



Housing and Land Use

Legislative Update

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Overview

- What's changing and why?
- ADU Expansion
- The “Housing Crisis Act” (SB 330)
- Objective Standards Rule
- Housing Element: Stick and Carrot
- Density Bonus Law
- Near Misses
- Trends & What's Coming



What's Changing and Why?

- From the Legislature's perspective:
 - “Statewide housing crisis”
 - NIMBY (local regulation)



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Statewide Housing Crisis Persists

- “California is experiencing a housing supply crisis, with housing demand far outstripping supply. In 2018, California ranked 49th out of the 50 states in housing units per capita.”
- “Seven of the 10 most expensive real estate markets in the United States are in California.”



Statewide Housing Crisis Persists

- *“California needs an estimated 180,000 additional homes annually to keep up with population growth, and the Governor has called for 3.5 million new homes to be built over the next 7 years.”*
- *** “Lengthy permitting processes and approval times, fees and costs for parking, and other requirements further exacerbate cost of residential construction.”*



The message from Sacramento:

- *Approve housing projects and reduce barriers to creation of housing ... or else (the stick)*
- *And we will give you some money to help! (the carrot)*



Accessory Dwelling Units

- One tool for addressing the housing crisis
 - 1980s ... but major changes in 2016, 2017 and 2019
 - Creates a creative opportunity to add housing on developed lots
 - But limits local control



Accessory Dwelling Units (AB 881)

- State expanded its push for ADUs, reduced barriers to creating ADUs
- MFR lots
- No replacement parking
- No owner-occupancy (until 2025)
- No minimum lot size requirement
- No impact fees if <750 sq ft
- Any inconsistency voids the whole



Accessory Dwelling Units (AB 69)

- State Treasurer to develop the Help Homeowners Add New Housing Program
 - Assist homeowners to qualify for loans to construct additional housing units on their property (ADUs, JADUs).



SB 330 – Restrictions on Local Control of Housing Development

- **Overview:**
 - Limits cities' and counties' ability to regulate *housing development projects*
 - Changes Permit Streamlining Act and Housing Accountability Act
 - Adds Housing Crisis Act



SB 330: *Housing Crisis Act*

- Applies to
 - “urbanized areas”
 - “urbanized clusters”
 - = nearly every city



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SB 330: *Housing Crisis Act*

- **Applies to**
 - Housing development projects =
 - All-residential
 - Mixed-use with 2/3 sf for residential
 - Transitional/supportive housing



SB 330: Housing Crisis Act

Legislative Restrictions

- **No reducing housing units**
 - Below January 2018 numbers
 - Directly (density caps) OR
 - Indirectly (standards)
 - Exception: concurrent increase > no net loss
- **No eliminating housing use**
 - If permitted, can't remove



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SB 330: Housing Crisis Act

Legislative Restrictions cont'd

- No moratoriums
 - Unless imminent threat + HCD approval
 - No growth-control
- No Adopting Subjective Design Standards
 - After January 1, 2020



SB 330: Housing Crisis Act

Project Restrictions

- **No New Subjective Design Standards**
 - January 1, 2020
 - BUT remember HAA ...
 - Difficult findings to deny or reduce units
 - Existing subjective standards ≠ ground for deny, restrict DUs
- **No rezone if consistent with objective GP standards**
 - So ... check for inconsistencies
 - Enforce objective standards only to extent facilitate GP density



SB 330: Housing Crisis Act

Project Restrictions cont'd

- **No net-loss of DUs:**
 - Must replace one for one
 - “project no-net-loss rule”
 - Applies to applications “complete” after 1/1/2020



SB 330: Housing Crisis Act

Project Restrictions cont'd

Projects demolishing “protected” units:

- *Protected* means in the **last five years**:
 - Rent stabilized;
 - Restricted to low income;
 - Units removed from the rental market under Ellis Act within 10 years; or
 - **Occupied by low/very low households**
 - Tip: Ask for income info early!



