California’s Housing Laws

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May 3, 2023
Presentation Overview

• The Major State Housing Laws:
  • The Housing Accountability Act: Hard to Deny Housing Projects
  • Replacing Local Planning with State Planning (Housing Elements, AB 2097, AB 2011/SB 6, Density Bonus Law)
  • Ministerial and ‘By Right’ Approvals (SB 35, AB 2011, ADUs, SB 9)

• Consequences of Non-Compliance
Major Housing Laws

The Housing Accountability Act
Making It Hard to Deny Housing Projects

“The Legislature’s intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval & construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects. This intent has not been fulfilled.”
Key Provisions

Applies to a “housing development project” which is:
• Two or more residential units
• Mixed use with 2/3 of square footage residential
• Transitional or supportive housing
Key Provisions

“Preliminary application” freezes development standards

• But project must meet these timelines:
  • Project application must be filed within 180 days
  • Must complete application within 90 days of receiving incomplete letter

• Can change project by up to 20% of square footage or number of units or invoking density bonus and still rely on initial preliminary application
Key Provisions

• Once complete, staff must notify applicant in short time (30 to 60 days) if there are any “inconsistencies” - or “deemed consistent”

• Assumed to be consistent if “substantial evidence would allow a reasonable person to assume consistency”

• No rezoning required if general plan is “inconsistent” with zoning
Key Provisions

Denial only if:

• Project doesn’t comply with “objective standards” OR

• Results in “specific adverse impact” on public health & safety
  • A “significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards” that can’t be mitigated
Key Provisions

Additional finding to deny project with 20% lower income units:

1. City meeting RHNA numbers
2. Specific adverse impact to public health and safety
3. Deny to comply with state or federal law
4. Proposed on agricultural land or water/sewer inadequate
5. Inconsistent with Zoning Ordinance & GP land use designation; must have a housing element in substantial conformance with state law, and not on a housing element site
Housing Accountability Act Decision Matrix

This decision tree generally describes the components of the HAA. Both affordable and market-rate developments are protected by components of the HAA. The statute contains detailed requirements that affect the applicability of the HAA to a specific housing project based on its characteristics.

A) Does the project meet the definition of a housing development?

- YES: HAA does not apply
- NO: Subdivision (j) applies

B) Are 20% of the total units affordable to very low- or low-income households, 100% affordable to moderate or middle income households, or an emergency shelter?

- YES, Subdivision (d) applies
- NO, Subdivision (j) applies

Does one of the following findings apply?

1. Housing element is in compliance, RHNA has been met (permitted) or exceeded for all income categories proposed for project.
2. Project has a specific, adverse impact upon the public health or safety, and there is no feasible method to mitigate or avoid impact.
3. Denial is required to comply with specific state or federal law, and there is no feasible method to comply.
4. The project is proposed on land zoned for agriculture or inadequate water or sewer.
5. The project is inconsistent with both zoning and general plan land use designation, and the project is not proposed on a site identified in the housing element, and there are sufficient sites to accommodate the RHNA or zoning for emergency shelters.

- Yes: Make finding and move to C).
- No: Project cannot be denied w/o potential HAA violation.

C) Is the project consistent with objective general plan, zoning, subdivision, and design standards and criteria?

- YES
- NO: Provide written documentation of inconsistency.

Is there a specific, adverse impact upon the public health or safety? and Is there no feasible method to satisfactorily mitigate or avoid the adverse impact?

- YES
- NO: The project is consistent with zoning.

Can make written findings to deny project or condition approval at lower-density.

- YES
- NO: The project cannot be denied w/o potential HAA violation.
What Is an “Objective Standard”?  
Involves no personal or subjective judgment by a public official and verifiable by referring to an external benchmark.

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>SUBJECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>DENSITY REQUIREMENTS</td>
<td>REFLECT THE LOOK AND FEEL OF THE COMMUNITY</td>
</tr>
<tr>
<td>HEIGHT LIMITS</td>
<td>SITE IS NOT PHYSICALLY SUITABLE FOR THE PROPOSED USE</td>
</tr>
<tr>
<td>LOT COVERAGE</td>
<td>MUST BE COMPATIBLE WITH ADJACENT USES</td>
</tr>
<tr>
<td>SETBACKS</td>
<td></td>
</tr>
<tr>
<td>FAR REQUIREMENTS</td>
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</tbody>
</table>
What Is NOT an “Objective Standard”? 

