



City of Sunnyvale

Agenda Item

17-1208

Agenda Date: 2/6/2018

REPORT TO COUNCIL

SUBJECT

Review of 2017 Housing Legislation (Information Only)

BACKGROUND

This report provides a summary and analysis of the new housing laws enacted by the State of California in 2017, commonly referred to as the “2017 Housing Package,” which took effect on January 1, 2018. Staff analyzed these laws (which included a review of the analysis of various outside groups and legal firms) to assess the likely positive or negative near term impacts of these laws on the City. Two summaries of this legislation, one provided by the California Department of Housing and Community Development Department (HCD) and the other by the League of California Cities, are attached to this report as Attachments 1 and 2, respectively.

EXISTING POLICY

Council Policy 7.3.1:

Goal 7.3B Assure that City policy is established, documented and enacted according to established procedures and legal principles.

Policy 7.3B.3 Prepare and update ordinances to reflect current community issues and concerns in compliance with state and federal laws.

DISCUSSION

The fifteen bills comprising the Housing Package (plus several other housing bills not officially included in the Housing Package but also enacted in 2017) were developed by the California Legislature to address the statewide housing crisis. The statewide housing crisis is considered by most of the bill authors and sponsors as a matter of both inadequate supply and significant affordability concerns. Most of these bills can be grouped into one or more of the following four categories:

- **Funding Measures:** SB 2, SB 3, and to a limited extent AB 73, AB 571;
- **Accountability, Reporting, and Enforcement Measures:** SB 166, SB 167, AB 72, AB 678, AB 879, AB 1397, AB 1515; AB 1568
- **Streamlining Measures:** SB 35, SB 229, SB 540, AB 73, AB 494
- **Miscellaneous:** AB 571, AB 1193, AB 1505, AB 1521

Potentially significant impacts of the new legislation in each of the above areas on City business or operations are noted below. A table showing which bill has impacts in each category(ies) is provided in Attachment 3. That table also indicates whether the bill creates new mandatory requirements that

cities and counties must meet, or new opportunities that jurisdictions may opt to pursue. Of those bills that create new mandatory requirements for local governments, the table also indicates whether those requirements apply to charter cities, such as Sunnyvale, and charter counties, or only to “general law” jurisdictions. Please see Attachment 1 for more detail on each bill, and Attachment 2 for analysis of likely impacts to cities and counties of the new laws.

Funding Measures

SB 2 is estimated to generate approximately \$250 million per year for the State from new real estate recording fees. These funds will be available for local planning and affordable housing purposes. The bill requires the State to distribute half of the revenues received in 2018 to cities and counties for planning activities intended to create additional capacity for housing, streamline development review, or otherwise support production of affordable housing. The remainder of the 2018 funds will be available to the State for affordable housing and homelessness programs. Starting in 2019 and beyond, the State must distribute 70% of these annual revenues to local governments for affordable housing development and related uses, such as rental and home buyer assistance. See Attachment 2 for more detail about the types of eligible uses of these funds.

What SB 2 Means for Sunnyvale: Based on the estimated amount of SB 2 revenue for 2018, and assuming the 50% set-aside for local governments is distributed evenly among the State’s 540 cities and counties, a very rough estimate of how much the City might be eligible for is approximately \$230,000. It is not clear yet how the State will divide up this amount among the jurisdictions, what the application process will be, or what kinds of strings may be attached to this funding, such as a matching requirement, for example. Some preliminary information about the expected application process is provided in Attachment 2, from the League of Cities; however, HCD may create a more robust application process in the coming months. Staff is monitoring this potential opportunity.

The City has previously completed or is currently working on many planning efforts similar to the type of work eligible for this funding, such as: updating local land use plans, completing plan-level environmental review, streamlining development review processes, developing inclusionary housing ordinances, and/or conducting nexus studies needed to justify and enact housing impact fees. Many jurisdictions around the state have not undertaken such efforts previously, or need to update older plans and programs, and may not have had sufficient funds to do such work earlier. The City is currently undertaking several specific plan updates with a goal of potentially increasing housing capacity in certain areas. Those studies, for the most part, are already funded, so it is not clear whether any additional plan updates will be pursued in 2018 for which this funding could be sought.

