2019 Legislative Update

American Planning Association
Orange County Section

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Outline of Today’s Update

- Housing
  - SB 330
  - ADUs
  - Density Bonus Law
- Surplus Land Act
- Website Requirements
- Safety Elements

- Evacuation Routes
- CEQA
  - Major Transit Stops
  - Interim Motel Housing Projects
  - Supportive Housing
- Low-Barrier Navigation Centers
SB 330: Clear Intent

- Declared a “statewide housing emergency”
  - Until January 1, 2025
- Encourage (affordable) housing development and retention of existing (affordable) housing
  - By expediting housing approvals
  - By suspending local authority to impose certain restrictions on housing developments
  - By requiring “replacement units”
SB 330: Expediting Approvals

- All Development Projects
  - Requires more detailed completeness checklists for all projects subject to the Permit Streamlining Act

- Housing Development Projects
  - Creates “preliminary application” process
  - Limits the number of “hearings”
  - Requires up-front “historic site” designations
SB 330: Permit Streamlining Act

- Detailed project completeness checklists
  - Incompleteness Letter:
    - Provide applicant with an “exhaustive list” of items that were not complete
    - Agency can identify as “incomplete” only items on the agency’s submittal checklist

- Tip: Review and update completeness checklists for all development permits

“Housing Development Project”
- Residential units only
- Mixed use developments
  - With 2/3 of square footage for residential
- Transitional and Supportive Housing
SB 330: “Preliminary Application”

- New application for “housing development projects” to freeze standards earlier
  - Statutorily required information
  - Payment of permit processing fees
- Cannot apply later-enacted policies or standards to that specific project
- To maintain benefits, applicant must submit a complete application within 180 days
SB 330: Changes to the HAA

- **Okay to Apply these Later-Enacted Standards:**
  - Automatic CPI adjustments of fees, etc.
  - To avoid a “specific, adverse impact”
  - To avoid / lessen a CEQA impact
  - If no construction within 2 ½ years after “final approval” of project
  - Project revised after preliminary application is submitted (if more than 20% change in square footage or number of units)
SB 330: Limited Number of Hearings

- No more than five hearings for a “housing development project” that complies with applicable objective standards after “deemed complete”
  - Includes “continued” public hearings
  - Does not apply to legislative approvals!
SB 330: Housing Approval Timelines

- Shortened timelines for housing projects:
  - Within 90 days after EIR Certification
  - Within 60 days after EIR Certification if the development:
    - Reserves at least 49 percent of the units as Very Low or Low Income units; and
    - Receives / will receive public $$
SB 330: Housing Crisis Act of 2019

- Applies to “affected” cities and counties
- Prohibits certain local agency restrictions on housing and residential density
- Requires “replacement units” for new housing development projects on sites with existing housing
  - Government Code § 66300
SB 330: Prohibited Local Actions

- Affected cities and counties may **not**:
  - Reduce allowable intensity in any land use designation or district **or** downzone any specific property to a “less intensive use” below what was allowed on January 1, 2018

  – **Exception for “no net loss” compliance**
SB 330: Prohibited Local Actions

- Impose a moratorium on housing
- Limit the number of approvals or construction permits for housing
- Cap the number of housing units
- Limit the jurisdiction’s population
- Adopt subjective design standards after January 1, 2020
SB 330: “Replacement Units”

- Prohibits affected cities and counties from approving housing development projects unless they replace all of the existing dwelling units.

- Special affordability requirements for demolishing “protected units”
SB 330: “Replacement Units”

“Protected units”

- Units subject to a legal rent restriction in the last 5 years (including recorded covenant);
- Units subject to rent control in the last 5 years;
- Units occupied by low or very low income households in the last five years;
- Units withdrawn from the rental market in the past 10 years (Ellis Act)
SB 330: Exceptions and Caveats

- Retain authority over housing development projects in Very High Fire Hazard Severity Zones
- May still adopt policies to:
  - Allow greater density & encourage housing
  - Reduce costs to housing development project
  - Impose or implement MMs under CEQA
- CEQA and Coastal Act remain intact
ADU Bills
Overview of ADU Requirements

