POLICY UPDATE – AUGUST 2020

August 5, 2020

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Greetings IES Board Members,

I hope this this month’s Policy Update email finds you all safe and well. While this information is subject to change, I wanted to share the latest legislative news with all of you.

FROM THE APA-CA LEGISLATIVE UPDATE
The Legislature returned in person to resume legislative work on July 27 after an unplanned extended Summer Recess. While the Legislature had originally intended to return on July 13, a two-week delay was deemed necessary after a number of legislators and staff tested positive for COVID-19. Members are back and again accompanied by very limited staff and are only allowing limited public participation for hearings in the Capitol. Most public participation since their initial return in May has been conducted remotely and/or by providing comments and letters to staff in advance of hearings. While legislative deadlines were already moved to allow more flexibility to pass bills before the end of session, members in both houses are yet again being advised to further limit the number of bills they continue to move. Currently there are still over 500 bills that are awaiting final action, and members have been asked to table many of those bills that don’t deal directly with the impacts of COVID-19 and other pressing issues that cannot wait until 2021.

Housing, homelessness, and wildfire mitigation remain a priority, though the number of proposals has been trimmed down and consolidated. The Senate and Assembly are both moving several housing bills that are intended to accelerate the review and approval of development projects. This year’s “Housing Package” includes AB’s 1279, 2323, 2345, 2405, 3040, 3107, and 3269 from the Assembly. From the Senate, SB’s 899, 902, 995, 1085, 1120, 1138, and 1385 are also moving. APA is also supporting housing funding in a new $25 billion Economic Recovery Fund plan just announced. APA, after working with the authors, sponsors, and committee staff since March, has been able to move to support or support if amended on many of the bills still moving and is continuing to work closely on amendments to the remaining bills to address final concerns.

Please see the attached APA California Legislative Update for additional information on specific legislation and APACA positions.
SB-281 HOUSING DEVELOPMENT: PERMITS AND OTHER ENTITLEMENTS: EXTENSION

With the Legislature now back in session, activity on SB-281 has been brisk. There have been a number of revisions to the Bill that have a direct effect on previously permitted housing projects, subdivisions, and other entitlements. It appears that as of this date, the Bill has passed out of the Senate and is being reviewed by the Assembly Local Government Committee. Please see the attached draft of the Revised Bill for more information.

I hope everyone is staying safe and healthy during these challenging times. I will continue to keep you posted on legislative activities.

Respectfully Submitted,

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End of Session Consolidation – Many Housing, Homelessness and Wildfire Bills Still on the Table

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APA California continues to work with legislative and administrative staff through conference calls, providing direct feedback and written comments on proposed legislation as well as COVID-19 impacts on planning processes and services. Included on that list is AB 1850 to address issues faced by planners, planning consultants, and public agencies in complying with AB 5, which restricts the ability to maintain an independent contractor status rather than an employee status in California. While there are still a number of bills pending their respective final policy committee hearing and floor votes, legislative leadership has not yet made clear which bills will continue to move. Though deadlines for bills have been moved, the end of the two-year session, which is August 31, is a constitutional requirement that cannot be changed without a constitutional amendment. Should the Legislature determine it is necessary, they can also work with the Governor to call a Special Session in the winter, which would allow for new bills to be introduced and moved on an urgency basis and under a truncated schedule.

Below is a list of high priority bills still moving that APA California has been lobbying and the position on and status of each. Position letters on these high priority bills are posted on the APA California website and as always, please visit www.apacalifornia.com to find APA California’s hot bill list with up-to-date information on all active legislation APA California is tracking.
**AB 5 Reform:**

**AB 1850 – Gonzalez – Clean up vehicle for AB 5 – Independent Contractors vs Employees**  
Position: APA California has submitted recommendations to the author’s office to amend independent contractor requirements related to planners and public agencies to allow planners to continue to contract to provide non-employee planning services. APA California has also asked to clarify the business-to-business exemptions for those planners and planning firms who contract with other planning firms and/or individuals.  
Status: Senate Labor Committee

**Density Bonus and Development Incentives:**

**AB 2345 – Gonzalez – Adds other layers of density, incentives, waivers and concessions for moderate-income and other density bonus projects**  
Position: Oppose Unless Amended  
Status: Senate Housing Committee

**SB 1085 – Skinner – Increases density bonus benefits for moderate-income for sale and student housing projects**  
Position: Support as Amended  
Status: Assembly Appropriations Committee

**Housing Elements/RHNA Reform/Homelessness:**

**AB 725 – Wicks – Requires at least 25 percent of RHNA for moderate-income housing and above be allocated to sites with zoning that allows at least two units of housing in larger metropolitan jurisdictions**  
Position: Reviewing Amendments  
Status: Senate Housing Committee

**AB 3040 – Chiu – Provides incentives to upzone single family sites for 4plexes and allows up to 25% of those developed sites to be counted under RHNA**  
Position: Support  
Status: Senate Housing Committee

