

# **The 2017 Housing Package: What Cities Need to Know**

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# Presenters

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# How to Ask a Question

- ✓ All phone lines have been muted.
- ✓ For questions - use the Q&A window to the right side of your screen. Please enter your name, title and city.



# Barriers to Affordable Housing

- ✓ Inadequate Funding
  - Tax credits
  - State and federal funding
  - Local funding
- ✓ Community Resistance
  - NIMBY
- ✓ Local Planning Process
  - Zoning/Density
  - CEQA
  - Project approvals/permitting

# Barriers to Affordable Housing

## ✓ State Policies

- GHG reduction goals – infill projects
- Energy efficiency standards
- Building codes

## ✓ Market Conditions

- Down market/booming market
- Lack of developer interest
- High interest rates
- Difficulty getting financing – Builder and buyer

# Goals of the Legislature in 2017

More than 130 housing-related bills introduced to:

- ✓ Strengthen housing element requirement to identify “adequate sites” for RHNA.
- ✓ Connect requirement to identify “adequate sites” to approval of housing development on those sites.
- ✓ Monitor housing element implementation.
- ✓ Maximize Housing Accountability Act effectiveness.
- ✓ Authorize inclusionary rental housing ordinance.
- ✓ Provide state funding for planning and housing production.

# The Housing Package

- ✓ 15 bills comprised the “Housing Package” signed by the Governor.
  
- ✓ Three broad categories of bills:
  - Local Accountability
  - Streamlining
  - Funding

# 2017 Housing Bills

## Local Accountability Bills

- ✓ Housing Accountability Act (SB 167/AB 678/AB 1515)
- ✓ Housing Element
  - New Content (AB 879)
  - Site Inventory Changes (AB 1397)
  - New Authority for HCD (AB 72)
- ✓ Annual Reports (AB 879/SB 35/SB 540)
- ✓ No Net Loss (SB 166)



# Housing Accountability Act

- ✓ Restricts cities' ability to deny, reduce the density of, or make infeasible housing developments, and requires cities to justify these actions.
- ✓ Applies to all housing development projects (affordable *and* market-rate) and emergency shelters:
  - Residences only;
  - Transitional and Supportive housing; and
  - Mixed use projects with **at least 2/3 of the square footage designated for residential use.**

# Housing Accountability Act

- ✓ If a housing development complies with “objective” general plan, zoning, and subdivision standards, city can only reduce density or deny if it would cause a “specific adverse impact” to public health & safety that can’t be mitigated.
- ✓ “Lower density” includes imposing conditions “that have the same effect or impact on the ability of the project to provide housing.”

# Housing Accountability Act

- ✓ Additional protections for affordable projects:
  - Emergency shelters;
  - 20% low income (up to 80% of median); or
  - 100% moderate (up to 120% of median) or middle income (up to 150% of median).
  
- ✓ Must make specific findings to deny, reduce density, or add condition making project infeasible—even if the project does not comply with all “objective” standards.

# Housing Accountability Act

## Change in Processing Housing Applications:

- ✓ If a project does not comply with objective standards, city must provide list of any inconsistencies within 30-60 days of application being deemed complete.
  - If city fails to provide this list, the project is “deemed consistent.”

# Housing Accountability Act

## Changes to Judicial Review:

- ✓ Provides that a project is “deemed consistent” with objective standards if substantial evidence would allow a reasonable person to conclude the project is consistent.
- ✓ Requires the city’s findings to be supported by a “preponderance of evidence.” If the city’s findings not supported by preponderance of the evidence, court must issue order compelling compliance within 60 days. If city denied project in bad faith, court may order approval.
- ✓ Imposes mandatory fines (\$10,000/unit) on cities that fail to comply with a judge’s order within 60 days.
- ✓ Mandates enhanced fines (x5) if a city acts in bad faith.

# Housing Element

## Overview:

- ✓ Planning and Zoning law requires each city to include in its general plan a housing element for the preservation, improvement, and development of housing.
- ✓ HCD reviews all housing elements and determines whether each housing element and amendment substantially complies with state housing element law.
- ✓ Cities are in the middle of their housing element cycles, with most housing elements being revised between 2021 and 2023.