SB 3 authorizes an affordable housing bond measure to be placed on the State ballot in 2018. If approved, \$4 billion in state bonds will be issued, of which \$3 billion will be for existing State affordable housing programs, and \$1 billion will be for veterans’ housing programs. If the bond measure passes, some of this funding may be available for future affordable housing projects within the City, primarily new construction and/or rehabilitation of rental housing for lower-income households. Usually the housing developer, rather than the city, is eligible to apply for such funds, most of which are provided as loans against the property, but the City may need to submit documents in support of that application. These funds help the developers further leverage any local housing funds the City contributes to such projects, in addition to leverage provided by federal tax credits or other non-City sources.

What SB 3 Means for Sunnyvale: The ultimate impact on the City as a whole would be potentially more affordable rental units developed in the City at a lower per-unit City cost. The City has previously taken advantage of State housing programs funded by prior State bond measures, so this would not be an entirely new process. For example, both the Fair Oaks Plaza and Onizuka Crossing projects applied for and were awarded Infill Infrastructure Grants (IIG) by HCD, which were funded by an earlier bond measure, Proposition 1C. In both cases the City supported the housing developer's application by providing technical assistance through the Community Development Department, and adopting Council resolutions in support of those funding applications, when required by the program.

Accountability, Reporting and Enforcement Measures

AB 678, SB 167 and AB 1515

These bills make changes to an existing law known as the Housing Accountability Act (HAA), also known as the "Anti-Nimby Act." The changes make it more difficult for all jurisdictions, including charter cities, to deny proposed housing developments, or to reduce the density or size of proposed housing projects. It increases the penalties for jurisdictions that fail to approve housing projects that conform to all "objective" general plan and zoning standards. AB 1515 requires the courts to give less deference to a local governments' determinations of a proposed development's consistency with local zoning or land use plans. Although cities and counties may not deny or reduce the density of a project once it is deemed consistent with objective development standards, they may still require projects to go through a design review process.

What AB 678, SB 167 and AB 1515 Mean for Sunnyvale: The City's development review processes and practices are for the most part largely consistent with these requirements; therefore, staff does not expect these new requirements to have significant impacts in Sunnyvale (some jurisdictions around the State may need to update their development standards to meet these requirements). However, staff is currently examining the City's codes and procedures to see if any amendments are needed to comply with these laws. If so, staff will bring forward any proposed amendments requiring Council action. See Attachments 1 and 2 for more detail on these bills.

Changes to Housing Element Laws

AB 1397 adds various technical requirements for housing elements, many of which were already implemented to some degree in practice by State staff (HCD), but may not have been specified clearly enough in State law. For example, the need to thoroughly analyze whether sites identified in the housing element had realistic capacity for, and/or likelihood of redevelopment or additional housing units being added to those sites during the coming Regional Housing Needs Allocation (RHNA) period, was previously communicated to local staff as a requirement by HCD staff, but was not specified in State statutes. The City's Housing Element already complies with these requirements. The high level of redevelopment of existing properties over the past decade or so, primarily due to privately initiated projects, provides substantial evidence that the City's sites inventory has been based on a realistic assessment of redevelopment potential of sites with existing uses.

What AB 1397 Means for Sunnyvale: Staff does not expect this bill to have immediate impacts on the City; however, it may have some impacts the next time the Housing Element is updated (2023). For example, HCD staff reviewing the City's next draft Housing Element for

compliance (in 2023) may question or reject a site listed on the site's inventory if HCD does not find that the site has a "realistic potential for redevelopment" within the next housing element cycle. While similar concerns were expressed by HCD upon prior reviews of the City's draft housing elements, now HCD staff has the language in these new State statutes to clarify and support this requirement. In prior cycles staff provided sufficient evidence of the City's track record with redevelopment of other sites to alleviate HCD's concerns and ultimately obtain HCD certification (without a requirement to remove those sites from the inventory).

