce the provisions of the statute, AB 821 would allow for suits whenever a city or its planning agency fails to make its general plan and zoning ordinances consistent or process a development application inconsistent with the zoning ordinance.

6. Arguments in support

According to the Home Building Alliance Coalition, who support the bill:

Existing law requires local governments to have local zoning ordinances consistent with their general plan, however many local governments have failed to modify their ordinances to create consistency. This conflict creates uncertainty for developers and housing project approvals. AB 821 will require a local agency that receives a development application that is consistent with the general plan to either amend the zoning ordinance within 90 days to resolve the conflict, or process the development application, as provided.

Our organizations are committed to supporting legislation that will rapidly and predictably increase housing production in our state and address our affordability and availability crisis. AB 821 will provide greater assurance for developers, reduce the need for litigation and judicial review, and facilitate desperately needed housing development.

SUPPORT

Home Building Alliance Coalition (sponsor)
San Francisco Bay Area Planning and Urban Research Association

Habitat for Humanity California
San Hill Property Company
Fieldstead and Company
CivicWell
Council of Infill Builders
California Housing Consortium
California Building Industry Association
YIMBY Action
California YIMBY
Meta
Eden Housing
California Apartment Association
Zach Hilton, Gilroy City Council Member

OPPOSITION

City of San Marcos
City of Pleasanton

RELATED LEGISLATION

Pending Legislation:

AB 1409 (Lowenthal, 2023) makes non-substantive changes to section 65860 of the Government Code relating to the requirement that a city or county's zoning ordinances and general plan be consistent. The bill was never referred to a committee.

AB 1176 (Zbur, 2023) adds a requirement to the general plan that cities and counties are required by law to develop, adopt, or incorporate a plan to identify opportunities to expand the city or county's electric vehicle charging. The bill is pending before the Senate Governance and Finance Committee.

SB 576 (Nguyen, 2023) requires a city or county, when reviewing its general plan, to modify it to prohibit high-density housing within five miles of a military installation or other site sensitive to the national security. The bill was held in the Assembly Governance and Finance Committee.

Prior Legislation:

SB 330 (Skinner, Ch. 654, Stats. 2019) – Established the Housing Crisis Act of 2019, which among other things, required housing developments to be subject only to the ordinances, policies, and standards adopted and in effect when it applied.

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SB 1333 (Wieckowski, Ch. 856, Stats. 2018) – Applied several laws related to planning and zoning to charter cities.

PRIOR VOTES:

Senate Governance and Finance Committee (Ayes 7, Noes 0)

Assembly Floor (Ayes 79, Noes 1)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Housing and Community Development Committee (Ayes 7, Noes 0)

Assembly Local Government Committee (Ayes 7, Noes 1)
