MEMO TO: MEMBERS OF THE ASSEMBLY HOUSING COMMITTEE

FROM: THE AMERICAN PLANNING ASSOCIATION, CALIFORNIA CHAPTER
CALIFORNIA STATE ASSOCIATION OF COUNTIES
URBAN COUNTIES OF CALIFORNIA

DATE: JUNE 26, 2019

SUBJECT: **SB 592 (Wiener) – Notice of Oppose Unless Amended**
Substantial Changes to the Housing Accountability Act
In Assembly Housing Committee Wednesday, July 3rd

The American Planning Association, California Chapter, California State Association of Counties, and Urban Counties of California has reviewed recent amendments to SB 592 and has respectfully taken an oppose unless amended position on the bill. SB 592 would make extensive changes to the Housing Accountability Act (HAA).

Our organizations support clarifying that ADU's should be included under the HAA to encourage additional affordable units. We also do not object to clarifying that the HAA remedies apply to SB 35, although we do not believe this is a needed fix. SB 35 approvals, like all ministerial projects, are required to be approved if they meet pre-defined standards, and failure to do so is an abuse of discretion that entitles an applicant to seek a writ of mandate in court. However, if the author wants HAA remedies to apply, that could be accomplished by adding those HAA remedies to SB 35 rather than trying to jam all ministerial approvals into the HAA. This could easily be implemented by adapting paragraphs (k) through (n) from the HAA statute to the SB 35 statute, with modifications to the internal references to correspond with applications subject to SB 35 that are improperly denied or by specifying that SB 35 projects are housing development projects under the HAA, as is proposed by AB 1485.

There are however a number of major policy changes that the bill proposes that impose extremely onerous requirements that outweigh whatever intended remedy the changes are designed to address. These policy changes include the following:

1. Page 10 and 11, S. 65589.5 (h)(2)(B) and (C):
(B) A "housing development project" may solely be, or may include, a single unit, including an accessory dwelling unit as defined in Section 65852.2.
(C) A "housing development project" may solely be, or may include, the addition of one or more bedrooms to an existing residential unit.

These additions would extend the HAA to cover projects as small as bedroom additions and prevent any conditions of approval that may reduce the size of kitchens or bedrooms in individual projects. The goal appears to be to protect a developer's ability to maximize square footage of stand-alone, single family homes, resulting in large mansions and thwarting efforts to modify large single homes on single lots – movement away from goals of recent bills to encourage greater density and increase affordability in single family zones. We do not object to applying the HAA to ADUs, but the other changes restrict review of bedroom additions and single-family homes without solving any identified problem.

2. Page 11, S. 65589.5 (h)(5)(B)
(B) Fails to comply with the time periods specified in subdivision (a) of Section *65950 or, in the case of a ministerial project, the time period specified in the applicable law authorizing that ministerial project.* An extension of time

pursuant to Article 5 (commencing with Section 65950) *or the time period specified in the applicable law authorizing that ministerial project* shall be deemed *or determined* to be an extension of time pursuant to this paragraph.
This change extends the HAA to all ministerial permits. This would create an impossible administrative burden on cities and counties, especially when combined with the change in subdivision (o) that deems all ministerial applications complete at the time of submittal: communities would need to prepare detailed analyses of every building permit, grading permit, and encroachment permit and other ministerial permits within 30 days, and if a code violation were missed, the project would be "deemed consistent" despite any health or code violations. Should the state support "deemed consistent" if it means a violation of the building or fire code? Very complicated building plans cannot be reviewed realistically in 30 days. No community has enough staff to comply with this new requirement.

3. Page 12, S. 65589.5 (6)(A) and (B):
(6) "Conditions that have the same effect or impact on the ability of the housing development project to provide housing" shall include, but are not limited to, each of the following:
(A) Reduction in the number of bedrooms or other normal residential features, such as a living room or kitchen.
(B) The substantial impairment of the housing development project's economic viability.
The language in (6)(B) is not workable and will lead to litigation about what conditions do/do not substantially impair economic viability. There is no standard for determining "economic viability". If the goal is more penalties when cities or counties miss SB 35 ministerial approvals, then that issue should be specifically addressed as noted above.