• “If height varies by more than one story between buildings, a transition or step in height is necessary.”
Why Isn’t This Standard “Objective”? 

• Could be a “transition” of trees and a trellis instead of a stepback 
• Not clear how far upper floors must step back 
• Not clear how far along building the stepback must run 
• Not clear how many floors must step back
The “Reasonable Person” Standard

• Staff and consultant concluded that the project conformed to the standard, whereas Planning Commission and City Council found it did not.
• Both interpretations “reasonable” which court construed as proof positive that it is not objective
• Under “reasonable person standard” either interpretation works, so it must be approved.
• Burden of proof on city.
Implications for Folsom

- Tight timelines and penalties for errors
- Strict standard for “objective”
- Subjective standards adopted before 1-1-20 can be used to apply conditions but cannot:
  - Reduce density
  - Make affordable project infeasible
  - Effectively deny project.

- CEQA applies
Q & A
Major Housing Laws

State Planning for Cities: Loss of Local Control
What Cities Must Approve

• Housing Elements: more sites must be zoned at 30 units/acre
• Housing Crisis Act: cannot reduce existing housing capacity
• AB 2097: no parking required within ½ mile of major transit stop
• AB 2011/SB 6: housing may be built in commercial zones
• Accessory Dwelling Units and SB 9: more units may be built on single-family lots
• Density Bonus Law: projects with affordable housing entitled to increased density and waiver of development standards
FOLSOM RHNA

• 2013 - 2021 (5th Cycle):
  • 4,633 units

• 2021-2028 (6th Cycle):
  • 6,363 units
NO NET LOSS

- Lower income RHNA = 3,567 units
- Must maintain capacity at all times (30 du/acre)
- Only sufficient state $$ for 20,000 units/year
Housing Crisis Act of 2019

- Cannot reduce density below that existing on January 1, 2018
  - Unless “concurrent” density increases
  - Includes reductions in height, FAR, increased setbacks
- No moratorium without HCD consent
Parking Requirements - AB 2097

• Projects within ½ mile of an existing or planned major transit stop = cannot require or enforce parking requirements
  • **UNLESS** study shows “substantially negative impact” on low or very low income RHNA, housing needs of elderly or disabled, or residential/commercial parking within ½ mile

• Even if findings are made no parking requirements for housing development projects with a minimum of 20% affordable or fewer than 20 units
Residential Development in Commercial Zones

AB 2011 and SB 6 allow multi-family residential development where it may not have been permitted previously:

- Applies in zones where commercial, retail or parking are principally permitted uses
- AB 2011: ministerial approval without CEQA
- Effective July 1, 2023
Site & Project Criteria (All Projects)

• Multi-family housing development projects only
• Sites in a neighborhood area plan must permit multi-family housing (if either adopted by 1/1/22; or NOP issued by 1/1/22 & plan adopted by Jan 1, 2024)
• **Prevailing wages**; SB 6 also requires union labor
• Affordable housing required by AB 2011
• No parking can be required except disabled, EV, & for bikes
# Mixed-Income Minimum Housing Density

DENSITY SHALL MEET OR EXCEED THE FOLLOWING:

<table>
<thead>
<tr>
<th>Density Metropolitan Jurisdictions</th>
<th>Site size less than 1 acre</th>
<th>Site size 1 acre or more</th>
<th>Site size 1 acre or more</th>
<th>Site size 1 acre or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 du/acre</td>
<td>40 du/acre</td>
<td>60 du/acre</td>
<td>80 du/acre</td>
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</table>

w/in 1/2 mile of major transit stop
## Mixed-Income Housing Height Limits

<table>
<thead>
<tr>
<th>Site</th>
<th>Commercial Corridor ROW &lt;100’</th>
<th>Commercial Corridor ROW &gt;100’</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Currently permitted height</td>
<td>35’</td>
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<tr>
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<td></td>
<td>45’</td>
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<tr>
<td></td>
<td></td>
<td>65’</td>
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</tbody>
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**Height Limit shall be the greater of the following:**
- Currently permitted height
- 35’
- 45’
- 65’

*pop > 100k & w/in 1/2 mi. of major transit stop*
Residential Development in Commercial Zones

Application to Historic District:

• Development cannot be located on a site where the development would require the demolition of a historic structure that was placed on a national, state, or local historic register.
Density Bonus Law