# Housing Element

## New Content:

- ✓ Governmental constraints analysis must include local ordinances that “directly impact the cost and supply of residential development.
- ✓ Nongovernmental constraints analysis must include requests to develop housing at densities below those anticipated in site inventory; length of time between receiving approval and submittal of building permit application.
- ✓ Program to address nongovernmental constraints.

# Housing Element

## New Site Inventory Requirements:

- ✓ Sufficient water, sewer, and dry utilities or be part of a mandatory program to provide such utilities.
- ✓ “Available” for residential development with “realistic and demonstrated” potential for redevelopment.
- ✓ Lower income sites must be between ½ acre and 10 acres in size.
- ✓ Continuing identification of nonvacant sites and certain vacant sites that have not been approved limited.
- ✓ Restrictions on using nonvacant sites.



# Housing Element

## New Authority for the Department of Housing and Community Development (HCD):

- ✓ Authorizes HCD to review any action or inaction by a city or county that it determines is inconsistent with an adopted housing element.
- ✓ Requires HCD to issue written findings regarding failure to comply. City response within 30 days.
- ✓ HCD's determination of failure to comply allows HCD to revoke original housing element compliance finding.
- ✓ HCD may notify AG that city is in violation of the Housing Element Law, HAA, no net loss, density bonus law, or anti-discrimination provisions.

# No Net Loss

- ✓ Regional Housing Need Allocation (RHNA).
  - Typically: 40% low and very low; 20% moderate; 40% above moderate.

## Model City

Lower Income (Very Low and Low)	Moderate Income	Above Moderate Income	TOTAL RHNA
400 units	200 units	400 units	1,000 units

# No Net Loss

- ✓ Must designate specific sites that can “accommodate” the RHNA at each income level during the planning period (65583.2).
- ✓ Sites “accommodating” lower income housing usually must be at “default densities” of 10 – 30 units per acre.

APN	Zone	DU/A	Acres	Units	Use	Income Category
041-0042-002	R-3	20-30 du/ac	2.0	40	Vacant	Lower
037-0400-027	R-2	10-20 du/ac	0.75	7	Duplex	Moderate
038-0100-040	R-1	5-10 du/ac	4.5	22	Vacant	Above Moderate
039-1100-039	CMU	20 du/ac	1.5	25	Parking	Moderate

# No Net Loss

- ✓ Only applies to general law cities.
- ✓ The no net loss provision applies if:
  - A city downzones a site shown in the housing element to permit fewer units than shown in the site inventory;
  - A city approves a project on a site shown in the housing element with fewer units than shown in the site inventory; or
  - A development is approved on a site with fewer units at the income level shown in the site inventory.
- ✓ If any of the above occur, the city must find that the reduction is consistent with the city's general plan and:
  - Find that other sites in the housing element are adequate to meet the RHNA at each income level; or
  - Identify and “make available” within 180 days other sites, so there is “no net loss” in capacity at each income level.

# No Net Loss

- ✓ Ways to “identify and make available”:
  - City approved more units on some site than shown in inventory or has other units at that income category; or
  - Other sites NOT in Element can make up difference; or
  - Rezoning another site to maintain the inventory.
- ✓ City cannot deny projects because they result in need for the city to identify or rezone additional sites.
- ✓ No housing element amendment seems to be required.
- ✓ Confusing CEQA language.

# Annual Reports

By April 1 of each year, general law **and charter** cities must send an annual report to their respective city councils, the Office of Planning and Research (OPR), and HCD regarding implementation of their general plans.

- ✓ Includes discussion of progress towards implementing housing element programs to meet RHNA.
- ✓ Failure to submit an annual report in substantial compliance with the new requirements by May 31 of each year may subject the city to a court order requiring completion. If the city fails to comply with the order within 60 days, court may order sanctions.

