



Sunnyvale

California Housing Law Overview

City Council
November 16, 2021



KEY TERMS & ABBREVIATIONS

- **HAA** Housing Accountability Act
- **ADU** Accessory Dwelling Unit
- **SB 35** (Wiener) Planning and zoning: affordable housing: streamlined approval process.
 - ◆ By right affordable housing developments
 - ◆ Housing Element reporting
- **SB 330** (Skinner) Housing Crisis Act of 2019
 - ◆ Certainty, hearings, timelines, waivers, etc.
 - ◆ Tenant protections

MAJOR CALIFORNIA HOUSING LAWS

- 1977 Permit Streamlining Act
- 1979 Density Bonus Law
- 1980 Mandatory Housing Element
- 1982 Housing Accountability Act (**HAA**)
- 2018 ADU Regulations
- 2018 **HAA** (AB 3194)
- 2019 Housing Crisis Act of 2019 (**SB 330**)
 - ◆ Affected **all** of the above statutes
- 2019 ADU Regulations (*again*)
- 2021 Streamlining for Duplexes & Lot Splits (SB 9)



RELATIVELY RECENT LEGISLATION

- **2017 Housing Package – SB 35**, introduced concept of “objective standards” in the **HAA**, enhanced judicial oversight, potential for monetary fines.
- **2019 Housing Package – SB 330**
 - ◆ Further strengthened the **HAA**
 - ◆ Preliminary application process (locks in requirements)
 - ◆ General Plan overrides inconsistent zoning – even in Charter cities
 - ◆ Enhanced density bonuses, incentives, concessions and waivers of development standards.

2021 CALIFORNIA HOUSING BILLS



45+ BILLS TRACKED
~19+ ADOPTED (42%)



WHAT DOES THE STATE WANT?

- More Housing!
 - Legislature has adopted a bucket of strategies to eliminate city-created procedural and substantive barriers to housing construction.



Issue: Discretionary Decision-Making

- **Discretionary** = decision-maker can use reason and judgment to decide among acceptable alternatives.
 - ◆ Example: Conditional Use Permits
 - ◆ Requires CEQA review
- **Ministerial** = the decision-maker merely determines if the project conforms to a prescribed set of standards.
 - ◆ Example: Building Permits
 - ◆ CEQA does not apply to ministerial decisions
 - However, there may be discretionary components that require CEQA (prior to ministerial action*)



**e.g. a demolition permit for an historic building requires CEQA review*

Legislative Strategy: Limit Discretion

- **Require more Ministerial vs Discretionary housing approvals**
 - ◆ **ADUs**
 - ◆ **SB 35** projects
 - ◆ **SB 330** projects
- **Limit cities' ability to “exercise discretion”**
 - ◆ Objective vs. subjective standards
 - ◆ Adopted vs. ad hoc standards

Legislative Strategy: Provide Certainty

Standards that apply to Residential projects must be:

- ❖ Objective
- ❖ Written
- ❖ Available and knowable ahead of time
 - ◆ Everything in a packet that the developer can request
- ❖ Reliable
 - ◆ Preliminary Application process: locks in standards & fees
 - ◆ Required notice of completeness and inconsistencies

OBJECTIVE VS. SUBJECTIVE STANDARDS

Definitions

- **Subjective** = based on or influenced by personal feelings, tastes, or opinions; ambiguous; use of “should” vs. shall
- **Objective** = “involves no personal or subjective judgment by a public official and being 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.” (*Definition in HAA*)
 - ◆ Note circularity: objective means “*not subjective*”

OBJECTIVE VS. SUBJECTIVE STANDARDS

Examples

- **Subjective**
 - ◆ Compatible with neighborhood character
 - ◆ Aesthetically pleasing
 - ◆ Attractive, etc.
- **Objective**
 - ◆ Compatible: 50% of homes
 - ◆ Neighborhood: homes within 500 feet
 - ◆ Character:
 - One story
 - Roof pitch less than 4:12
 - 50% Floor Area Ratio (FAR)
 - ◆ Attractive: specific material, color, quantity

ADOPTED VS. AD HOC STANDARDS

- **Ad Hoc** = Standards created and imposed during the process of project review and approval
- **Adopted** = Standards created in advance, in writing, and apply to all similar projects:
 - ◆ General Plan (GP) standards
 - ◆ Zoning Code
 - ◆ Design Guidelines
 - ◆ Administrative policies



***Issue:* Inconsistent General Plan & Zoning**

- Historically, Charter cities (such as Sunnyvale) were not required to have zoning consistent with General Plan (“vertical consistency”)
 - ◆ Example 1:
 - GP designates an industrial neighborhood for residential redevelopment, but
 - ◆ the area is never rezoned from industrial to residential.
 - ◆ Example 2:
 - GP designates a neighborhood for higher density residential development, but
 - ◆ zoning standards were never revised to allow development at that density.

