



American Planning Association Orange County Section

2017 HOUSING BILLS AND LAWS

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Goals of the 2017 Housing Package

- To increase the **supply** and **affordability** of housing in California
- To strengthen **planning for**, and **production of**, housing for people at all income levels, especially lower income households
- To create **tools** for local agencies to plan and encourage the production of more dwelling units, and more affordable housing
- To **reduce barriers** to the development of new housing
- To strengthen **enforcement mechanisms** to ensure local agencies plan and approve housing to reduce the State's housing shortage

Many, Many Laws ...

- Housing Element Law, Gov't Code § 65583
- No Net Loss, Gov't Code § 65863 (not applicable to charter cities... yet?)
- Housing Accountability Act, Gov't Code § 65589.5
- Streamlined Housing Approval ("SB 35"), Gov't Code § 65913.4
- Inclusionary Housing, Gov't Code § 65850
- Accessory Dwelling Units, Gov't Code § 65852.2
- Workforce Housing Opportunity Zones, Gov't Code §§ 65620 to 65625
- Housing Sustainability Districts, Gov't Code §§ 66200 to 66210
- Housing Element Annual Reports, Gov't Code § 65400

Categories of State Housing Laws

1. Laws that require local agencies to plan for housing production in specific ways
2. Laws that restrict local authority to approve or deny specific project applications
3. Laws that create optional tools for cities to encourage the production of more housing, and more affordable housing

Planning for Housing – Housing Elements

- Analyze local demographic trends and local housing needs
 - RHNA Allocation = the number of units needed to meet the City's projected household growth at various income levels
- Analyze governmental and nongovernmental constraints that prevent the development of housing
- Prepare a “**Site Inventory**” that identifies parcels in the City where housing can be developed to meet RHNA allocation

Housing Element – Site Inventory

- List of properties showing the **number of units** that can be accommodated on each site
 - Must demonstrate that zoning standards (i.e., allowable density) for each site that is identified can accommodate the number of units needed at various income levels
- May be required to identify sites where the maximum density is “deemed appropriate” for lower income households – known as the “default density”
 - “Default density” = 20 or 30 dwelling units / acre
- New site requirements for next Housing Element Update

Housing Element Law

- Previously, the State required cities / counties to **zone** at densities that would **allow for** the development of housing to meet RHNA
- With 2017 Housing Package, the State seeks to address failure to **build** enough housing
- Now, the State wants cities / counties to demonstrate that they're actually **producing housing** to meet RHNA at all income levels

No Net Loss (SB 166)



No Net Loss

- Cities must maintain, at all times during the planning period, adequate sites to meet their unmet share of the RHNA
- Cities may not take any action that would allow or cause the sites identified in its Site Inventory to be insufficient to meet its remaining unmet share of the City's RHNA for lower and moderate-income households
 - Government Code § 65863

No Net Loss – When to be Concerned

- Downzoning – i.e., reducing allowed density – for any site in the Site Inventory
- Approving a specific project on a site included in the Site Inventory, either:
 - With fewer units than were indicated in the Site Inventory, or
 - With fewer units **at the income level** than were indicated in the Site Inventory, or
 - At a “lower residential density” (as defined by statute)

No Net Loss – Maintaining Unit Capacity

- A city may reduce the density or approve development of a parcel at a “lower residential density” **only if** it makes the following **findings**:
 - Reduction consistent with General Plan and Housing Element; **and**
 - Remaining sites in the Site Inventory are adequate to meet the City’s RHNA share **at all income levels**
 - Must **quantify** the unmet RHNA need and the remaining capacity of sites identified in the Site Inventory to accommodate the City’s RHNA **at each income level**

No Net Loss – Duty to "Up-Zone" Other Sites

- If the remaining sites are **not** adequate, the City must identify “additional, adequate, and available sites” so there is no net loss in unit capacity!
 - Rezoning must occur **within 180 days** of the initial project approval
- City **cannot** disapprove a project simply because it would result in the need to up-zone other sites to comply with No Net Loss provisions

