

NEW 2018 STATE HOUSING LAWS

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New Legislation's Objectives

- Strengthen the housing element requirement to identify sites that provide for the City's share of the Regional Housing Need Allocation (RHNA) for all income levels.
- Enforce the housing element requirement to identify sites by connecting that requirement to actual approval of housing development on those sites at those income levels.
- Plug perceived "holes" in the Housing Accountability Act.
- Authorize inclusionary housing ordinances for rental housing.
- Allow the State Department of Housing and Community Development (HCD) to reconsider housing element compliance during the planning period.
- Allow for developer and City-oriented streamlining of housing approvals.
- Provide state funding for planning and housing production

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Categories of Legislation

1. Local accountability
2. Housing approval streamlining
3. Funding for planning changes and housing development

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LOCAL ACCOUNTABILITY

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Housing Accountability Act

SB 167, AB 678, and AB 1515

- The Housing Accountability Act (HAA) limits the City's ability to deny, reduce the density of, or make infeasible housing developments and requires the City to make specific findings for denial.
- Expands the scope of the HAA, which includes residences, transitional/supportive housing, and certain mixed-use projects, to include mixed-use projects where 2/3 of the square footage is designated for residential use.
- Increases the burden on cities from “substantial evidence” to a “preponderance of the evidence” when making findings as to the disapproval of a housing project.
- Requires the City to notify an applicant if the proposed housing development project is deemed inconsistent with applicable ordinances, standards, etc.
- Such notice must be provided within 30 days of the application being deemed complete for a project with 150 or fewer housing units and within 60 days for one with more than 150 housing units.

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Housing Accountability Act

SB 167, AB 678, and AB 1515

- If the City fails to timely provide such notice, the project is deemed to be consistent with the City's ordinances, standards, etc.
- Requires a court to issue a 60-day compliance order to the City compelling compliance to take action on a housing development project or if findings for denial were not being supported by substantial evidence or disapproved a project consistent with objective general plan and zoning standards. The court may direct approval if City acted in bad faith.
- If City fails to comply within 60 days, the court must impose a minimum \$10,000 per unit fine on the date the application was deemed complete.
- If the City fails to comply within 60 days and acted in bad faith the court must multiply the \$10,000 per unit by a factor of five.
- The court may also order approval of the project as proposed by the applicant at the time the City violated the HAA.

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Annual General Plan Report

AB 879, SB 35, and SB 540

- By April 1 of each year, the City must send an annual report to HCD that includes information regarding the implementation of the General Plan, including RHNA progress and housing element deadline compliance.
- Additional information that must be reported includes:
 - Number of housing development applications received in the prior year;
 - Number of units included in all development applications in the prior year;
 - Number of units approved and disapproved in the prior year;
 - Listing of sites rezoned to accommodate City’s RHNA for each income level and additional “no net loss” sites;
 - Number of net new units of housing that have been issued a “completed entitlement” (bldg. permit/COO) in the planning cycle and the income category satisfied by each unit (broken up by rental vs. for sale);
 - Number of applications submitted under SB 35, the location and number of developments approved under SB 35, and the total units constructed under SB 35; and
 - Number of units approved within a Workforce Housing Opportunity Zone.

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No Net Loss

SB 166

- The City cannot allow the reduction of residential density for any parcel unless it makes findings supported by substantial evidence that the reduction is consistent with the general plan and *remaining sites* in the housing element are adequate to accommodate the City's RHNA.
- If remaining sites are inadequate, then the City can identify other sites with equal or greater density so there is no net loss of residential unit capacity.
- Under SB 166, the City must ensure that its housing element inventory can accommodate its "unmet" share of RHNA at each income level throughout the planning period.
- Findings for density reduction now require substantial evidence identification of unmet needs at each income level and the remaining capacity of sites to accommodate needs by income level.
- If additional sites cannot accommodate RHNA for an income category, the City must "identify and make available" adequate sites within 180 days.