# Annual Reports

**Table A**

**Annual Building Activity Report Summary - New Construction  
Very Low-, Low-, and Mixed-Income Multifamily Projects**

Housing Development Information						Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions			
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure R=Renter O=Owner	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.
			Very Low- Income	Low- Income	Moderate- Income	Above Moderate- Income			See Instructions	See Instructions	
(9) Total of <b>Moderate and Above Moderate</b> from Table A			0	0			0				
(10) Total by income Table A/A3 ▶ ▶											
(11) Total <b>Extremely Low-Income</b> Units*											

\* Note: These fields are voluntary

# Annual Reports

## New Content Required:

- ✓ Prior year **Applications**
  - Housing development applications received.
  - Units in all applications: approved & disapproved.
- ✓ **Sites** rezoned to accommodate RHNA.
- ✓ **Sites** identified or rezoned for No Net Loss.
- ✓ **Production Report**  
Net new units entitled, permitted, or occupied.
  - For sale or rental.
  - RHNA income category.
  - Assessor Parcel Number.
- ✓ **SB 35 Report**
  - Applications & sites.
  - Units by type & RHNA.



# Annual Reports

## Additional Changes:

- ✓ HCD to publish new reporting forms.
- ✓ HCD will publish reports online.
- ✓ Failure to submit two or more consecutive annual reports triggers SB 35 streamlining.

# 2017 Housing Bills

## Bonus Bill

- ✓ The “Palmer Fix” (AB 1505)

# Inclusionary Zoning

- ✓ Can adopt ordinance that requires rental housing development to include a certain percentage of units affordable to very low, low, or moderate income households.
- ✓ Must provide alternative means of compliance (e.g. in-lieu fees, land dedication, off-site development of units, etc.)

# Inclusionary Zoning

- ✓ HCD may review ordinance adopted after 9/15/2017 if:
  - Requires more than 15% be occupied by low or very low income households; and
  - City failed to either (1) meet at least 75% of its share of above moderate income RHNA; or (2) submit annual report.
- ✓ HCD may request economic feasibility study with evidence that ordinance does not constrain production.

# Possible Next Steps

- ✓ Review housing element inventory to become familiar with distribution of RHNA by income category.
- ✓ Review housing development approvals since the beginning of the housing element period to determine status of “unmet” need by income category on remaining parcels.
- ✓ Review inclusionary requirements to maximize actual production of affordable housing.
- ✓ Develop new information required for Annual General Plan Report (possibly due on April 1, 2018).

# Questions?



# 2017 Housing Bills

## **Streamlining Bills:**

City-Initiated (SB 540, AB 73)  
vs. Developer-Initiated (SB 35)

# City-Initiated Streamlining

## **SB 540: Workforce Housing Opportunity Zone**

- ✓ Streamlines the housing approval process by having cities identify Workforce Housing Opportunity Zones (WHOZ) in areas close to jobs and transit, and perform the planning and CEQA review up front.
- ✓ No project-specific CEQA review if developments meet the standards of the WHOZ.
- ✓ HCD may provide grants or no-interest loans to cities to develop the specific plan and EIR required for the adoption of the WHOZ.
- ✓ League sponsored bill.



# City-Initiated Streamlining

## **SB 540: Creating a WHOZ:**

- ✓ Develop a Specific Plan/EIR. Should include:
  - 100-1,500 housing units (but not more than 50% of your city's RHNA);
  - ID the distribution of major components of public and private infrastructure and essential facilities ( including schools);
  - Uniformly adopted mitigation measures for traffic, water quality, natural resource protection, etc.;
  - Uniformly adopted development policies such as density ranges, parking ordinances, grading ordinances, habitat protection, reduction of GHG emissions;
  - Design review standards; and
  - Source of funding for infrastructure and services.
- ✓ WHOZ & Streamlining good for 5 years

# City-Initiated Streamlining

**SB 540: Developments within the WHOZ must be approved and no CEQA review is required if:**

- ✓ Consistent with adopted SCS/APS;
- ✓ Incorporated Plan's mitigation measures;
- ✓ Incorporated Plan's uniform standards;
- ✓ Affordability requirements (within Zone):
  - 30% affordable to moderate or middle income
  - 15% affordable to lower income
  - 5% affordable to very low income
- ✓ Not more than 50% for above moderate; above moderate must include 10% affordable to lower income unless local ordinance requires higher percentage; and
- ✓ Either “public work” or payment of prevailing wages.

