

CLIENT NEWS BRIEF

State Adopts Comprehensive Housing Legislation

Facing one of the tightest housing markets in California history, state lawmakers have approved an extensive package of bills intended to maintain existing housing stocks and boost new housing construction. These bills become effective on January 1, 2018.

This legislative package will provide funding to stimulate housing production and will eliminate procedural hurdles to getting housing built. Alternatively, though, the bills also require more detailed justification and reporting on planning for and production of housing, limit local agencies' ability to say no to development projects, and may increase local agencies' infrastructure costs.

Summaries of the legislation are provided below.

Funding

Senate Bills 2 and 3: The Building Homes and Jobs Act and Veteran and Affordable Housing Bond

Senate Bills (SB) 2 and 3 provide funding opportunities for local housing projects and programs. SB 2 establishes a \$75 fee for recorded documents, excluding commercial and residential real estate sales. During the first year the fee is collected, local governments will have access to half of the money collected to update planning documents and zoning ordinances, while the rest will be allocated to the Department of Housing and Community Development (HCD) to assist homeless people. After the first year, up to 70 percent of the fee proceeds will be allocated to local governments for purposes including development of affordable rental and ownership housing, creation of home ownership opportunities, and matching funds for localities that approve low-income housing projects.

SB 3 places a \$4 billion general obligation bond for veteran and affordable housing and infill infrastructure on the November 2018 ballot.

Assembly Bill (AB) 571: Expands Funding Access for Farmworker Housing Projects

AB 571 expands the availability of the state's Low Income Housing Tax Credit Program to aid farmworker housing development and redefines the term "farmworker housing" to mean "housing which is available to and occupied by not less than 50 percent of farmworkers and their households" rather than the prior 100 percent requirement. The bill also extends the occupancy period during which migrant farm labor centers are open from 180 days to 275 days.

Local governments, particularly those in rural districts, should prepare for additional housing developments for farmworkers. The reduction of the occupancy requirement for farmworker housing and the extension of the occupancy period during which migrant farm labor centers are open may result in increased costs to the migrant farm labor centers.

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Approvals

Senate Bill 35: Streamlined Approval of Multifamily Residential Developments

SB 35 streamlines the development process for infill multifamily residential developments in communities that have not met their fair share housing goals. The bill makes approval of such developments on sites already zoned to accommodate them a ministerial action, eliminating public input and CEQA review and removing local discretion. A developer must pay prevailing wages on the projects fast-tracked under this bill. The bill sunsets on January 1, 2026.

Senate Bill 167 and Assembly Bills 678 and 1515: Higher Burden of Proof for Disapproval of Development

SB 167 and AB 678 make significant changes to the Housing Accountability Act (HAA), also known as the Anti-NIMBY Law. These amendments impose a heightened standard of proof on local agency governing bodies that vote no on housing projects, authorize the award of attorneys' fees to housing advocates and project applicants who successfully challenge such disapprovals and allow courts to vacate local disapprovals and impose fines of \$10,000 or more per housing unit within an affected project where a local government failed to comply with a court order.

Local agencies should be aware that if courts find that the agency acted in bad faith when it disapproved or conditionally approved a development, the agency could be subject to additional fines if it fails to abide by a court's injunctive order. To prevent the imposition of fines, local agencies should ensure that their decision to disapprove or conditionally approve a development is based on sufficient evidence that meets the higher burden of proof.

AB 1515 strengthens the HAA by imposing a "reasonable person" standard for determining consistency, compliance, and conformity with any applicable plan or requirement for a housing development project or emergency shelter under the HAA. Concurrent with AB 678's changes, this law makes it more difficult for localities to vote down housing projects or emergency shelters that comply with existing land use regulations. Per the bill's author, AB 1515 gives courts a clear standard for interpreting the HAA in favor of building housing, thus weakening local government power to disapprove development.

Assembly Bill 1505: Restores Locals' Right to Apply Inclusionary Ordinances to Rental Housing

AB 1505 restores a local agency's right to require that at least 15 percent of units in a rental housing development be set aside as affordable to low- or moderate-income residents. The bill supersedes a 2009 appeals court decision that eliminated local governments' ability to apply inclusionary policies to rental housing. In addition to restoring locals' rights to apply inclusionary housing rules to rental housing developments, AB 1505 grants HCD authority to review such ordinances if they were approved or amended after September 15, 2017 and if the locality fails to meet certain housing production thresholds.

Local governments that already have inclusionary housing policies on the books should be prepared to re-familiarize themselves with their inclusionary policies and to apply them as necessary.