SB 330: Housing Crisis Act

Project Restrictions cont'd

- **Protected units cannot be demolished unless:**
 - Project replaces all
 - All = peak within **last 5 years**
 - Count for inclusionary and density bonus (if affordable)
 - **Occupy until six months before** construction;
 - **Relocation** benefits;
 - **Right of first refusal.**



SB 330: Housing Crisis Act

Project Restrictions cont'd

- **Replace =**
 - same or greater number
 - equivalent size
 - affordable rent or cost
 - occupied by same or lower income category
 - Income unknown?
Presumed: same proportion as city
(per HUD)
- * Request income verification



SB 330

Streamlining Provisions

- **Hearing Limit**

- 5 max ... if complies with GP and zoning objective standards when application deemed complete
- Includes meeting and workshops and non-leg appeals
- Does not include hearings on legislative



- **Shorter Approval timeframes**

- 120 > 90 days following EIR certification (60 days if CEQA exempt)



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SB 330

New Preliminary Application Process: Earlier Vesting

- **“Freeze” regulations**
 - Standards in effect when pre-app submitted
 - Objective only
- **Checklist**
 - Pre-app requirements (on website)
 - Limited to statutory
 - Must disclose why incomplete



SB 330

New Preliminary Application Process: Earlier Vesting

- Pre-app requirements:
 - Mostly fill-in-the-blank
 - But detailed plans (every structure, elevation, colors, materials)
- Skip the pre-app ...?
 - Talk with city attorney