AB 879 and AB 72 further clarify the types of analysis of "local constraints on housing development" to be included when housing elements are updated. AB 72 authorizes HCD to review city and county actions, such as denial of a housing project, or rezoning or downzoning a housing site, for compliance with the jurisdiction's housing element. It authorizes HCD to issue a notice of non-compliance if HCD deems that action to conflict with the jurisdiction's housing element or otherwise violate housing element law. Previously HCD was not able to take such compliance actions directly, rather private litigation was required to enforce these requirements.

What AB 879 and AB 72 Mean for Sunnyvale: Historically Sunnyvale has not had a track record of litigation or significant compliance problems of this nature, so staff does not anticipate any immediate impacts in the near term. Nonetheless, this bill gives all jurisdictions more reason to proceed with caution if contemplating any action that might result in a non-compliance notice from HCD.

SB 166 strengthens existing provisions in housing element law (known as "no net loss"), which are intended to prevent local governments from down-zoning residential areas and/or approving developments at a lower density or size than contemplated in their State-approved housing elements. A new aspect of the no net loss concept introduced in this Bill is analysis of the actual income level of the units approved, not only the number of units or density of the project, yet the City cannot deny a proposed development because it may not match the income level estimated in the sites inventory. It is not clear yet how this analysis will be implemented or enforced by HCD. It is unclear how feasible it will be for general law jurisdictions to comply fully with this law as there is a finite amount of land available in most jurisdictions (without annexation of other land). Because of property rights laws, cities cannot force developers or property owners to develop and use their land only for the residential purposes, and the particular income levels and unit counts, indicated in the housing element sites inventory. Staff anticipates that HCD will develop clarifying guidance in this area within the coming year.

What SB 166 Means for Sunnyvale: This bill does not apply to charter cities such as Sunnyvale, so no immediate impacts are anticipated on Sunnyvale, but it could be extended to charter cities through future legislation.

SB 35 and AB 879 require enhanced annual reporting requirements for cities and counties which must provide new types of data in their annual reports to HCD on their housing element compliance ("APRs"), primarily related to the number of housing units proposed compared to the number approved by the City through Planning approvals (entitlements). AB 879 also requires new types of data to be included in APRs, and directs HCD to evaluate the reasonableness of local government impact fees imposed on housing developments.

What SB 35 and AB 879 Mean for Sunnyvale: Sunnyvale has been submitting the APRs for

many years and will continue to do so; however, the new types of data required by these bills are quite detailed and will increase the level of effort, primarily in terms of staff time, that the City must commit annually to the APR process. Staff is optimistic that the new permitting software the City is pursuing (a.k.a. the new SunGIS) will allow some of this data gathering and reporting effort to be automated in future years and thus lessen the amount of staff time and expense required to comply with these laws. Regarding HCD's forthcoming analysis of local fees on housing development, it is unclear at this time what the outcome of that analysis will be; however, most local government interest groups, such as the League of California Cities and similar entities, are concerned about this and will be following the fee issue closely. The outcome may require cities to actively participate in this analysis by sharing information about how such fees are determined, what they are used for, and how local public services and facilities would be impacted if these revenues were reduced or eliminated.