# City-Initiated Streamlining

## **AB 73: Housing Sustainability Districts**

- ✓ Allows a city or county to create a housing sustainability district to complete upfront zoning and environmental review.
- ✓ Requires HCD oversight.
- ✓ Remains in effect for 10 years.
- ✓ Zoning Incentive Payment available if HCD determines that approval of housing is consistent with ordinance (currently unfunded).

# Developer-Initiated Streamlining

## SB 35

- ✓ Seeks to streamline multifamily housing project approvals by eliminating public input, prohibiting CEQA, and removing local discretion.
- ✓ Allows the developer to opt-in to streamlining.

## Does it apply to my city?

- ✓ Applies if city didn't submit annual report for 2 years.
- ✓ Applies to cities where the number of building permits issued is less than city's share of RHNA by income category for that *reporting period* (first ½ or last ½ of RHNA assessment cycle).
- ✓ City remains eligible until HCD's determination for next reporting period.

# Developer-Initiated Streamlining

**SB 35: Does it apply to the site on which a project has been proposed?**

## **Site Exclusions:**

- ✓ Sites in Coastal zone;
- ✓ Prime farmland or farmland of statewide importance;
- ✓ Wetlands;
- ✓ Delineated earthquake zone;
- ✓ FEMA floodplain unless flood plain development permit;
- ✓ FEMA floodway unless no rise certification;
- ✓ Habitat for protected species;
- ✓ Zoned for non-residential use (unless GP allows residential)

# Developer-Initiated Streamlining

## Site Exclusions Continued:

- ✓ Site on which housing occupied by tenants demolished in last ten years;
- ✓ Site with existing rental housing occupied by tenants in last ten years required to be demolished;
- ✓ Site with historical structure required to be demolished for project; and
- ✓ Site is subject to Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act or the Special Occupancy Act.

# Developer-Initiated Streamlining

## SB 35: Does the project qualify for streamlining?

- ✓ Multifamily housing development on site in which 75% adjoins parcels that are developed with urban uses.
- ✓ Inclusionary requirement:
  - 10% below 80% of AMI if annual report reflects fewer units of above-moderate **approved** than required;
  - 50% below 80% of AMI if annual report reflects fewer units of lower income **issued building permits** than required; or
  - If both, then developer chooses.

# Developer-Initiated Streamlining

## **SB 35: Does the project qualify for streamlining? (Continued)**

- ✓ Consistent with “objective zoning standards and objective design review standards.”
- ✓ “Objective” means: Uniformly verifiable by reference to an external and uniform benchmark or criterion. No personal or subjective judgment.
- ✓ Consistent with housing density if density is compliant with maximum density.
- ✓ Development is a “public work” or construction workers will be paid at least the general prevailing wage rate. Requirement for “skilled and trained workforce.”



# Developer-Initiated Streamlining

## **Project exclusion:**

- ✓ Project involves subdivision of land unless (1) received tax credit financing; or (2) paid prevailing wages and skilled and trained workforce will be used.

# Developer-Initiated Streamlining

## SB 35 applies to the project, now what?

- ✓ Review limited to compliance with objective standards published before submission of development application and broadly applicable.
  - If in conflict with “objective planning standards,” city must provide written documentation within 60 days (if <150 units) or 90 days (if >150 units) of an **application’s submittal**, or the project is deemed to satisfy the standards.
- ✓ City must complete “design review or public oversight” within 90 days (if <150 units) or 180 days (if >150 units) of an **application’s submittal**.
  - No public hearing required.
- ✓ No CEQA review.
- ✓ Limited parking requirements.

# Possible Next Steps

- ✓ Decide whether your city wants to initiate streamlining under SB 540, AB 73, or by creating your own specific plan/overlay zone.
- ✓ Prepare lists of “objective planning standards” to be applied to projects under SB 35 and the HAA. If you already have a list, determine whether new standards should be added.
- ✓ Develop SB 35 eligibility checklist and process for reviewing applications where SB 35 is invoked.
- ✓ For projects utilizing SB 35, SB 540 or AB 73, verify compliance with requirements for payment of prevailing wage or utilizing a “skilled and trained workforce.”