- **Two-pronged approval process:**
  - **“Building Permit Only” Process**
    - State standards only
    - Residential or Mixed-Use Zone
      - Gov. Code § 65852.2(e)
  - **Local Ordinance Process**
    - Local ADU Standards
      - But must comply with standards in Gov. Code § 65852.2(a)
“Building Permit Only” Process

- One ADU or JADU per lot
  - Within proposed single-family dwelling
  - Within existing space of single-family dwelling
  - Within existing space of accessory structure (including expansion of up to 150 square feet for ingress/egress)
    - Exterior access required
    - Side and rear setbacks for fire and safety
    - JADU must comply with 65852.22
“Building Permit Only” Process

What is a JADU?

- An ADU contained entirely within the walls of a single-family residence
- No larger than 500 square feet
- Must have a cooking facility with food preparation area and appliances
- May have its own bathroom or share a bathroom with the main residence
“Building Permit Only” Process

- One detached, new ADU
  - For a lot with a proposed or existing single-family dwelling
  - Maximum size of 800 square feet
  - Maximum height of 16 feet
  - Four-foot side and rear yard setbacks

- One detached, new ADU plus one JADU
“Building Permit Only” Process

- **ADUs on Multifamily Property**
  - Must allow conversion of non-“livable space” of an existing multifamily property
    - For example, storage rooms, boiler rooms, passageways, attics, basements, or garages
    - Must comply with state building standards
    - Allow at least one ADU, and up to 25 percent of the existing number of multifamily dwelling units in the building
“Building Permit Only” Process

- **ADUs on Multifamily Property**
  - Up to two *detached* ADUs on a lot with an *existing* multifamily building
  - Subject to 16-foot height limit
  - Subject to four-foot rear / side-yard setbacks
“Building Permit Only” Process

- If the “building permit only” process applies, the city may **not**:
  - Impose any other local standards except for building code requirements
  - Require correction of nonconforming zoning conditions

- If “building permit only” process applies, the city **must** require that rental of ADU be for longer than 30 days (i.e., no short-term rentals)
“Local Ordinance” Process

- **Designate areas for ADUs, based on:**
  - Water and Sewer Services
  - Traffic Flow and Public Safety

- **Establish local standards**
  - Must comply w/ Gov. Code § 65852.2(a)
“Local Ordinance” Process

- Ministerial Review Only
  - Must approve the ADU within 60 days, without a hearing or discretionary review
  - May delay until after reviewing application for new single-family home
“Local Ordinance” Standards

- Local ordinance may **not**:
  - Require minimum lot size
  - Require owner-occupancy
  - Require replacement parking spaces
  - Impose FAR, lot coverage, or other similar requirements that do not allow an 800-square-foot ADU
“Local Ordinance” Standards

- **Ordinance may limit size, but may not:**
  - Set maximum unit size below 850 square feet (or 1,000 square feet for 2+ BD ADUs)

- **Existing dwelling?**
  - Attached ADU shall not exceed 50 percent of the existing single-family home

- **Detached ADU**
  - Total floor area shall not exceed 1,200 sq. ft.
“Local Ordinance” Standards

- **Setback Limitations**
  - Maximum 4-foot side and rear setbacks
  - No setback beyond existing for conversions of existing living space and re-construction to the same dimensions in the same location
Local Parking Standards

- Local ordinance may not require more than one parking space per ADU.

- Local ordinance may **not** require parking in any of the following instances:
  - Within ½ mile **walking** distance of public transit.
  - Within historic district.
  - Attached ADU or converted accessory structure.
  - On-street permits not offered to ADU residents.
  - Car-share vehicle within one block.
Impact Fees / Utility Connections

- **Fees imposed per Mitigation Fee Act**
  - No impact fees for ADUs under 750 sq. feet
  - Fees for larger ADUs are proportional to the square footage of the primary dwelling

- **Utility Connections**
  - New use only if proposed with a new SFD
  - Limited opportunity to require new utility connections
State Oversight of ADUs

- Send ordinance to California Department of Housing & Community Development (HCD) for review within 60 days after adoption