Streamlining Measures

SB 35 was primarily initiated as the Legislature's alternative to the housing development streamlining measure proposed by Governor Brown in 2016, which failed to pass the Legislature. This bill requires cities and counties in most cases to provide a by-right (ministerial) approval process for multi-family rental housing projects with a certain percentage of affordable units, if the developer agrees to pay prevailing wages to the construction workers that build the project (See Attachments 1 and 2 for more detail). Sunnyvale added a by-right process for rental projects of 25 or fewer units as an implementation objective included in the 2009-2014 Housing Element update, at the urging of HCD staff reviewing the draft Housing Element at that time. However, SB 35 requires this type of approval process for larger projects as well, therefore some modifications to City approval processes will be required to handle any future SB 35 streamlining applications. This streamlining process must be requested by the developer of the project meeting the affordability and wage-related criteria noted above, so if no developers request it, it will not have any immediate effects. Many market-rate developers hesitate to voluntarily provide affordable units in their projects, and/or to pay prevailing wages, because those commitments can have significant impacts either on total anticipated financial gain or feasibility of the project, and/or on construction costs.

The proposed SB 35 streamlined project must be consistent with objective zoning and design review standards and not exceed the maximum density allowed within the general plan land use designation. Objective standards are those that are "involve no personal or subjective judgment by a public official and are 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 prior to submittal."

What SB 35 Means for Sunnyvale: It is unclear how many market-rate residential developers will pursue this option in Sunnyvale, which is known for its already streamlined, fair, and relatively predictable process, which might not warrant the developer's costs to qualify a project for SB 35 streamlining. Most subsidized affordable housing projects are required to pay prevailing wages as a condition of their financing, and are 100% affordable already, so staff expects that most projects requesting SB 35 streamlining in Sunnyvale, if any, will likely be subsidized affordable projects.

The City will likely need to adopt a few minor zoning amendments to comply with SB 35. These changes may reduce the City's ability to require use permits or other discretionary approvals for certain types of projects pursuing SB 35 streamlining. SB 35 could influence the

size and location of multi-family rental project applications in the City. Large projects requiring rezoning or design exceptions will still have to go through the City's regular review process. However, developers of SB 35-eligible projects in multi-family, commercial, or mixed use zoning districts that allow housing as an ancillary use may choose to pursue the streamlined review. In this situation, existing standards, such as floor area ratio, height, setback, etc. could still be enforced.

SB 540 and AB 73, were introduced by other authors around the same time as SB 35 to address the same streamlining objectives, but using a voluntary, rather than mandatory approach. SB 540 provides options largely modeled after provisions already available under State law. AB 73 includes more State involvement in this type of effort, including some funding but also State oversight. Please see Attachment 2 for more detail.

What SB 540 and AB 73 Mean for Sunnyvale: Sunnyvale and many other cities have utilized streamlining provisions for many years, such as specific or precise plans, overlay districts, and tiered environmental review. Tiered environmental review is conducting environmental review (e.g., EIRs) at the plan level to streamline the amount of review needed for individual development proposals which are consistent with those plans. Given the significant requirements involved in pursuing either of these new programs, they do not appear to provide any advantages compared to existing efforts the City is already pursuing or has recently completed, such as updating general plan elements and specific or precise plans.

Miscellaneous

Several of the bills in this area, such as **AB 571** and **AB 1521**, make changes that address somewhat technical issues that may have previously hindered certain types of affordable housing projects or efforts, such as farmworker housing and preservation of existing subsidized housing.

What AB 571 and AB 1521 Mean for Sunnyvale: Regarding AB 571, staff does not anticipate any proposed farmworker housing in the City, so that is not likely to impact the City. AB 1521 could be somewhat helpful in any future City efforts to preserve any subsidized affordable housing properties with expiring affordability restrictions. The City does not have any properties in that situation on the immediate horizon, but that may be an issue to address in the next housing element update.

AB 494 and SB 229 are considered Accessory Dwelling Unit (ADU) "clean-up" bills. They make minor adjustments to the ADU laws adopted last year (2016), which raised questions of interpretation due to unclear or ambiguous language. The 2017 ADU clean-up bills require local governments to amend their ADU codes to comply with current State law.

What AB 494 and SB 229 Mean for Sunnyvale: The City has already initiated amendments to its ADU codes to comply with the ADU clean-up bills. The draft ordinance to enact these changes was approved by Planning Commission on January 8 and will be considered by City Council on February 6.