**AB 3269 – Chiu – Requires jurisdictions to adopt a plan to reduce homelessness**  
Position: Neutral as amended  
Status: Senate Housing Committee

**SB 1138 – Wiener – Adds requirements to sites identified in the Housing Element to accommodate emergency shelters**  
Position: Support if Amended  
Status: Assembly Appropriations Committee

**Housing Assistance:**

**AB 1436 – Chiu – Provides COVID-19 rental assistance**  
Position: Support as Amended  
Status: Senate Judiciary Committee

**SB 1410 – Caballero and Bradford – Provides COVID-19 rental assistance**  
Position: Support as Amended (Previously set up a state appeals board to challenge local housing decisions)  
Status: Assembly Judiciary Committee
Streamlining / Project Review:

AB 1851 – Wicks – Restricts faith-based organization housing parking requirements  
Position: Watch  
Status: Senate Appropriations Committee

AB 3107 – Bloom – Allows projects with at least 20% affordable housing to be allowed on commercial sites  
Position: Support if Amended  
Status: Senate Housing Committee

SB 899 – Wiener – Allows by right approval for nonprofit hospital and religious institution housing  
Position: Watch  
Status: Assembly Appropriations Committee

SB 902 – Wiener – Allows local governments to pass ordinance to zone any parcel up to 10 units of residential density per parcel, at a height specified by the local government, for parcels located in a transit-rich and jobs rich areas or urban infill site, and exempts the ordinance from CEQA  
Position: Support as Amended  
Status: Assembly Local Government Committee

SB 1120 – Atkins – Allows duplexes in single family zones and streamlines lot splits  
Position: Support  
Status: Assembly Local Government Committee

SB 1385 – Caballero – Allows housing in retail and office zones  
Position: Support if Amended  
Status: Assembly Local Government Committee

Wildfire Mitigation and Planning:

AB 3164 – Friedman – Requires CalFire to develop a wildland-urban interface wildfire risk model to determine the risk for a community or parcel in specified wildfire hazard zones  
Position: Support  
Status: Senate Natural Resources Committee

SB 182 – Jackson – Requires new requirements for development approvals in VHFHSZ and updates to the safety element *Two-Year bill from 2019*  
Position: Support  
Status: Assembly Floor

SB 1199 – McGuire— Creates the Commission on Home Hardening to develop a three-tiered certification system of fire prevention levels for structures in a Wildland-Urban Interface  
Position: Support  
Status: Assembly Governmental Organization Committee

CEQA:

AB 609 – Levine – Requires electronic noticing requirements for certain CEQA documents  
Position: Support if Amended  
Status: Senate Environmental Quality Committee
AB 2323 – Friedman – Cleans up current CEQA exemptions for housing development
Position: Support
Status: Senate Environmental Quality Committee

AB 3279 – Friedman – Provides streamlining in CEQA litigation and deletes obsolete and duplicative provisions from CEQA
Position: Support
Status: Senate Environmental Quality Committee

SB 288 – Wiener – Provides a statutory CEQA exemption for bus rapid transit and regional rail services projects
Position: Support
Status: Assembly Natural Resources Committee

SB 55 – Jackson – Gut and amend that takes makes various changes proposed in SB 950 that did not move forward this year. The proposal has been scaled back but still proposes, among other things, to exempt from the requirements of CEQA emergency shelters or supportive housing projects meeting certain requirements. The bill also makes a number of changes related to the preparation of the administrative record, codifies tolling agreements, provides longer timeframes for public review and comment of EIRs and repeals various other obsolete provisions from CEQA.
Position: Review
Status: Assembly Rules Committee

SB 995 – Atkins – Extends the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 until 2025, allows smaller housing projects to qualify, requires a lead agency to prepare a master EIR for a general plan, plan amendment, plan element, or specified plan for housing projects where the state has provided funding for the preparation of the master EIR
Position: Support if Amended
Status: Assembly Natural Resources Committee

Other Planning Related Topics:

AB 2421 – Quirk – Streamlines permitting for backup generators for cell towers
Position: Neutral as Amended
Status: Senate Appropriations Committee

The Planning and Zoning Law requires each county and each city to adopt a comprehensive, long-term general plan for its physical development, and the development of specified land outside its boundaries, that includes, among other mandatory elements, a housing element. Existing law, the Permit Streamlining Act, among other things, requires a public agency that is the lead agency for a development project to approve or disapprove that project within specified time periods.

This bill would extend by 18 months the period for the expiration, effectuation, or utilization of a housing entitlement, as defined, that was issued before, and was in effect on, March 4, 2020, and that will expire before December 31, 2021, except as specified. The bill would toll this 18-month extension during any time that the housing entitlement is
the subject of a legal challenge. The bill would also provide that if the state or a local agency extends, on or after March 4, 2020, but before the effective date of the bill, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 24 months and pursuant to the same conditions provided by this bill, that housing entitlement shall not be extended an additional 24 months pursuant to this bill.

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.