- City can use ADUs toward production of units for HCD reporting of RHNA compliance
Homeowners’ Associations

- Homeowners associations may not prohibit or “unreasonably restrict” construction of ADUs and JADUs on single-family lots
- “Reasonable restrictions” are okay
Density Bonus Law
Density Bonus Law: An Overview

- **Qualifying projects entitled to receive:**
  - A density bonus;
  - Specific number of “incentives & concessions” based on the type of housing development;
  - Waivers or reductions of development standards (where standards would “physically preclude” the construction of the development); and
  - Reductions in minimum parking requirements
Existing Qualifying Projects

- 10 percent Lower Income HHs (or Students)
- 5 percent Very Low Income HHs
- Senior Citizen Housing Development
- 10 percent Moderate Income (Condos)
- 10 percent Transitional Foster Youth, Disabled Veterans, or Homeless Persons
AB 1763: New Qualifying Project

- **To Be Eligible: 100 Percent “Affordable”**
  - At least 80% for Lower Income HHs
  - Remaining units must be reserved for either Lower or Moderate Income HHs

- **Benefits for Eligible Projects**
  - An 80-percent Density Bonus
  - Four Incentives / Concessions
  - Reductions in Parking Requirements
Benefits for TOD Affordable Projects

- If a 100-percent affordable project is located within ½ mile of a Major Transit Stop:
  - Height increase of 3 more stories or 33 feet
  - Waiver from “maximum controls on density”
    - But no other “ waivers” under 65915(e)
Surplus Land Requirements
Determining “Surplus Land”

- Identifying “surplus land” and exempt “surplus land”
  - Land owned ... by any local agency for which the local agency’s governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency’s use
  - New expanded list of local agencies
  - New explicit definition of “agency’s use”
Disposing of “Surplus Land”

- Before disposal (or engaging in negotiations to dispose) of surplus land, agency must:
  - Notice of availability to designated entities
  - Good faith negotiations w/ designated entities
    - Priority for low / moderate income housing, unless property already used for park
  - Notice to HCD of proposed terms
Surplus Land Inventory

- Annual inventory of “surplus land”
- Send HCD list of “surplus land”
- HCD to publish a statewide inventory
Website Requirements
AB 1483: Website Requirements

- Current “Fees, Exactions, and Affordability Requirements” for Housing
- Zoning, Design & Development Standards
- All Application Completeness Checklists
- Current (and five prior) annual fee reports
- Impact fee nexus studies (or cost of service studies) conducted after January 1, 2018
CEQA – Minor Changes
Definition of “Major Transit Stop”

- CEQA exemption for certain residential projects within ½ mile of “major transit stop”
- AB 1560 expanded that definition to include bus rapid transit with:
  - Full-time dedicated bus lanes w/ defined stations
  - Headways ≤15 minutes during peak commutes
  - Transit signal priority
  - All door boarding
  - Fare system promoting efficiency
Interim Motel Housing Projects

- SB 450 adds a new statutory exemption for interim motel housing (through January 1, 2025)
  - Exempts certain conversions of a motel, hotel, hostel, or residential hotel to supportive or transitional housing

- Conversion must not:
  - Expand floor area of any living unit by > 10 %
  - Result in significant effects to traffic, noise, air quality or water quality

- Notice of Exemption must be filed with OPR
Supportive Housing: Existing Law

- “By right” supportive housing meeting certain criteria must be processed ministerially
  - So they’re not “projects” under CEQA

- Prior legislation (AB 2162) made supportive housing “by right” in zones where mixed-use or multifamily housing is a permitted use

- Cap of 50 units to get “by right” process for jurisdictions < 200,000 population with 1,500 or fewer people experiencing homelessness
  - Cities / Counties can increase the cap
Supportive Housing: New Law

- Adopting a local policy to allow “by right” approval of supportive housing projects larger than 50 units is exempt from CEQA.