4. Page 12, S. 65589.5 (j)(1)(B):
(B) For purposes of this section, a general plan, zoning, or subdivision standard or criterion is not "applicable" if its applicability to a housing development project is discretionary or if the project could be approved without the standard or criterion being met.
This language is being added to subsection (j), which means it applies to all housing development, market rate and affordable. What does it mean that a project could be approved without the standard having been met? The language would appear to prevent approval of projects with conditions of approval based on long standing, written development standards, since any developer could request a general plan amendment, zoning amendment, or variance in order not to meet a standard. The proposed language would effectively eliminate the ability of local agencies to apply any planning standard.

5. Page 13, S. 65589.5 (j)(2)(B):
(B) If an applicant elects to revise the application in response to any comments, and the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, the local agency shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity within 30 days of the date that the revisions are submitted.
This requires cities to re-do their initial consistency analysis every time a developer submits a change in their application "in response to any comments." Comments from whom? "Any comments" is very broad. Requiring a re-do of the analysis multiple times for a project will be a huge burden. At most, there should be a fixed amount of time before a decision is made where the developer is given notice of inconsistencies due to changes, which could allow changes to accumulate over time and only require one response from the agency.

6. Page 15, S. 65589.5 (K)(1)(A):
A plaintiff or petitioner who is the project applicant may seek compensatory damages for a violation of this section.
This new requirement would allow any applicant to be entitled to "compensatory damages" if a court were to find a violation of the law. What are "compensatory damages"? Costs of additional hearings? Lost profits? The HAA already exposes cities and counties to steep fiscal penalties for violating the HAA – a minimum fine of $10,000 per unit. The provision of compensatory damages subjects cities and counties to almost unlimited liability and will encourage extensive litigation, while there is no way for cities or counties to recover even litigation costs if they successfully defend themselves. Further, SB 330 already significantly decreases the responsibilities of developers while adding many obligations to cities and counties.

7. Page 17, S. 65589.5 (m):

(m) Irrespective of whether the local agency's action was made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken in any action brought to enforce the provisions of this section and discretion in the determination of facts is vested in an inferior tribunal, corporation, board, or officer.
The language proposed is nearly incomprehensible, and it is not clear what the intended effect is, or how jurisdictions would comply. This language should be revised so that its requirements can be understood.

8. Page 18, S. 65589.5 (o):
(o) For purposes of this section, an application that is not the subject to Chapter 4.5 of Division 1 of Title 7 (commencing with Section 65920) shall be deemed or determined to be complete at the time the application is submitted to the local agency.
This major change in land use policy would make all applications for development "deemed complete" at the time the application is submitted, even if the application is grossly deficient. There is a proposed carve out for projects subject to the Permit Streamlining Act, so this appears to be intended for ministerial projects. SB 35 already has this provision, but it should not be extended to other forms of ministerial approvals, such as building permits.

9. Page 18, S. 65589.5 (p):
(p) This section shall apply to any form of land use decision by a local agency, including, but not limited to, a ministerial or use by right decision or a discretionary approval.
This section broadens applicability of remedies under the HAA by applying the HAA to "any form of land use decision by a local agency," apparently including legislative approvals such as general plan and zoning amendments, and every form of ministerial approval, including building permits. The HAA was intended to protect housing development that conforms with existing planning and zoning, while maintaining local discretion to determine when legislative changes should be made. It should not apply to such legislative decisions, nor should it apply to the many routine ministerial approvals required for development projects.

For these reasons, we are opposed, unless amended, to SB 592. Should you have any questions about our position on this measure, please do not hesitate to contact Christopher Lee (CSAC) at clee@counties.org, Jean Hurst (UCC) at jkh@hbeadvocacy.com, or Sande George (APA) at sgeorge@stefangeorge.com.

Sincerely,

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cc: The Honorable Senator Scott Wiener
Republican Caucus
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