No Net Loss – CEQA Review

- CEQA analysis for the initial project does not need to consider any subsequent rezoning of other sites that may be necessary to comply with the no net loss requirements
- Subsequent rezoning subject to CEQA as a separate project
- The City must cover the cost of any rezoning required, including CEQA review process



Housing Accountability Act (AB 1515)



Housing Accountability Act (HAA)

“The Legislature’s intent in enacting this section in 1982 and in expanding its provisions since then was to significantly **increase the approval and construction of new housing** for all economic segments of California’s communities by meaningfully and effectively **curbing the capability of the local governments** to **deny, reduce the density of, or render infeasible** housing development projects. This intent has not been fulfilled.”

- Government Code § 65589.5(a)(2)(K)

HAA Applicability

HAA applies to all “housing development projects”:

- Residential units only
- Mixed use developments, with at least 2/3 of the square footage designated for residential use
 - **Applies to market-rate and affordable housing!**
- Transitional housing or supportive housing
- Emergency shelters

Basic Standard under the HAA

- If a housing development project complies with “objective” general plan, zoning, and subdivision standards and criteria, including design review standards, ... the City can only **lower the density** or **deny the project** if there is “specific, adverse impact” to public health and safety that cannot be mitigated in any other way.
 - Government Code § 65589.5(j)

Objective v. Subjective Standards

- Density requirements
- Height limitations
- Lot coverage
- Setbacks
- FAR requirements
- Required list of materials
- Façade variation (sometimes)
- Reflect the look and feel of the community
- Site is not physically suitable for the proposed use
- Must produce high quality design
- Must be compatible with adjacent uses

HAA – Letter of Inconsistency

- **Significant, new** burden on City staff:
 - To analyze the project and **send written documentation** explaining if / how a proposed project does not conform to “objective” general plan, zoning, and subdivision standards / criteria, including design review standards

- Letter must be sent:
 - Within 30 days of application being deemed complete (for projects of \leq 150 units)
 - Within 60 days of application being deemed complete (for projects of $>$ 150 units)

HAA – Failure to Send Adequate Letter

- If the City does **not** provide an adequate letter, the housing development project shall be **deemed** consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement or other similar provision
 - Result → City can only deny, or approve project at lower density, if the “specific, adverse impact” finding can be made



HAA – Specific, Adverse Impact

- A significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health and safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- Very hard standard to meet!



HAA – Burden on the City

- City findings are evaluated based on “preponderance of the evidence,” not merely “substantial evidence”
- Majority of the evidence in the record must support the City’s findings under the HAA



HAA – Who Can Sue?

- An applicant, an individual who is a potentially eligible resident, and a housing organization
- Includes housing advocacy groups, and trade / industry groups “whose local members are primarily engaged in the construction or management of housing units”
 - Government Code § 65589.5(k)



HAA – Penalties

- If the City acted in bad faith, the court shall direct the City to approve the project and award reasonable attorney's fees and costs to the plaintiff
- Failure to comply within 60 days →
 - Minimum \$10,000 fine per dwelling unit
 - Court can multiply by 5 → up to \$50,000 per unit!
 - Money from fines must be put in a local housing trust fund and used within 5 years to finance construction of new affordable housing – otherwise, funds revert to the State



Streamlined Housing Approval (SB 35)