- Eligible project: 5% to 100% affordable housing
- Eligible projects entitled to receive:
  - A density bonus [20 - 80%, or unlimited];
  - 1 - 4 “incentives / concessions” [based on affordability]
  - Unlimited waivers of development standards
  - Reduced parking requirements.
- Density Bonus project = consistent with City standards
Density Bonus Law

• Inclusionary units can qualify project for density bonus (Latino Unidos v. County of Napa)

• Example:
  • City requires 3% very low and 7% low income housing for for-sale projects; or in-lieu fee
  • If units provided: project qualifies for 20 percent bonus (plus parking reductions, one concession, unlimited waivers)
Implications for Folsom

• City is required to accept and approve plans that conform with state law
  • Even if inconsistent with City’s adopted policies
  • Regardless of City or community concerns
Q & A
Major Housing Laws

Ministerial and ‘By Right’ Approvals
What Is a Ministerial Approval?

- A governmental decision involving little or no personal judgment by the public official.
- Involves only the use of fixed standards and objective requirements.
- Exempt from CEQA.
- State has imposed strict timelines for approval.
Projects that Must Be Approved Ministerially

• Accessory Dwelling Units
• SB 9 projects: Two-unit developments and urban lot splits
• SB 35: Streamlined Ministerial Review
• AB 2011: Housing projects in commercial zones
ADUs: Housing in Residential Zones

• Allows for construction of ADUs and JADUs within all residential zones.
• Requires ministerial approval.
• Overrides City standards that would physically preclude ADUs.
• New state-mandated development standards include: increased height limits, building in front yard setback, lesser fire sprinkler requirements, restrictions on code enforcement.
ADUs: Housing in Residential Zones

- In historic district:
  - ADUs allowed
  - City can impose standards to prevent adverse impacts on property listed in California Register of Historic Places
    - These standards do not apply to state exempt/subdivision (e) ADU
  - Cannot impose parking requirements
SB 9: Housing in Single-Family Zones

• Allows for construction of up to four units on single-family zoned lots (either on one existing lot or after divided into two lots).

• Requires that two-unit housing development projects be approved ministerially and overrides City standards that would physically preclude this type of development.

• SB 9 standards include: minimum setbacks, minimum parking standards, and minimum unit sizes that must be approved.
SB 9: Housing in Single-Family Zones

• Application to Historic District:
  • Project is not eligible for SB 9 if it is located within a historic district or included on the State Historic Resources Inventory or within a site designated or listed as a city or county landmark or historic property or district pursuant to city ordinance
SB 35 Projects (“Streamlined Review Process”)

Qualifying Projects:

• Multifamily residential with 50% lower income in Folsom
• 2/3 residential square footage
• General plan or zoning allows residential or mixed use
• No housing occupied by tenants within last 10 years
• Consistent with objective standards; but can request density bonus waivers if not
• Prevailing wages required if more than 10 units
SB 35 Projects ("Streamlined Review Process")

• Consistency review in 60 - 90 days after submittal
• Design review and decision in 90 - 180 Days
• AB 2011 prescribes identical process
• SB 6 allows SB 35 to be used on sites zoned commercial, with only 50% residential
• Can only apply standard conditions
SB 35 Projects ("Streamlined Review Process")

• Application to Historic District:
  • Development cannot be located on a site that would require demolition of a historic structure that was placed on a national, state, or local historic register.
‘By Right’ Approvals

• No CEQA review
• Only objective design review; may impose conditions
• Applies to:
  • Certain housing element sites designated for lower income housing if project has 20% lower income units and no subdivision is needed.
  • Certain supportive housing developments.
  • Low barrier navigation centers.
• No accelerated timelines
Implications for Folsom

• Very fast timelines = big demands on staff
• Limited community input
• Scope of public hearings limited
• Decision-makers have very limited discretion
Q & A
Major Housing Laws

Consequences of Non-Compliance
HCD and Attorney General Enforcement

• HCD Housing Accountability Unit with at least 25 staff
• Broader and broader authority
• Letters of Technical Advice
• Notices of Violation
• Referral to Attorney General
• Attorney General has 12-person strike force that acts independently
Active Third-Party Litigants

• Have sued at least 10 SoCal cities and 12 Bay Area cities (Californians for Homeownership, YIMBY, California Housing Defense Fund) on housing elements

• Often join in, or are plaintiffs, in litigation related to denials of housing development
Housing Cases in General

• Courts:
  • Generally very pro-housing
  • Uphold housing approvals
  • Overturn denials

• City risks:
  • Significant attorneys fees exposure
  • High defense costs
  • Possible damages
Q & A
Thank You!