



21 Elements

March 6, 2018 TAC Meeting

New State Housing Laws



**New
Housing
Laws!!!**





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Housing
Laws!!!**

- ✓ **Takeaways**
- ✓ **Carefully Venture into the Weeds**
- ✓ **Handouts**
- ✓ **Pop Quiz**
- ✓ **Small Group Exercise**
- ✓ **Experts** (Barbara Kautz and Eric Phillips, Goldfarb and Lipman, LLC)
- ✓ **HCD Phone-In for Q&A** (Paul McDougall)

ADU Takeaways

- **AB 494/SB 229** continue to ease ADU restrictions (*less parking, more zones, fewer fees*)
- “Null and void” still in effect
- Continues **exterior** And “**interior**” distinction



Changes to ADU Rules

- **Parking Requirements:**

- No parking for studios and **INTERIOR ADU** and 1 maximum for other units
- Parking in setbacks generally OK

- **Existing ADU Processing:**

- **INTERIOR ADU** must be permitted in any district where single family homes are permitted

Changes to ADU Rules

- **Utility Fees:**

- Applies fee reductions rules to special districts (interior no connection fee, exterior scaled down fee)

Housing Laws Takeaways

- Reduced ability of local jurisdictions to reduce density or deny development
- More streamlining and ministerial review using 'objective' standards required
- Increased accountability
- Rental inclusionary is back
- Funding increased

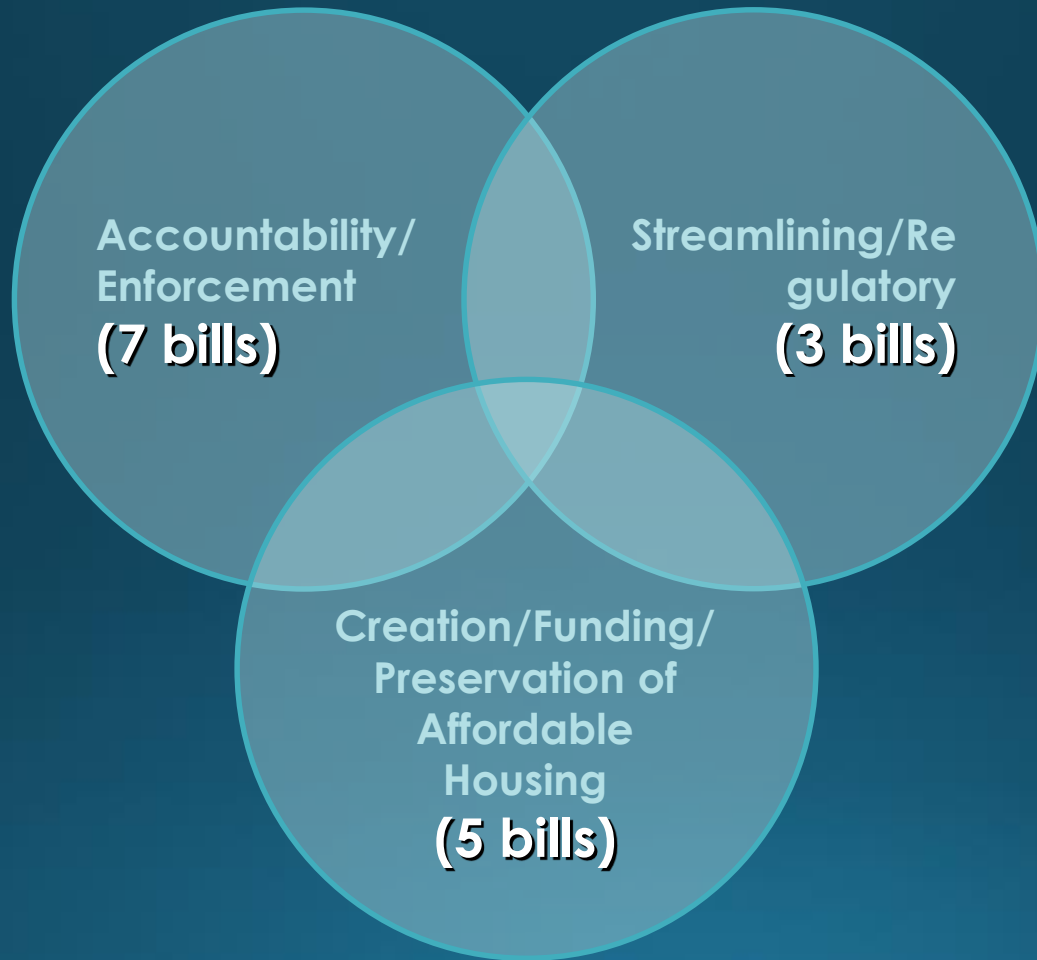


The State's View of the Housing Crisis

“The Legislature’s intent . . . **curbing the capability of local governments to deny, reduce the density of, or render infeasible** housing development projects. . . .”