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Housing Element

AB 72, AB 879, and AB 1397

- The City is already required to include a housing element in its general plan regarding its contribution to the attainment of state housing goals.
- It must contain an inventory of land for residential development, including vacant sites and sites having the potential for redevelopment.
- HCD will now be required to review “any action or failure to act by a city” that it determines to be “inconsistent” with an adopted housing element.
- HCD will issue findings and the City will have 30 days to respond.
- If HCD finds that the City does not comply, then HCD can revoke its findings of compliance for the housing element.
- HCD may notify the State Attorney General that the City is in violation of its housing element, the HAA, the Density Bonus Law, or the prohibition of discrimination against affordable housing.

Housing Element

AB 72, AB 879, and AB 1397

- The governmental constraints analysis must identify local ordinances that “directly impact the cost and supply of residential development,” the number of requests to develop housing at densities below those in the site inventory, the length of time between receiving approval for housing development and submittal of an application for buildings permits, and ways to eliminate such constraints.
- Other restrictions for identifying adequate sites include:
 - Limits on use of non-vacant sites as part of the housing element inventory;
 - Parcels must have for sufficient water, sewer, and dry utilities available and accessible to support housing development;
 - Limits on reliance on sites that have been listed on multiple housing elements without being developed as housing;
 - Lower income sites must be between ½ acre and 10 acres in size unless a different site is shown to be adequate; and
 - Sites must be “available” for residential development and have “realistic and demonstrated” potential for redevelopment.

Inclusionary Housing

AB 1505

- Response to *Palmer v. City of L.A.* where a court invalidated L.A.'s inclusionary housing requirement for violating the Costa-Hawkins Act's preclusion of price control of rental units.
- Under AB 1505, cities can adopt inclusionary housing ordinances that require inclusion of a percentage of residential rental units that do not exceed limits for very low, extremely low, low, or moderate income households.
- Such ordinances must provide an alternative means of compliance (e.g. in-lieu fees).

Housing Approval Streamlining

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Streamlining Housing Approvals

SB 35: Streamlined Housing Approval Process

- Streamlines multifamily (2+ units) multifamily housing project approvals.
- Applies to cities where the number of building permits issued is less than a city's share of RHNA by income category for that reporting period and if there were fewer units of above-moderate or lower income housing approved or issued building permits.
- Site must be in residential or residential mixed-use zones or have general plan designation that allows for residential use.
- Excluded areas include (among others) sites where:
 - currently occupied, rent controlled, or affordable housing would be demolished;
 - housing that was occupied by tenants has been demolished within 10 years before application;
 - demolition of a historical structure would be required; or
 - a subdivision would be required, unless the project is funded through a low-income tax credit or prevailing wages are paid and a trained workforce is used.

Streamlining Housing Approvals

SB 35: Streamlined Housing Approval Process

- To qualify for streamlining, the development must be consistent with “objective zoning standards and objective design review standards” in effect at the time of application submittal.
- “Objective” standards involve uniformly verifiable standards available and knowable that are not subject to personal or subjective judgment.
- Development is consistent with housing density if within maximum allowable density.
- If application is in conflict with objective zoning standards, then the City must provide written documentation within 60 days, if 150 or fewer housing units, or 90 days if more than 150 housing units, from application submittal, or the project will be deemed to satisfy those standards.
- Development must be a “public work” or provide prevailing wages. Certain projects will require a “skilled and trained workforce.”

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Streamlining Housing Approvals

SB 35: Streamlined Housing Approval Process

- Approval must be ministerial and not subject to CEQA.
- City must complete review of the project within 90 days if 150 or fewer housing units or 180 days if more than 150 housing units from an application's submittal.
- The City can require a hearing but cannot “inhibit, chill, or preclude” the ministerial approval.
- NO parking requirements would be permitted if a development is within a ½ mile of of public transit, within one block of a car share vehicle, or located within a historic district.
- Otherwise, only one parking space per unit can be required.