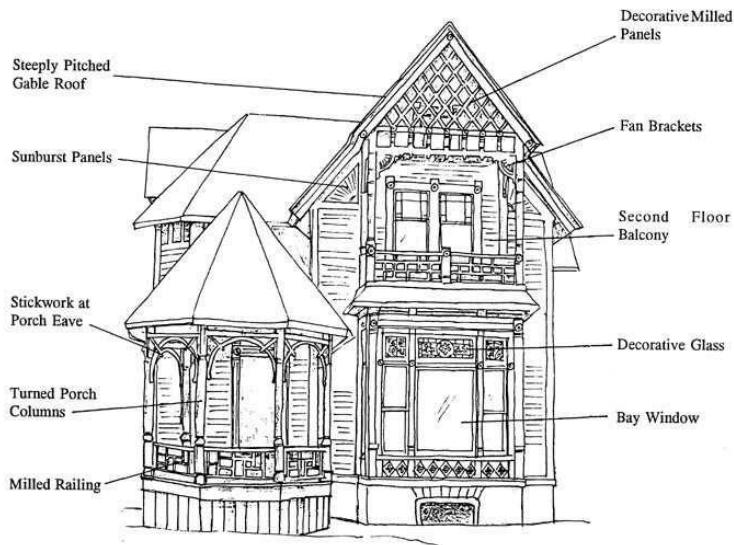
Developer-Initiated Streamlining (SB 35)

- HCD Determination of Applicability
- Creates a streamlined, ministerial approval process for multi-family residential developments that an applicant can request if the project meets certain criteria
- Substantially limits City's ability to impose parking and other requirements on developments applying under SB 35 process
- No CUP, Planned Development, or other discretionary review may be imposed
- Projects are statutorily exempt from CEQA review (ministerial)

SB 35 – Eligible Projects

- Must be a multi-family residence containing at least two units
- At least 2/3 of the proposed development's square footage must be designated for residential use
- Project must be consistent with the “objective zoning standards and objective design review standards” established before the application is submitted
- Limited to sites surrounded by current / former urban land uses
- Limited application to subdivision projects

SB 35 – Objective Zoning / Design Review Standards



Stick style dwelling at 470 E. Chicago Street.

- City may apply “objective” zoning and design review standards
- What is “objective”?
- Applicable objective design standards must be established and published **prior to** the date of the project’s application to be applied to the project

SB 35 – Parking Requirements

- At most, one space per dwelling unit
- No parking required if:
 - Located within ½-mile of public transit;
 - Within an architecturally or historically significant district;
 - Within one block of a car share vehicle; or
 - In areas where street parking permits are required but not offered to the project's occupants



SB 35 – Labor Requirements

- If > 10 units:
 - **Prevailing Wages**: Applicant must certify that the project is a “public work” **or** that it is subject to prevailing wages **and** all construction workers will be paid at least the general prevailing wage
 - Must use “skilled / trained workforce”
- If ≤ 10 units, labor requirements do not apply, unless otherwise a “public work”



SB 35 – Affordability Requirements

- HCD Determinations:
 - Developer must dedicate at least 10 % (or at least 50 %) of the proposed units for households making below 80 % of AMI
 - BUT, if the City adopts an inclusionary housing ordinance that requires a **higher** percentage of dedicated lower-income units, then the City's higher inclusionary requirement would apply

No Streamlining under SB 35 if ...

With limited exceptions, SB 35 projects **cannot** be located in:

- Coastal zone
- High or very high fire hazard severity zone
- Hazardous waste site
- Earthquake fault zone
- FEMA flood plain
- FEMA floodway
- Protected species habitat
- Protected agricultural, farmland or wetlands

Projects **cannot** be subject to:

- Mobilehome Residency Law
- RV Park Occupancy Law
- Mobilehome Parks Act
- Special Occupancy Parks Act
- Conservation easement
- Conservation plan

SB 35 – Demolition / Eviction Restrictions

- No SB 35 streamlining if:
 - The project would require the **demolition** of any of the following:
 - Deed-restricted affordable housing;
 - Rent or price controlled housing;
 - Housing that was occupied by tenants within the past 10 years;
or
 - A structure placed on a national, state, or local historic register
 - The site was previously used for housing that was occupied by tenants, but was demolished within the 10 years prior to the project application date

SB 35 – Limited Review Period

- If an SB 35 application is submitted, the City must review the application to determine if the project meets the objective planning standards:
 - Within 60 days of submittal for projects of \leq 150 units, or
 - Within 90 days of submittal for projects of $>$ 150 units
- If the project does **not** meet the standards, the City must provide **written explanation** within these timeframes – otherwise, the project will be **deemed** to satisfy the objective planning standards