- Authorizes imposition of fees / exactions to provide necessary public services and facilities BUT CANNOT be based:
  - Solely or partially on being permanent supportive housing
  - On basis that it’s a ministerial approval
Supportive Housing & CEQA

- Notice of Exemption for “No Place Like Home” funded supportive housing projects
  - If not exempt, file Notice of Determination with OPR
  - Filings must be within **two working days rather than 5 days from approval**
  - 30-day CEQA challenge period
  - If DON’T file on time – 30 days from late filing, or 90 days after NOE/NOD filing deadline.
Low-Barrier Navigation Centers
Low Barrier Navigation Centers

- Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing (Govt. Code §§ 65660 et seq.)
- Temporary living
- Has case management connecting homeless to public benefits, health services, shelter and housing
  - May include partners, pets, storage of possessions
- Must meet certain federal service-related standards
Low Barrier Navigation Centers

- Allowed by right in areas zoned for mixed use and residential zones permitting MF uses

- Criteria:
  - Offers services to connect people to permanent housing; services plan with identifying staffing
  - Linked to coordinated entry system designed for intake, assessment, and referrals
  - Complies with certain Welfare & Institutions codes
  - Has system for entering information re: client stays, demographics, income, and exit destinations through Homeless Management Information System
Safety Elements
AB 65 – Natural Infrastructure

- Safety Elements already need to include info on Climate Adaptation & Resiliency Strategies
- Must identify “Natural Infrastructure”
- AB 65 updates definition – referencing
  - Sustainable management of aquatic or terrestrial vegetated open space
  - Systems / practices that use or mimic natural process, incl. engineered systems (e.g. levees)
- Consider in next Safety Element update
Evacuation Routes
SB 99: Emergency Evacuation Routes

- Review / update Safety Element to identify residential developments in hazard areas with less than two emergency evacuation routes

- Deadline:
  - Next update of Housing Element on/after January 1, 2020
AB 747: Evacuation Route Updates

- Expands requirement for Safety Element to identify evacuation routes and their:
  - Capacity / Safety / Viability
    - In a range of emergency scenarios
- Update tied to next update of Local Hazard Mitigation Plan after January 1, 2022
  - If agency has not adopted LHMP, then by January 2022
Miscellaneous
Licensed Family Daycare Homes

- **Goal of SB 234**
  - Reduce costs & improve access to childcare

- **Treat large family daycare homes like small family daycare homes**
  - Permitted use like other residences in the zone; can no longer require special zoning permit
Licensed Family Daycare Homes

- Cities / counties may **not**:
  - Impose spacing / concentration standards
  - Impose traffic / parking / noise controls
  - Require a business license

- But **can** impose generally applicable height, setback, and lot standards on same terms as residential development
Licensed Family Daycare Homes

- Must allow small and large family daycare in a variety of multi-family residences including:
  - SF in a MF zone
  - Townhomes
  - Dwelling unit within a dwelling (ADU?)
  - MF dwellings in zones allowing residential use
Photovoltaic Req’ts & Disaster Repairs

- AB 178: Residential reconstruction / repair after disaster (fire / flood) in areas of declared state of emergency only need to comply with solar photovoltaic requirements that were in effect when the damaged or destroyed structure was originally constructed if:
  - Owner’s income ≤ below county median income
  - Square footage of residence does not exceed size when damaged
  - No code upgrade insurance at time of damage
  - New construction is on the same site
Warehouse – Economic Subsidies

- **AB 485**: New reporting requirements and procedures related to subsidies for distribution centers
  - Subsidies over $100,000 to warehouse distribution centers
  - Cannot require nondisclosure agreement as part of negotiations
Warehouse – Economic Subsidies

- **New reporting requirements:**
  - Estimated number of temp agency workers
  - Info re: benefit packages offered to employees
  - Outreach, training and hiring plans, including disadvantaged workers (as defined in the statute)
  - Total state / fed subsidies applied for / received
  - Accountability measures if contract goals not met
  - Net job loss / replacement due to AI, automation, or other technologies
Land Use Approvals & COVID-19

- Effect of Emergency Orders?
- Tolling of Deadlines?
  - Permit Streamlining/Subdivision Map Acts
  - Housing Accountability Act
  - Accessory Dwelling Units
  - Streamlined Housing ("SB 35") Approvals
  - Wireless Facility Shot Clocks
Thank you! Questions?

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