AB 1505 is called the "Palmer Fix." This bill overrides the 2009 Palmer court decision that struck down local inclusionary rental ordinances. The City had such an ordinance prior to 2009, adopted originally in 1980 and amended in 2003, which required 15 percent of the units in new multi-family

rental projects to be affordable to lower-income households ("BMR rental units"). AB 1505 allows cities and counties to once again require developers to provide affordable units as part of any rental development. Any ordinances adopted after passage of the bill must include alternate means of compliance, such as in-lieu fees, land dedication, or off-site development of units, and if they require more than 15 percent of the units to be affordable to lower-income households, HCD may review the ordinance and require a feasibility study (nexus study) to justify the requirement.

What AB 1505 Means for Sunnyvale: While the City's prior rental inclusionary requirements were largely consistent with AB 1505, they did not specifically include several of the alternate compliance options now required, and there were minor incompatibilities with State density bonus law related to calculating the rent limits applicable to the low-income units. Staff will prepare a new rental inclusionary ordinance compliant with AB 1505 and current State density bonus law as part of the 2017 Housing Strategy study issue currently underway. This objective is prioritized to be the first deliverable in the work plan for that study, and will be brought for Council's consideration before the rest of the Strategy is complete. If that ordinance is enacted, it will help the City meet a portion of its RHNA goals for lower-income units, as was the case until the Palmer case put an end to the prior BMR rental program. In the meantime, the City's Rental Impact Fee (RIF) program will continue to apply to any proposed new rental projects. The RIF program assesses a fee based on the square footage of the new rental development, but allows developers the option of providing affordable units in their project instead of paying this fee. Since the RIF program has been in effect, most developers have opted to provide the affordable units rather than pay the fee. In effect the RIF program operates similarly in its end result to an inclusionary rental requirement of the type enabled by AB 1505, without violating the case law created by the Palmer decision. Therefore, the City will continue to receive affordable housing contributions in some form or another by any rental projects that may be proposed in the intervening several months between now and when a new inclusionary rental ordinance can be enacted.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

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ATTACHMENTS

1. HCD Summary
2. League of California Cities Summary
3. Table of New Housing Laws



California's 2017 Legislative Housing Package Major Components¹



Provides critical funding for new affordable homes

- Imposes a \$75 fee on recording of real estate documents (excluding sales) for investment in affordable-home development.
- Places a \$4 billion general obligation bond on the November 2018 general election ballot for veterans and affordable housing programs.

Accelerates development to increase housing supply

- Creates a streamlined approval process for certain developments in cities/counties that have not yet met their legally mandated housing targets.
- Authorizes HCD to provide one-time planning funds and technical assistance to cities/counties to help them streamline housing production.
- Authorizes financial incentives for cities/counties that streamline development of housing in specific areas of their jurisdiction.

Holds cities/counties accountable for addressing housing needs in their communities

- Authorizes increased enforcement of state housing-planning ("housing element") law and enables HCD to refer violations to the Attorney General.
- Strengthens housing-planning law to ensure appropriate land is available for new development and increases transparency on local government progress in meeting legally mandated housing targets.
- Creates a \$10,000 per unit penalty on cities/counties that deny (for unjustified reasons) approval of new homes affordable to low or moderate income Californians.

Creates opportunities for new affordable homes and preserves existing affordable homes

- Makes California's "farmworker housing tax credit" more attractive to developers.
- Creates additional tracking and enforcement responsibilities to ensure compliance with state housing-preservation laws.
- Allows the legislative body of a city/county the option to require a certain amount of low-income housing in any new residential rental developments.