SB 35 – Design Standard Review

- Planning Commission or Design Review Committee may review the project's design, but **review is limited** to assessing whether the project conforms to the “reasonable **objective** design standards”
- If the City chooses to allow for design review, the review must be completed:
 - within 90 days of a project's submittal for approval (for projects containing ≤ 150 units), or
 - within 180 days of a project's submittal for approval (for projects > 150 units)

Expiration of Project Approvals

- Approvals are generally valid for **three years**, with a possible one-year extension
 - Extension allowed if the project proponent shows that there has been significant progress toward getting the development construction ready, such as filing a building permit application
- Approval valid so long as vertical construction is in progress
- But, if the project designates at least 50 % of the units for households making below 80 % of AMI, and the project includes public investment in housing affordability (beyond tax credits), the project approval **does not expire**

Complying with SB 35

- Determine what areas of the City may (and may not) be subject to SB 35 (given exclusions)
- Create a checklist for SB 35 projects
- Review zoning / design review standards to determine whether those standards are “objective” and may be applied to SB 35 projects
- Consider adopting or refining objective zoning and especially, design review, standards for all projects

Accessory Dwelling Units (AB 494/SB 229)



Accessory Dwelling Units

- City may require a maximum of **one** parking space per ADU
- City may not prohibit tandem parking **unless** specific topographical / safety findings
- Applicable to ADUs on lots with **proposed** dwellings (not just **existing** single-family dwellings)

Inclusionary Housing (AB 1505)

- Overturns *Palmer* decision
- Cities may now adopt an ordinance requiring that **both** rental and for-sale residential developments must include a percentage of affordable units

HCD Review of Inclusionary Ordinance

- HCD may review local ordinance if it requires that more than 15 % of the total number for units rented in a development be affordable to, and occupied by, households at 80 % or less of the area median income, and if:
 - The City fails to submit to HCD the required annual housing element report for at least two consecutive years, or
 - The City has, according to its annual report, failed to meet at least 75 % of its above-moderate income RHNA allocation, prorated based on the length of time within the planning period
- HCD may require a feasibility study to show that the ordinance does not unduly constrain production of housing

Additional Tools to Develop Housing

■ **Workforce Housing Opportunity Zones (SB 540)**

- City may prepare a Specific Plan (and an EIR) for an area of the City that includes parcels identified on the City's Housing Element Site inventory
- Minimum densities; affordability requirements; prevailing wages
- Streamlined project approval once the WHOZ is created

■ **Housing Sustainability Districts (AB 73)**

- City may establish HSDs to create regulations for housing projects in areas located within ½-mile of public transit or "highly suitable for a residential or mixed-use" district due to existing infrastructure (or underutilized utilities), transportation access, or location
- Minimum densities; affordability requirements; prevailing wages
- Streamlined project approval once the District is created

Annual Housing Reports (AB 879)

- Each city (*including charter cities*) must submit a report to the Department of Housing & Community Development, showing progress towards meeting the local share of RHNA
- Report describes progress towards programs identified in Housing Element
- Report is due to HCD each year on April 1
 - Gov't Code § 65400

New Housing Report Requirements

For the prior year, Housing Report **must now include**:

- The number of housing development applications received
- The number of units included in all development applications
- The number of units approved and disapproved
- List of sites rezoned because the City's share of RHNA could not be accommodated on land identified in the Site Inventory (listed for each income level)
- List of any additional sites that were rezoned pursuant to the No Net Loss provisions