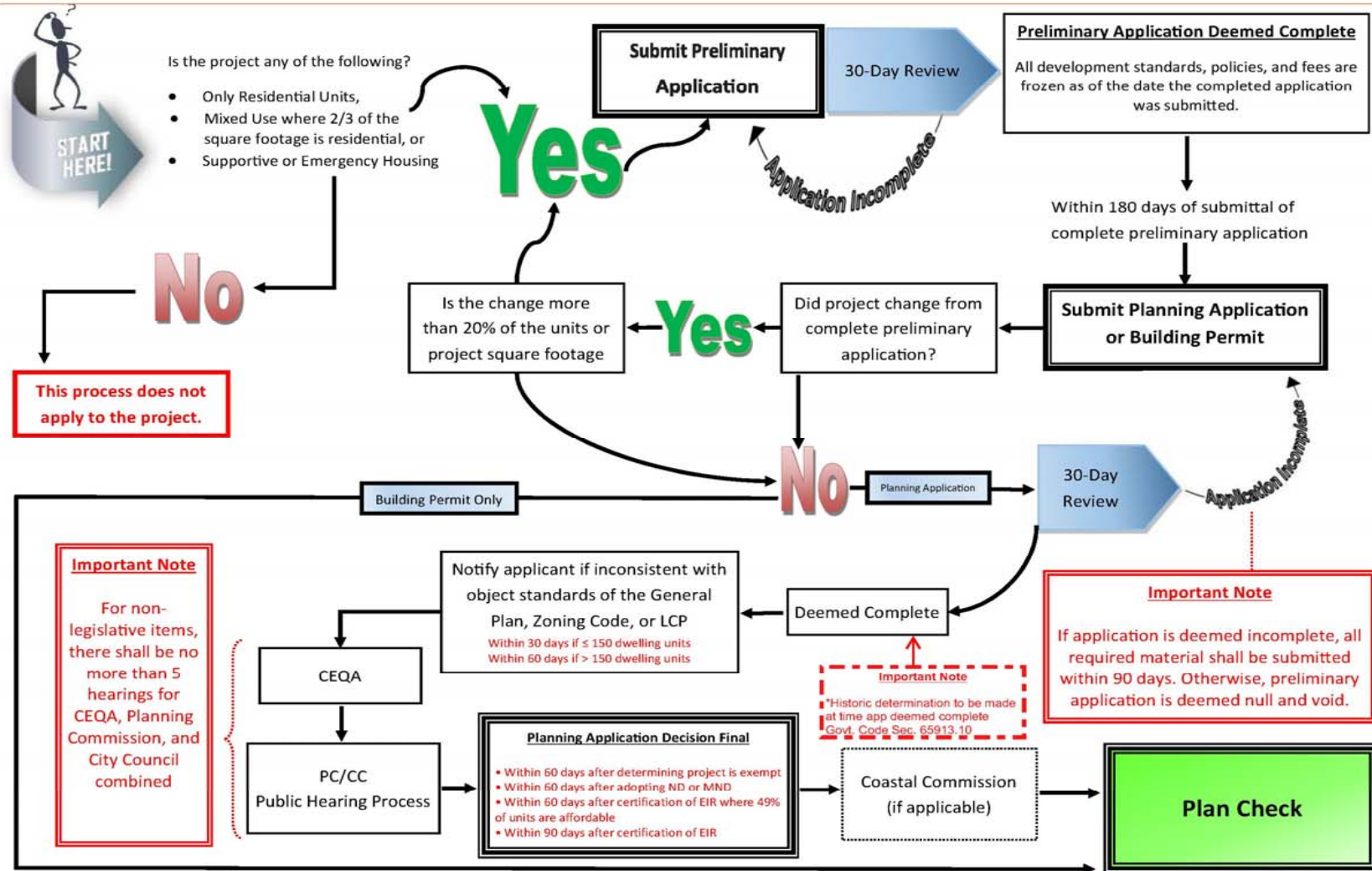
SB 330

Historic Determination

- When (full) application deemed complete (GC 65913.10)
- CEQA still applies



Residential Project Flow-Chart



SB 330 *Summary*



- **Key Takeaways:**
 - Process preliminary applications
 - Special attention when demolishing housing
 - Address inconsistencies between zoning and GP densities
 - Remember Housing Accountability Act (Findings required for denial or reduction in units)
 - Dovetails with Housing Crisis Act
 - Both change application process
 - Objective only for residential; no more subjective.



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Buzz Word of 2020: Objective Development Standards

- Traditionally, development and design standards were a mix of objective and subjective standards.
 - Height, density, setback can be quantified
 - *Compatible* in scale, bulk and massing (cannot be quantified)
- Together, struck a nice balance of guidance and freedom to create unique and interesting design



Objective Development Standards

- 1. Housing Accountability Act**
Limits cities' ability to deny or reduce density for housing projects if project complies with objective standards.
- 2. SB 35 Streamlining**
Streamlines review and approval of eligible affordable housing projects through a ministerial approval process
- 3. Housing Crisis Act (SB 330)**



Objective Development Standards

- “Objective design standard” means a design standard that involve 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.



Objective Development Standards

- Lengthy permitting processes and approval times
 - \$\$\$\$ residential construction
 - impedes housing
 - streamline and simplify process
- Concept:
 - City determines in advance what it wants to see objectively in developments
 - Developers design to meet those requirements
 - No one should have grounds to deny the project—can be approved quickly.



Objective Development Standards

- Setbacks
- Height
- FAR/lot coverage
- Relation to neighboring buildings (stepbacks and articulation vs “compatible” in scale)
- Explaining with details the characteristics of a particular style and list the required components



Objective Development Standards

- Limits on blank walls (breaks in bank walls every X feet)
- Building Frontage requirements (# of doors, space between doors and garage, etc).
- Material Requirements
- Color requirements
- According to HCD, can require consistency with *neighborhood character* if that term is defined in an objective manner (i.e., in quantifiable terms, as above)
- Creativity???



Objective Development Standards

- More scrutiny of conditioning projects
 - Put objective expectations in the code
- Involve public in creation of new standards, since they will have less ability object to residential projects based on compatibility, mass and scale
- Will need to look closely at which existing standards can be applied to residential and which should be made more objective
- Close scrutiny of new standards



Online Information

- City must provide:
- Schedule of all fees, exactions, affordability requirements for each parcel
- All zoning ordinances and design and development standards for each parcel
- Detailed list of information required for a development project application ... including “statement of application” (new)
- Annual fee reports
- Archive of fee nexus studies
- Post it ALL



Housing Element Update

- Ending fifth state planning cycle for housing.
- 8-year cycle (staggered HE due date/start date between 2019 and 2024)
- Updated HE to HCD for review and certification
- Cities must
 - review and evaluate current housing programs
 - assess housing needs
 - identify the existing and new programs to meet needs for the next eight years.



Housing Element Update (cont'd)

- Includes demonstrating that existing housing programs and residential zoning is adequate to accommodate the RHNA* allocation

... and if not, that programs and zoning can be adjusted to meet RHNA to the satisfaction of HCD.