Legislative Strategy:* Enforce the General Plan

- If zoning is inconsistent with the development described in by the General Plan, City cannot require a rezone.
- City cannot impose conditions that would preclude residential development at the density described in the General Plan.



**But only as it relates to Housing ...*

Legislative Strategy: Freeze Down-Zoning

- Until 2030 (SB 8), cities cannot decrease density or height below whatever the permitted use and intensity was on January 1st, 2018.*

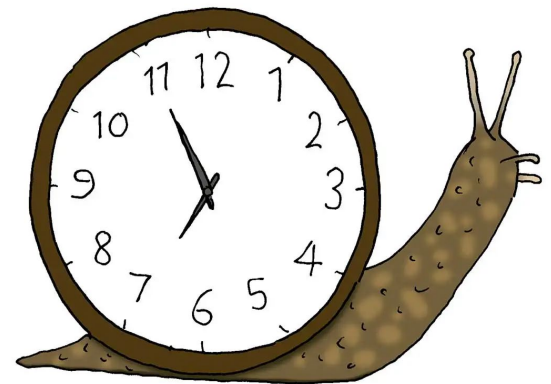


** Actions that collectively increase housing are possible even if an individual site might change*

***Issue:* Slow Approval Process**

Developers complained that:

- Projects get bogged down at staff level in a cycle of comments and re-submittals
- Changing goal posts
- Delays in setting hearings
- Multiple hearings and re-designs without a final decision



Legislative Strategy: Speed Up Approvals

- “One bite at the apple” rule
- Failure to meet Permit Streamlining Act deadlines could result in an application being deemed complete or deemed consistent with zoning standards
- No more than 5 public hearings
 - ◆ Including community outreach meetings, study sessions, and appeals



DENSITY BONUS LAW (1979, + 28 amendments)

- In return for providing **affordable** units, developer is entitled to **incentives**, **concessions**, and **waivers** of development standards.
 - ◆ **1 to 4 incentives/concessions** that will provide identifiable and actual cost reductions to support the **affordable** housing
 - ◆ **Unlimited waivers** of development standards that would physically preclude construction of the development at the **allowable density**
 - ◆ Reduced parking ratios, per statute
- **Concessions/waivers**, deemed to be “consistent” with City’s standards (*for purposes of the HAA/SB 330*)

INCENTIVES/CONCESSIONS & WAIVERS

- City has *limited discretion* to deny a request for incentives/concessions or waivers
- If City wants to deny the request – must demonstrate:
 - ◆ Incentive/concession will not result in identifiable and actual cost reductions
 - ◆ Or, waiver is unnecessary to build the project at the allowable density
 - ◆ Or, there is a specific, adverse health or safety impact that cannot be feasibly mitigated.

INTERACTION OF ALL THESE LAWS

- City may be required to approve a residential project despite inconsistent zoning
- Projects can be built at the density described in the General Plan plus available density bonuses
- Care must be taken to comply with applicable timelines and procedural rules
- City may be unable to enforce certain zoning standards and other requirements, e.g.:
 - ◆ Subjective
 - ◆ Not disclosed
 - ◆ Adopted after preliminary application
 - ◆ Density bonus entitlements



2021 Laws

Signed by the Governor

2021 HOUSING BILLS SIGNED BY THE GOVERNOR

- ✓ **AB 215 (Chiu)** Planning and Zoning Law: housing element: violations
 - ✓ **AB 345 (Quirk-Silva)** Accessory dwelling units: separate conveyance
 - ✓ **AB 571 (Mayes)** Planning and zoning: density bonuses: affordable housing
 - ✓ **AB 787 (Gabriel)** Planning and zoning: housing element: converted affordable housing units
 - ✓ **AB 803 (Horvath)** Starter Home Revitalization Act of 2021
 - ✓ **AB 1398 (Bloom)** Planning and zoning: housing element: rezoning of sites: prohousing local policies
 - ✓ **SB 7 (Atkins)** Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2021
 - ✓ **SB 290 (Skinner)** Density Bonus Law: qualifications for incentives or concessions: student housing for lower income students: moderate-income persons and families: local government constraints.
 - ✓ **SB 728 (Hertzberg)** Density Bonus Law: purchase of density bonus units by nonprofit housing organizations
 - ✓ **SB 791 (Cortese)** California Surplus Land Unit
- *SB 8 (Skinner) *SB 9 (Atkins) *SB 10 (Wiener) *SB 478 (Wiener)**

SB 8 – EXTENSION OF THE HOUSING CRISIS ACT OF 2019 (SB 330)

- Extends **sunset** by 5 years, to January 1, 2030
- Expands definition of **housing development project** to include:
 - ◆ single dwelling units
 - ◆ projects requiring *either* discretionary or nondiscretionary approval throughout SB 330
- Expands definition of **downzoning**
- Revises definition of **concurrently**
- Modifies **relocation assistance**, **right of first refusal** and **replacement unit** provisions