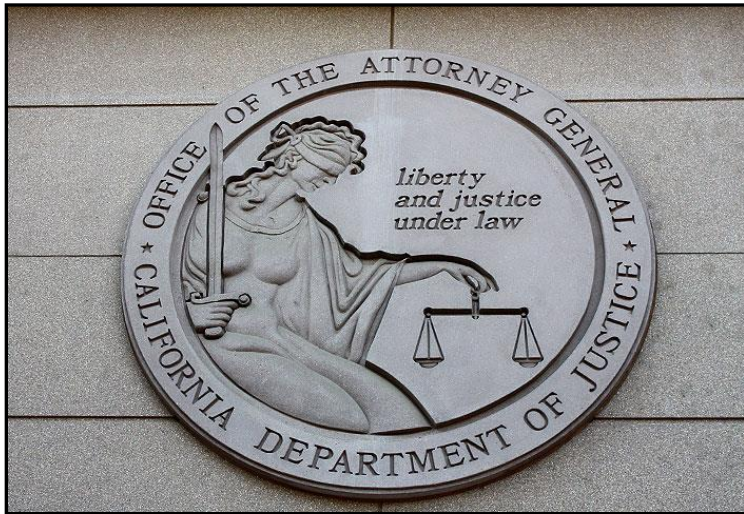
New Housing Report Req'ts (Cont.)

- List of, and the number of, net new housing units (both rental and for-sale) that have been issued a “completed-entitlement, a building permit, or a certificate of occupancy” during the relevant housing element cycle, and identifying the income category designated for each unit
- The number of applications submitted for consideration under SB 35, as well as the total number of developments approved, building permits issued, and housing units constructed pursuant to the SB 35 process

Increased HCD Enforcement (AB 72)

- HCD shall review any city's action or failure to act that HCD determines to be inconsistent with adopted Housing Element or Housing Element Law
- HCD shall notify a city if HCD finds that:
 - The City's housing element or an amendment to its housing element does not substantially comply with State law;
 - The City's action or failure to act is inconsistent with an adopted housing element;
 - The City has taken an action in violation of HAA, No Net Loss provisions, Density Bonus Law, or housing discrimination laws

Consequences of HCD Review



- HCD may revoke a finding that the City's housing element "substantially complies" with State law
- HCD may notify the Office of the Attorney General that the City has violated State law

Financial Incentives

■ **Building Homes and Jobs Act (SB 2)**

- Imposes a \$75 real estate transaction fee
 - For 2018 revenues, 50 % of the money will be available for local agencies to update planning and zoning documents (to streamline housing production)
 - NOFA from HCD expected in Spring 2019
 - For 2019 revenues, 70 % will go to local planning efforts

■ **Veteran's and Affordable Housing Bond Act (SB 3)**

- November 2018 ballot measure that would establish a \$4-billion fund for housing and veteran's assistance programs

Other 2017 Bills of Note

■ AB 352 – Efficiency Units

- If agency allows efficiency units, it cannot limit the number of such units in areas zoned for residential use that are:
 - within ½ mile of public transit or where there is a car share vehicle located within 1 block of the unit
 - within 1 mile of a UC or Cal State University campus

Other 2017 Bills of Note

- **SB 732 – Optional Agriculture Component/Element**
 - Authorizes development of an Ag land component in Open Space element or a separate Ag land element
 - Govt. Code Sec. 65565 provides required contents (maps of farmland, ag preserve lands, conservation easements, priority lands for conservation, etc.)
 - Agencies that adopt can get priority enable priority for grants and other funding

Other 2017 Bills of Note

■ SB 80 – CEQA Notices

- Would require posting CEQA notices on agency website
- Electronic postings with County / OPR
- **Vetoed.**

■ SB 649 – **[Not so]** Small Cell Infrastructure

- Mandate leasing of public infrastructure and stipulate **(low)** leasing fee amounts
- Eliminate discretionary review (except coastal / historic)
- **Vetoed** – but may be back... again...

Did you know...

- **AB 549 – Electrified Fences**
 - City or county (including a charter) that approves a building permit for the construction of an electrified security fence shall notify the local fire department and fire marshal and provide them with a copy of the approved permit.

Anticipated 2018 Housing Legislation

- Transit-Oriented Housing?
- RHNA Allocation Process?
- More Streamlined Approval Processes?
- Accessory Dwelling Units?
- Density Bonus?
- Rent Control and Eviction Restrictions?



QUESTIONS?

THANK YOU!

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