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Streamlining Housing Approvals

SB 540: Workplace Housing Opportunity Zones (WHOZ)

- This potential process streamlines the housing approval process for projects in an identified WHOZ in areas close to jobs and transit.
- HCD may provide grants or no-interest loans to cities to develop the WHOZ-related specific plan and EIR.
- A WHOZ can include non-contiguous parcels identified in the City's housing element land inventory.
- To create a WHOZ, the City must develop an EIR and specific plan that include:
 - 100-1,500 housing units (majority of RHNA prohibited);
 - Uniform mitigation measures for traffic, water quality, natural resource protection, etc.;
 - Uniform development policies addressing parking, grading, habitat protection, public access, reduction of GHG emissions, etc.;
 - Design review standards; and
 - Funding sources for infrastructure and services.
- Adopted plans must be reviewed every 5 years.

Streamlining Housing Approvals

SB 540: Workplace Housing Opportunity Zones (WHOZ)

A development must be approved if it is:

- Consistent with the adopted sustainable community strategy and alternative planning strategy;
- Compliant with the WHOZ standards;
- A "public work" or prevailing wages are paid; and
- Consistent with affordability requirements (WHOZ-wide restrictions):
 - At least 30% affordable to moderate or middle income;
 - At least 15% affordable to lower income;
 - At least 5% affordable to very low income.

Note: No more than 50% can be provided for above moderate and any above moderate must include 10% for lower income unless City ordinance requires higher percentage.

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Housing Sustainability Districts

AB 73: Housing Sustainability Districts

- Provides cities with the option to create “Housing Sustainability Districts,” which operate as overlay districts to streamline the residential development process in areas with existing infrastructure and transit.
- The Districts would be zoned at higher densities, near public transit, and an EIR on the District would be completed on the front end.
- 20% of the housing in a District must be zoned at affordable levels.
- Once zoning is complete, housing sites within a District would be subject to ministerial approval and prevailing wage requirements.
- Cities would receive incentive payments from HCD for the creation of such Districts.
- However, HCD oversight is required.

Funding for Planning Changes and Housing Development

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Funding for Planning and Housing

SB 2: The Building Homes and Jobs Act

- Creates a permanent ongoing source of funding for housing to fill the gap in funding lost from redevelopment dissolution and the exhaustion of prior bond funds.
- Generates hundreds of millions of dollars each year for affordable housing, emergency shelters, and other housing needs via a \$75 to \$225 recording fee on specified real estate documents.
- In the 2018, 50% of funds will go to local governments to update zoning and planning documents to streamline housing approvals. Thereafter, 70% will be allocated to cities and counties through CDBG.
- City must a request from HCD to qualify for funds, including a description of the potential use of funds.

SB 3: Veteran and Affordable Housing Bond Act

- Places a \$4 billion bond on the November 2018 ballot to fund veteran housing programs, affordable housing, and infill infrastructure projects.
- If approved, \$1 billion would go toward housing veterans and \$3 billion for low income housing projects.

Recommended Next Steps

- Review the housing element inventory to determine distribution of RHNA by income category.
- Review housing development approvals since the beginning of the planning period to determine status of “unmet” need by income category on remaining parcels.
- Develop new information required for the Annual General Plan Report (possibly due on April 1, 2018).
- Determine whether the City wants to initiate streamlining under SB 540 (WHOZ) or AB 73 (Housing Sustainability Districts).
- Prepare/refine lists of “objective planning standards” to be applied to projects under SB 35 and the HAA.
- Develop SB 35 eligibility checklist and process for reviewing SB 35 applications.
- Verify compliance with requirements for payments for payment of prevailing wage or utilizing a “skilled and trained workforce” for SB 25, SB 540, or AB 73 projects.
- Determine potential uses of 2018 funds from Building Homes and Jobs Act.
- Encourage passage of the housing bond in November 2018.

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