By adding to the duties of local officials with respect to housing entitlements, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 65914.5 is added to the Government Code, to read:

65914.5. (a) The Legislature finds and declares all each of the following:

(1) On January 30, 2020, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern, and, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency.

(2) On March 4, 2020, California Governor Gavin Newsom proclaimed a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19.

(3) According to the United States Bureau of Labor Statistics, the United States economy, as measured by gross domestic product, contracted by 4.8 percent in the first quarter of 2020.

(4) Last month, California’s unemployment rate tripled, the largest increase since 1976.

(5) It is estimated that California lost 2,000,000 jobs by March 27, 2020.

(6) In the past month, 3,100,000 Californians filed for unemployment benefits, and California became the first state in the nation to borrow money from the federal government to continue paying out rising claims for unemployment benefits.

(7) The Governor has labeled California’s economic crisis a “pandemic-induced recession.”

(8) Even before the pandemic-induced recession, California was in the midst of a housing affordability crisis caused fundamentally by a consistent failure to supply enough new housing for Californians of all income levels.

(9) According to the League of California Cities, over 90 percent of cities in this state report they are considering cutting or furloughing city staff or decreasing public services, and 72 percent of cities report they may take both actions. In addition, over 70 percent of cities, and 90 percent of the largest cities, report that they expect a significant impact to "core" planning and housing services.

(10) The pandemic-induced recession, combined with mandatory social distancing, stringent construction protocols, and anticipated reductions in the capacity of local governments to deliver services to the housing industry, will drastically impact all segments of a complex ecosystem that delivers the essential housing California so desperately needs to combat the ongoing housing crisis.

(11) To facilitate and expedite the return of this vital industry, it is necessary to relieve any additional pressure on housing development as a result of the lapse in planning, finance, and construction due to the pandemic-induced recession. An essential component of ensuring the survival of the housing industry is proactively extending the life of the myriad state and local approvals, permits, and other entitlements required to develop and construct housing in California.

(12) A uniform statewide entitlement extension measure is necessary to avoid the significant statewide cost and allocation of local government staff resources associated with addressing individual permit extensions on a case-by-case basis.
(b) Except as provided in subdivision (c), notwithstanding any law, including any inconsistent provision of a local agency’s general plan, ordinances, or regulations, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement that is within the scope of the timeframes specified in paragraphs (1) and (2) is extended by 18 months. For the purposes of this section, housing entitlements that are extended are entitlements where both of the following apply:

(1) It was issued prior to and was in effect on March 4, 2020; and

(2) It will expire prior to December 31, 2021.

The otherwise applicable time for the utilization of a housing entitlement provided by this section includes any requirement to request the issuance of a building permit within a specified period of time.

(c) If the state or a local agency extends, on or after March 4, 2020, but before the effective date of the act adding this section, the otherwise applicable time for the expiration, effectuation, or utilization of a housing entitlement for not less than 18 months and pursuant to the same conditions provided in subdivision (b), that housing entitlement shall not be extended for an additional 18 months by operation of subdivision (b).

(d) For purposes of this section, the following terms have the following meanings:

(1) “Housing entitlement” means:

(A) A legislative, adjudicative, administrative, or any other kind of approval, permit, or other entitlement necessary for, or pertaining to, a housing development project issued by a state agency.

(B) An approval, permit, or other entitlement issued by a local agency for a housing development project that is subject to Chapter 4.5 (commencing with Section 65920).

(C) A ministerial approval, permit, or entitlement by a local agency required as a prerequisite to issuance of a building permit for a housing development project.

(D) A requirement to submit an application for a building permit within a specified period of time after the effective date of a housing entitlement described in subparagraph (B) or (C).

(E) A vested right associated with an approval, permit, or other entitlement described in subparagraphs (A) to (D), inclusive.

(2) For the purposes of this section, a housing entitlement does not include any of the following:

(A) A development agreement issued pursuant to Article 2.5 (commencing with Section 65864).

(B) An approved or conditionally approved tentative map that is extended for a minimum of 18 months pursuant to Section 66452.6 on or after March 4, 2020.

(C) A preliminary application as defined in Section 65941.1.

(3) “Housing development project” means a residential development or mixed-use development in which at least two-thirds of the square footage of the development is designated for residential use. Both of the following apply for the purposes of calculating the square footage usage of a development for purposes of this section:

(A) The square footage of a development shall include any additional density, floor area, and units, and any other concession, incentive, or waiver of development standards pursuant to Section 65915.

(B) The square footage of a development shall not include any underground space, including, but not limited to, a basement or underground parking garage.

(4) “Local agency” means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(e) The extension granted pursuant to subdivision (b) shall be tolled during any time that the housing entitlement is the subject of a legal challenge.

(f) Nothing in this section is intended to preclude a local government from exercising its existing authority to provide an extension to an entitlement identified in this section.

(g) The Legislature finds and declares that, for the reasons described in subdivision (a), this section addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.
SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

REVISIONS:
Heading—Lines 2 and 3.