Housing Element

Senate Bill 166: Local Governments Must Perpetually Maintain Housing Site Inventory

SB 166 revises the "No Net Loss" zoning law to require local governments to maintain enough housing sites to meet their assigned housing needs at all times during a general plan housing element planning period. Existing law prohibits local agency governing boards from approving new housing development at significantly lower densities

than are projected in the housing element of the local agency's general plan without identifying other sites that could accommodate the lost units. SB 166 ensures that, as development occurs, local governments reassess their ability to accommodate new housing on remaining housing sites in their inventory and make adjustments to their zoning if needed. According to the bill's author, prior law did not adequately ensure that local governments would maintain a supply of available land to accommodate unmet housing needs because land that was previously zoned for lower-income housing could later be developed into high-end market-rate housing or a commercial development. SB 166 requires local governments to maintain housing site inventory at each income level.

Local governments should maintain a log of adequate housing sites, which may or may not result in development of the sites that include affordable housing. Local governments should also be prepared to review their remaining housing sites and analyze zoning.

Assembly Bill 72: Permits HCD to Revoke Findings of Compliance with Housing Element

AB 72 enhances HCD's authority to review any local government action or failure to act that it deems inconsistent with that local government's housing element. HCD may revoke its finding that a housing element complies with state law and notify the local government entity and the state Attorney General that the entity is in violation of state law.

Assembly Bill 879: Mandates More Comprehensive Housing Element and Annual Report

AB 879 creates additional requirements for a local government's housing element and the housing element portion of its general plan annual report and also applies the existing and new requirements to charter cities, which were previously exempt. Under the new law, the housing element must discuss efforts to address restraints to housing development, while the annual report must include:

- The number of housing development applications received in the prior year;
- Units included in all development applications in the prior year;
- Units approved and disapproved in the prior year; and
- A list of sites rezoned to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on specified sites.

The bill also requires the housing element portion of the annual report to be prepared using standards adopted by HCD and requires that agency to conduct a study evaluating the reasonableness of local development fees.

Local governments should be prepared to create a more extensive general plan and to include a housing element that addresses constraints affecting development, maintenance, and improvement of housing for all income levels.

Assembly Bill 1397: Zoning for Realistic Housing Capacity

AB 1397 establishes higher standards and requires localities to conduct a stronger analysis before they may include sites with existing uses in their housing element, and limits reliance on potential housing development sites that are considered too large or too small or sites that have been recycled across multiple housing elements without development occurring. The bill also requires replacement of existing affordable housing slated for demolition with housing affordable to occupants at the same or lower income levels.

Local governments should be prepared to provide more evidence demonstrating the suitability of sites listed in a housing element for residential development, and particularly those expected to accommodate affordable housing development. Local governments may face funding difficulties in implementing the new mandates of AB 1397, such as bringing utilities to each identified site in the housing element.

Zoning

Senate Bill 540 and Assembly Bill 73: Establish New Zoning Designations

SB 540 allows cities and counties to adopt a specific plan establishing a Workforce Housing Opportunity Zone, which is intended to encourage workforce and affordable housing close to jobs and transportation. The zones may be created by preparing a specific plan and an environmental impact report, both of which would remain valid for five years. Approval of housing developments in these zones will be streamlined, with no further environmental review required, and the local agency will be mandated to approve projects meeting the plan criteria. HCD funds may be made available to create the zones. The developer of a project that takes advantage of this process must pay prevailing wages.

AB 73 creates a new type of overlay district intended to speed development of high density housing in areas with transit and existing infrastructure. Local governments that create such districts are eligible for state incentive payments when the districts are created and when housing is permitted. Local governments would conduct environmental review of a "housing sustainability district" in advance of any development proposals. Residential projects within a housing sustainability district would be subject to ministerial review that must be completed within 120 days. At least 20 percent of the units in a residential project to be built in a housing sustainability district must be affordable units, and such projects are subject to prevailing wage requirements.

Assisted Housing Developments

Assembly Bill 1521: Stricter Notice Requirement for Assisted Housing Development Owners

AB 1521 requires an owner of an assisted housing development to accept a bona fide offer to purchase from a qualified purchaser, if specified requirements are met. It also requires the HCD to monitor assisted housing development owners' notice requirement compliance.

This bill is intended to help keep affordable housing available for low-income families and to reduce displacement of low-income residents. Owners who receive a market rate offer from a qualified preservation entity that intends to maintain the property's affordability restrictions must either accept the offer or abide by the affordability restrictions for another five years.

Local governments should be aware of this notice requirement, as owners of assisted housing developments may fail to meet the requirement and would then be required by law to maintain the characterization of their property. Owners may turn to cities or counties to seek the ability to sell property for market rate conversion and cities and counties should be prepared for potential pushback.

Takeaways

This comprehensive housing package seeks to encourage a more residential development- and affordable housing-friendly environment in local communities. City and county planning staff should review the benefits of streamlining development approvals and work closely with their legal counsel to ensure that the streamlined procedures are in place. Additionally, staff should ensure that enhanced findings are included in staff reports to supplement records

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of housing project disapprovals. Local agencies should also prepare for housing advocates and HCD to conduct far more rigorous review of any decisions related to their housing element.

These new laws are complicated, presenting a double-edged sword to public agencies, and Lozano Smith stands ready to assist. For more information on these bills or on law governing housing projects in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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