



# Objective Standards 101

How to Apply Objective Standards to Comply with State Law and Retain Local Control

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# Authorities requiring Objective Standards

- Housing Accountability Act (HAA)/SB 330:
  - Applies to (1) residential units only; (2) mixed-use development projects consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; (3) transitional housing or supportive housing. (Gov. Code 65589.5 (h)(2)).
  - Preliminary Application/Vested rights: “preliminary application” process effectively gives housing developers vested rights to develop housing projects in accordance with local rules in place at the time they submit a preliminary application. (Gov. Code 65941.1). 180 days to then submit app.
  - Inconsistency with local standards: Qualifying project with 150-or fewer units = City must ID any inconsistency, non-compliance or nonconformity with City’s local standards within 30 days. For more than 150 units: 60 days. If no notice is provided, project deemed consistent with City’s standards. (Gov. Code 65589.5(j)(2)).

# Authorities requiring Objective Standards

- Housing Accountability Act (HAA)/SB 330: Where housing is an “allowable use, City cannot “impos[e] or enforc[e] design standards established on or after January 1, 2020, **that are not objective design standards.**” (Gov. Code 66300(b)(1)(C).)
- An “objective design standard” is a **“design standard that involves no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application.”** (Gov. Code 66300(a)(7).)

# Authorities requiring Objective Standards

- Housing Accountability Act (HAA)/SB 330:
  - Limited Grounds to Deny: if a “housing development project” complies with **objective general plan, zoning and subdivision standards** “in effect at the time the application was deemed complete,” the City can only reduce density or deny the project if it can identify a “specific adverse impact” to public health and safety that cannot be mitigated. (Gov. Code, § 65589.5(j)(1)(A)-(B).)
  - **Must be read together with vested rights and notice obligations of City; limits City’s ability to condition approval on neighborhood compatibility concerns for qualifying projects.**

# Authorities requiring Objective Standards

- SB 35: Applies in cities/towns that are not meeting their Regional Housing Need Allocation (RHNA) goal. Took effective 1/1/2018.
- Amended Government Code Section 65913.4 to require cities to streamline the approval of certain housing projects by providing a **ministerial** approval process.
- So long as project meets all **objective** general plan, zoning and design review standards in effect at the time the project application is submitted, an SB 35 project is eligible for ministerial approval. (See Gov. Code, § 65913.4(a).)

# Authorities requiring Objective Standards

- SB 9: Recent legislation requires cities to **ministerially** approve urban lot splits (i.e. two unit subdivisions) and; two-unit projects within single family residential zoning districts.
  - City only allowed to adopt **objective** standards that apply (re: subdivision requirements; height; FAR; setback; etc.)
- Accessory Dwelling Unit Law: Another instance of required **ministerial approval** for applicants seeking to construct an ADU/JADU on their property. Ministerial approval – if ADU/JADU meets certain requirements -- allows only objective local standards. Subjective standards on a ministerial-eligible ADU/JADU could mean city’s local ordinance is null and void under State law.
- Density Bonus Law: City must **ministerially grant** a Density Bonus (allowable gross residential density above the otherwise applicable maximum) for qualifying housing projects with an affordable housing component.

# Authorities requiring Objective Standards



- Density Bonus Law (cont.): Qualifying housing development projects includes: 5 or more residential units (including mixed-use; condos; conversion of commercial buildings to residential; etc.)
- Density bonus contingent on how deep the income restriction: under State law income categories (i.e. “Extremely Low Income” 15-30% of AMI, “Very Low Income” 30-50% AMI, etc.)
- **Qualifying Density Bonus Law projects are SB 330/HAA projects: so project can seek concessions/waivers/incentives that allows noncompliance *even of objective standards* that City could otherwise enforce.**

# Penalties for failure to comply

- If a City improperly denies a qualifying housing development project (including, when based on subjective considerations):
  - City could face writ of administrative mandamus that it has violated State law under SB 330/HAA;
  - Court has authority to issue order directing the city to comply, at city's cost, and court can impose penalties.



# Court Interpretation



California Renters Legal Advocacy & Education Fund v. City of San Mateo (2021) 68

Cal.App.5th 820, 845: “**Intentionally deferential to housing development**”

- Government Code 65589.5(f)(4): “For purposes of this section, a housing development project ... shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision **if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.**”

# Court Interpretation

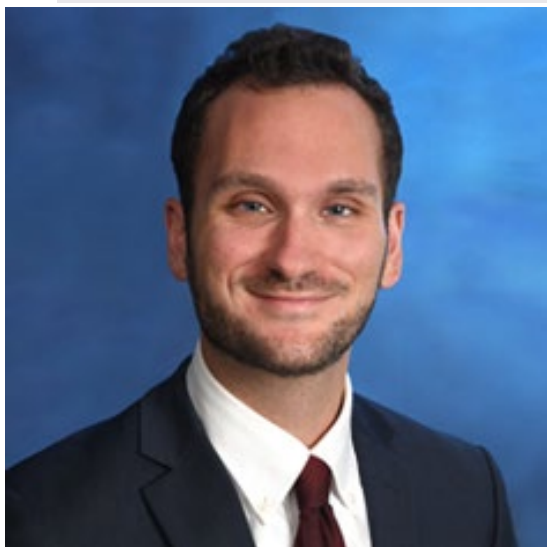


California Renters Legal Advocacy & Education Fund v. City of San Mateo (cont.)

“... whether the City denied the project for failure to conform to an objective standard is close, **recall that the City has the burden to show its decision conformed to the HAA** ... the Legislature has declared **the HAA must be interpreted and implemented to ‘afford the fullest possible weight’ to the approval of housing ...**”  
(Id. at 845)

“Where a standard is truly objective ... **there is little to no room for reasonable persons to differ on whether a project complies...**” (Id. at 845)

Court emphasizes that applicable law does not bar cities from imposing Conditions of Approval on the qualifying project.



**Questions?**

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