* Regional Housing Need Assessment



Stricter State Enforcement of Housing Laws | (Assembly Bill 101-2019)

- Two key components
 - The stick: Stepped up enforcement of Housing Element compliance
 - The carrot: targeted grant programs



Stricter State Enforcement of Housing Laws (Assembly Bill 101)

- **Judicial Enforcement**

- Attorney General to seek court orders against cities for HE compliance:
 - Court retains jurisdiction
 - Status conferences
 - Imposition of Fines
 - Appointment of receiver (“agent”)



- **Access to Funding**

- Compliant cities have preference in grant funding



Housing Omnibus Bill

New Grant Programs – mostly gone

- ~~**\$650 Million for the Homeless Housing, Assistance, and Prevention Program**~~
 - ~~One-time grant funds for regional coordination and expanding or developing “local capacity to address homelessness challenges.”~~
 - ~~The deadline to apply for funds is **Feb. 15**.~~
- ~~**\$250 Million for the Local Government Planning Support Grants Program**~~
 - ~~One-time grants to cities, counties and councils of government (half to cities and counties, half to COGs) for technical assistance, preparation and adoption of planning documents, and “process improvements” to “accelerate housing production and ... facilitate compliance with” sixth-cycle regional housing needs assessments.~~
 - ~~The amount available to a particular city depends on its population. The deadline for cities and counties to apply for funds is **July 1** (COGs have until January 2021).~~
- **\$500 Million for the Infill Infrastructure Grant Program of 2019**
 - Funds capital improvement projects that are needed to facilitate development of qualifying infill projects and areas.
 - *HCD will release a notice of funding availability by **Nov. 30**.*



Expansion of Existing Programs

- **CalHome Program Funds**
 - Now eligible for grants to local agencies and nonprofits for the construction or rehabilitation of accessory dwelling units and junior ADUs, as well as to assist disaster victims.
- **Housing Trust Grant Funds**
 - Native American Tribes may now receive funds from this Program.
 - Permissible uses of the funds now include construction or rehabilitation of ADUs and junior ADUs.



Expansion of Existing Programs cont'd

- **Tax Credits**
 - Additional \$500 million in tax credits to qualifying low-income housing projects
 - Some changes to the criteria to qualify
 - HCD and CalHFA directors added to TCAC
- **Self-Help Housing Fund for Special-Needs Housing**
 - \$500 million to facilitate low- and moderate-income housing for people with intellectual or developmental disabilities.
- Remember AB 69



Housing Omnibus Bill Summary

- **Key takeaways:**
 - Housing Element compliance is even more critical in light of AB 101's enforcement provisions
 - There may be funding available for certain housing-related projects, but be aware of application windows and eligibility requirements



Changes to Density Bonus law to promote 100% affordable housing developments (AB 1763)

- **Background**

- Existing density bonus law allows developers to increase density and receive other concessions in exchange for affordability restrictions of a percentage of units.
- AB 1763 Increases density bonus and other concessions for 100% affordable housing projects



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Changes to Density Bonus law to promote 100% affordable housing developments (AB 1763)

- Applies to:
 - 100% affordable housing projects
 - Up to 20% may be moderate income units
 - At least 80% must be low income
- Density Bonus:
 - Up to 80% of the otherwise maximum allowable density
 - If within ½ mile of a major transit stop, then no density limit



Changes to Density Bonus law to promote 100% affordable housing developments (AB 1763)

- New Regulatory Concessions
 - Projects will receive at least four
 - Reduced parking requirements
 - If within 1/2 mile of major transit stop, then given a height increase of up to three stories or 33 feet



Other Significant Housing Laws from 2019

- **Legislation:**
- **Tenant Protection Act (AB1482)**
 - Statewide residential rent control
 - But COVID?



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Legislation

- Near misses in 2019–2020
 - SB 50 (2019) – Death of R1 (4-plex)
 - SB 902 (2020) – 10 du/parcel (optional)
 - SB 1120 (2020) – SB 50 redux (duplex)



Legislation

- Trend for 2021 and beyond?
- SAME, SAME, SAME PLUS COVID



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