SB 9 – HOUSING DEVELOPMENT: APPROVALS

Overview

- Also referred to as:
 - ◆ Streamlining for Duplexes and Lot Splits
 - ◆ Duplex and Lot-Split Legislation
 - ◆ The end of single-family zoning
- Non-lot split
 - ◆ Duplexes plus ADUs allowed
 - ◆ Needs clarification on total number of units
- Urban Lot Split
 - ◆ 4 units total max (2 per lot)
- **Staff Recommends: Urgency ordinance, Jan 4, 2022**

Adoption of a local ordinance to implement SB 9 is exempt from CEQA

SB 9 – HOUSING DEVELOPMENT: APPROVALS

(continued)

General Requirements

- Ministerial approval of up to 2 units/lot and/or an urban lot split in existing single-family zones:
 - ◆ Demolition up to 25% of existing structural walls
 - ◆ No Demolition/Alteration if:
 - Affordable Housing OR Subject to Rent Control OR Occupied by a Tenant in the last 3 Years
- Authorizes local agencies to:
 - ◆ Deny for adverse impact upon health & safety or physical environment
 - ◆ Apply local development standards that allow:
 - Setbacks of up to 4 feet from the rear and side lot lines
 - 1 parking space per unit [0 parking near transit]
 - ◆ Disallow Short-term Rentals

SB 9 – HOUSING DEVELOPMENT: APPROVALS

(continued)

Requirements for urban lot splits

- Lots to be roughly equal in size
 - ◆ No less than 40% of the original parcel, and
 - ◆ No smaller than 1,200 square feet
- Conforms to Subdivision Map Act requirements
- Must allow 2 units on each of the split parcels:
 - ◆ **ADUs**, Junior **ADUs**, and primary dwelling units
- Unit sizes are at least 800 s.f. (each)
- Allows requirements for easements and right-of-way
- *Requires* owner intent to occupy 1 unit for minimum 3 years

SB 10 – STREAMLINING TO UPZONE FOR INCREASED DENSITY

- **Enables** (*does not require*) a local government to **Rezone** for housing projects of 10 or fewer units in transit-rich areas or urban infill sites.
 - ◆ Rezoning Ordinance is exempt from CEQA
- No action required

SB 478 – MINIMUM FAR STANDARDS

Multi-family & Mixed-Use Zones

- **Prohibits** a local government from requiring the following:
 - ◆ 3-7 units FAR standard <1.0 (100%)
 - ◆ 8-10 units FAR standard <1.25 (125%)
 - ◆ 3-10 units, denial on the basis of failure to meet **minimum lot size standards** (existing lots only)*
 - ◆ Adds enforcement language from AB 215 (Chiu) for chaptering purposes.
- No Action Required

**R-3 + R-4 + R-5 sliding scale affected*

2021 INCLUSION AND EQUITY BILLS SIGNED BY GOVERNOR

- ✓ **AB 491 (Ward) Equal Access for Affordable Units.** Requires that low-income occupants of a mixed income development have the *same access to common entrances and to common areas and amenities* as occupants of market rate units.
- ✓ **AB 721 (Bloom) Restrictive Covenants.** Provides that covenants, restrictions, or private *limits on the density* of a property shall *not be enforceable* on a *100% affordable project*.
- ✓ **AB 1466 (McCarty) Restrictive Covenants.** Requires each county recorder's office to establish a program to *proactively identify, catalog, and redact any unlawfully discriminatory restrictive covenants* in that county's property records and authorizes the imposition, if approved by the respective county board of supervisors, of a fee to fund the program.
- ✓ **AB 602 (Grayson) Impact Fees And Nexus Studies**

AB 602 – IMPACT FEES AND NEXUS STUDIES

Modifies Mitigation Fee Act

- HCD required to create impact fee nexus study **templates**
- January 1, 2022, nexus study for new/revised impact fee must:
 - ♦ Identify **level of service** for each public facility and explain why level of service is appropriate.
 - ♦ **Review** existing fees that were collected and **how** they were **used**
- Calculate impacts of housing development projects **based on square footage** of the units
 - ♦ or, make findings that an alternative calculation is more appropriate
- Large jurisdiction must adopt **Capital Improvement Plan**
- Numerous procedural and **administrative requirements, such as posting information** and reporting status
- Be updated at least every 8 years



NEXT STEPS

- **What will come back to City Council?**
 - ◆ SB 9 related actions (January 2022)
 - Zoning Code & Subdivision Code Updates
 - ◆ Objective Standards
 - ◆ Village Center Master Plans (*Plans, Zoning, Standards*)
 - ◆ Update of plan for El Camino Real (mid-2022)
- **What will Staff work on administratively?**
 - ◆ Impact fee compliance actions
 - ◆ Website upgrades
 - ◆ Identify any General Plan/Zoning inconsistencies
 - ◆ Monitor opinions, court cases & proposed bills

Questions?