¹ In order of reference: SB 2 (Atkins), SB 3 (Beall), SB 35 (Wiener), AB 73 (Chiu), SB 540 (Roth), AB 72 (Santiago), AB 1397 (Low), AB 879 (Grayson), AB 166 (Skinner), AB 678 (Bocanegra)/SB 167 (Skinner) AB 1515 (Daly), AB 571 (E. Garcia), AB 1521 (Bloom), and AB 1505 (Bloom)



CALIFORNIA'S 2017 LEGISLATIVE HOUSING PACKAGE

Streamline Housing Development

<p>Planning & Zoning</p>	<p>SB 35 (Wiener) Streamline Approval Process</p> <p><i>Opt-in program for developers</i></p> <p>Creates a streamlined approval process for developments in localities that have not yet met their housing targets, provided that the development is on an infill site and complies with existing residential and mixed use zoning.</p> <p>Participating developments must provide at least 10 percent of units for lower-income families. All projects over 10 units must be prevailing wage and larger projects must provide skilled and trained labor.</p>
<p>Planning & Zoning</p>	<p>AB 73 (Chiu) Streamline and Incentivize Housing Production</p> <p><i>Opt-in program for jurisdictions and developers</i></p> <p>Provides state financial incentives to cities and counties that create a zoning overlay district with streamlined zoning. Development projects must use prevailing wage and include a minimum amount of affordable housing.</p>
<p>Planning & Zoning</p>	<p>SB 540 (Roth) Workforce Housing Opportunity Zones</p> <p><i>Opt-in program for jurisdictions</i></p> <p>Authorizes the state to provide planning funds to a city or county to adopt a specific housing development plan that minimizes project level environmental review. Requires at least 50 percent of total housing units within that plan to be affordable to persons or families, at or below moderate income, with at least 10 percent of total units affordable for lower income households. Development projects must use prevailing wage.</p>

Accountability and Enforcement

<p>Amends Housing Accountability Act</p>	<p>AB 678 (Bocanegra)/SB 167 (Skinner) Strengthen the Housing Accountability Act</p> <p>Strengthens the Housing Accountability Act by increasing the documentation necessary and the standard of proof required for a local agency to legally defend its denial of low and moderate-income housing development projects, and requires courts to impose a fine of \$10,000 or more per unit on local agencies that fail to legally defend their rejection of an affordable housing development project.</p>
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Accountability and Enforcement (Continued)	
Amends Housing Accountability Act	<p>AB 1515 (Daly) Reasonable Person Standard</p> <p>States that a housing development conforms with local land use requirements if there is substantial evidence that would allow a reasonable person to reach that conclusion.</p>
Amends Housing Element Law	<p>AB 72 (Santiago) Enforce Housing Element Law</p> <p>Authorizes HCD to find a jurisdiction out of compliance with state housing law at any time (instead of the current eight-year time period), and refer any violations of state housing law to the Attorney General if it determines the action is inconsistent with the locality's adopted housing element.</p>
Amends Housing Element Law	<p>AB 1397 (Low) Adequate Housing Element Sites</p> <p>Requires cities to zone more appropriately for their share of regional housing needs and in certain circumstances require by-right¹ development on identified sites. Requires stronger justification when non-vacant sites are used to meet housing needs, particularly for lower income housing.</p>
Amends Existing Housing Law	<p>SB 166 (Skinner) No Net Loss</p> <p>Requires a city or county to identify additional low-income housing sites in their housing element when market-rate housing is developed on a site currently identified for low-income housing.</p>
Amends Existing Reporting Requirements	<p>AB 879 (Grayson) and Related Reporting Bills</p> <p>Make various updates to housing element and annual report requirements to provide data on local implementation including number of project application and approvals, processing times, and approval processes. Charter cities would no longer be exempt from housing reporting. Requires HCD to deliver a report to the Legislature on how local fees impact the cost of housing development.</p>

¹ Current housing law defines by-right as local government review of a project may not require a conditional use permit or other discretionary action that would constitute a "project" under the California Environmental Quality Act