# Questions?



# 2017 Housing Bills

## Funding Bills

- ✓ The Building Homes and Jobs Act (SB 2)
- ✓ Veterans and Affordable Housing Bond Act (SB 3)

# Building Homes and Jobs Act

- ✓ Permanent source of funding.
- ✓ Imposes a \$75 recording fee on specified real estate documents (up to \$225 per transaction per parcel).
- ✓ Projected to generate hundreds of millions of dollars per year for the Building Homes and Jobs Trust Fund for:
  - ✓ Affordable housing;
  - ✓ Supportive housing;
  - ✓ Emergency shelters; and
  - ✓ Transitional housing.
- ✓ 2018 funds– 50% set aside for local plans
- ✓ All other years – 70% =available to locals

# Building Homes and Jobs Act

## Potential uses for 2018 funds:

- ✓ Preparing general plans, community plans, specific plans, sustainable communities strategies, and local coastal programs;
- ✓ CEQA analysis to eliminate need for project-specific review;
- ✓ Local process updates to improve and expedite local planning;
- ✓ Creation of inclusionary housing ordinances;
- ✓ Preparation of fee studies; etc.

# Building Homes and Jobs Act

## How to qualify for 2018 funds:

- ✓ Submit a request for use to HCD, including a description of the proposed use of funds.
- ✓ Include the proposed use of these funds in your funding plan and annual reports.



# Building Homes and Jobs Act

## Potential uses for 2019 funds:

- ✓ Development, acquisition, and preservation of affordable multifamily, residential live-work, and rental housing;
- ✓ Matching funds for housing trust funds;
- ✓ Matching funds for the Low and Moderate Income Housing Asset Fund;
- ✓ Homeless services: rapid rehousing, rental assistance, navigation centers, emergency shelters, transitional housing;
- ✓ Accessibility modifications;
- ✓ Efforts to acquire and rehabilitate foreclosed/vacant homes;
- ✓ Homeownership opportunities (e.g. down payment assistance); etc.

# Building Homes and Jobs Act

## **Local Government Allocations for 2019:**

- ✓ 90% allocated based on the same formula as used for Community Development Block Grants (CDBG), except that funds allocated to non-entitlement areas under the CDBG formula will be distributed by HCD through a competitive grant program.
- ✓ 10% allocated equitably among non-entitlement areas.

# Building Homes and Jobs Act

## How to qualify for 2019 funds:

- ✓ Submit a plan to HCD, describing how you will use the funds in accordance with the authorized uses;
- ✓ Have a compliant housing element and submit a current annual report;
- ✓ Provide ongoing tracking of any allocated funds in your future annual reports;
- ✓ Prioritize investments that increase housing stock affordable to households that are at or below 60% of area median income.

# Veterans and Affordable Housing Bond Act of 2018

- ✓ Authorizes a \$4 billion general obligation bond to fund affordable housing programs and infill infrastructure projects, including:
  - Multifamily housing;
  - CalHome;
  - Joe Serna Farmworker Housing;
  - Local Housing Trust Fund Matching Grant;
  - BEGIN; and
  - TODs.
  
- ✓ November 2018 ballot

# Possible Next Steps

- ✓ Begin discussions of potential uses of the 2018 funds generated by the Building Homes and Jobs Act, and begin lining up consultants to perform the planning activities for which funds are requested.
- ✓ Encourage the passage of the housing bond in November 2018.

# What's Next: 2018 Focus

## Remove Additional Barriers:

- ✓ Funding – Need voter approval for Housing Bond
- ✓ Seek additional funding
  - Federal tax credits
  - ACA 11 (Caballero) California Middle Class Affordable Housing and Homeless Shelter Account – ¼ cent sales tax
- ✓ Empower Local Governments
  - ACA 4 (Aguiar-Curry) Local Government Financing: Affordable Housing and Public Infrastructure: Voter Approval – 55% voter threshold
- ✓ Encourage Cities to Implement Streamlining
  - SB 540 and AB 73 – Update Plans

# Questions?



# Contact Information

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