Create and Preserve Affordable Housing	
Ongoing Source	<p>SB 2 (Atkins) Building Jobs and Homes Act</p> <p>Imposes a fee on recording of real estate documents excluding sales for the purposes of funding affordable housing. Provides that first year proceeds will be split evenly between local planning grants and HCD's programs that address homelessness. Thereafter, 70 percent of the proceeds will be allocated to local governments in either an over-the-counter or competitive process. Fifteen percent will be allocated to HCD, ten percent to assist the development of farmworker housing and five percent to administer a program to incentivize the permitting of affordable housing. Fifteen percent will be allocated to CalHFA to assist mixed-income multifamily developments.</p>
Affordable Housing Bond	<p>SB 3 (Beall) Veterans and Affordable Housing Bond Act</p> <p>Places a \$4 billion general obligation bond on the November 2018 general election ballot. Allocates \$3 billion in bond proceeds among programs that assist affordable multifamily developments, housing for farmworkers, transit-oriented development, infrastructure for infill development, and homeownership. Also funds matching grants for Local Housing Trust Funds and homeownership programs. Provides \$1 billion in bond proceeds to CalVet for home and farm purchase assistance for veterans.</p>
Land Use: Zoning Regulations	<p>AB 1505 (Bloom) Inclusionary Ordinances</p> <p>Authorizes the legislative body of a city or county to require a certain amount of low-income housing on-site or off-site as a condition of the development of residential rental units.</p>
Amends Preservation Noticing law	<p>AB 1521 (Bloom) Preserve the Existing Affordable Housing Stock</p> <p>Requires the seller of a subsidized housing development to accept a bonafide offer to purchase from a qualified purchaser, if specified requirements are met. Gives HCD additional tracking and enforcement responsibilities to ensure compliance.</p>
Amends Farmworker Housing and Office of Migrant Services Programs	<p>AB 571 (E. Garcia) Low-Income Housing Credits for Farmworkers</p> <p>Makes modifications to the state's farmworker housing tax credit to increase use. Authorizes HCD to advance funds to operators of migrant housing centers at the beginning of each season to allow them to get up-and-running. Extends the period of time that migrant housing centers may be occupied up to 275 days.</p>

The 2017 Housing Package: What Cities Need to Know

Webinar
Wednesday, December 6, 2017

Presenters

Jason Rhine

Legislative Representative, League of California Cities®

Alison Leary

Deputy General Counsel, League of California Cities®

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 Moderate and Above Moderate from Table A			0	0		0					
(10) Total by income Table A/A3 ▶ ▶											
(11) Total Extremely Low-Income 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?



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Table of New Housing Laws

Bill No., Author	Category				City Impacts	
	Funding	Account./ Enforcement	Streamlining	Misc.	Mandatory?	Charter Cities?
SB 2 Atkins	X				N	
SB 3 Beall	X				N	
SB 35 Weiner		X	X		Y	Y
SB 166 Skinner		X			Y	N
SB 167 Skinner		X			Y	Y
SB 229 Wieckowski			X		Y	Y
SB 540 Roth			X		N	
AB 72 Santiago, Chiu		X			Y	Y
AB 73 Chiu	X		X		N	
AB 494 Bloom			X	X	Y	Y
AB 571 Garcia	X			X	N	
AB 678 Bocanegra		X			Y	Y
AB 879 Grayson		X			Y	Y
AB 1193 Gloria				X	N	
AB 1397 Low		X			Y	Y
AB 1505 Bloom, Chiu				X	N	
AB 1515 Daly		X			Y	Y
AB 1521 Bloom				X	N	
AB 1568 Bloom		X			N	

LEGEND

AB: Assembly Bill

SB: Senate Bill

Mandatory?

Y = Cities are required to implement new law;

N = New law offers cities new options/tools for cities, but cities are not required to participate.

Charter Cities?

Y = Charter cities/counties must comply with new requirements (as well as general law cities/ counties);

N = Charter cities/counties are exempt from new requirements.

Sunnyvale is a charter city.