Housing Accountability Act as amended

Package of 15 Housing Bills



Package of 15 Housing Bills

Accountability/Enforcement

Strengthen the Housing Accountability Act (HAA) AB 678/SB 167

Reasonable Person Standard AB 678/SB 167

Enforcement of Housing Element Law AB 72

Adequate Housing Element Sites AB 1397

No Net Loss by Income Category SB 166

Annual Housing Element Report Requirements (2019)** SB 879

Streamlining/Regulatory

Streamlined Approval Process SB 35



Streamline and Incentivize Housing Production AB 73



Workforce Housing Opportunity Zones SB 540



State funding attached

Optional for jurisdictions

Jurisdiction requirement

Creation/Preservation



Recording Fee Funding Source SB 2



Veterans and Affordable Housing Bond Act (November ballot) SB 3

Inclusionary Ordinances (return of rental housing) AB 1505

Preserve Existing Affordable Housing AB 1521



Low Income Housing Credits for Farmworkers AB 571

Immediate Takeaways

- Need to move quickly! — Housing Accountability Act (HAA), SB 35 (streamlining) and “No Net Loss” two months ago!
- HAA affects ALL proposals
- SB 35 streamlining affects developments that qualify and jurisdiction category
- “No Net Loss” affects ALL proposals



HAA and SB 35

Both laws — Difficult to deny projects that meet **objective** rules. Need to move quickly or “deemed compliant”

HAA

- Almost all development
- All jurisdictions (coastal zone?)
- Very fast timelines
- Conditions OK
- CEQA Applies

SB 35

- Some developments
- Some jurisdictions (tied to production)
- Fast timelines
- No conditions
- General plan maximum densities
- CEQA exempt

Objective Standards Takeaways

- Objective standards must be used when reviewing applications
- Standards must be very clear (reasonable person standard)
- **“Specific adverse effect”** must be significant, quantifiable, direct and cannot be mitigated



Objective Standards

If complies with “objective” general plan, zoning, and subdivision standards, can only reduce density or deny if “specific adverse impact” to public health & safety that can’t be mitigated in any other way.”

Objective Standards Defined

What Is an “**Objective**” Standard?

SB 35:

“Standards that 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 and the public official prior to submittal.”

Not Objective Standard

Examples of standards found not to be “objective:”

- “Address unmet need for senior housing.”
- “Special care shall be taken to avoid obstructing views to the surrounding hills.”
- “Produce high quality authentic design.”
- “Reflect look and feel of the community.”
- “Consistency with small town character”

HAA Takeaways

- Cities must evaluate proposals very quickly or they are “deemed compliant”
- Applies to all jurisdictions and almost all developments
- Cannot deny or reduce density, conditions OK
- Additional protections for affordable and special needs housing



HAA Applicability

Applies to **ALL** “housing development projects” and emergency shelters:

- Residences only (2 or more units);
- Transitional & supportive housing;
- Mixed use projects with at least 2/3 the square footage designated for residential use.

HAA Applicability

Additional protections for projects:

- Emergency shelters;
- 20% low income;
- 100% moderate (up to 120% of median) or middle income (150% of median).

HAA Application Review

- Must provide list of any inconsistencies with:
 - “Plan, program, policy, ordinance, standard, requirement or similar provision”;
 - Within 30-60 days of completeness;
 - Explaining why inconsistent; or
 - “Deemed consistent.”
- Also “deemed consistent” if — **“substantial evidence** that would allow a **reasonable person to conclude”** is consistent

HAA Denial or Reduction in Density

- If desire to deny or reduce density:
 - Identify **objective** standards project does not comply with.
 - If project complies with all, must find specific adverse effect on public health & safety.
- **“Specific adverse effect”** must be significant, quantifiable, direct, and unavoidable based on written health & safety standards on date project deemed complete, and no way to mitigate.

HAA Jurisdiction Decision

- City findings evaluated based on 'preponderance of the evidence,' not merely 'substantial evidence'
- Attorneys' fees to both market-rate & affordable
- \$10K/unit fine if ignore court

HAA Application Review

Some remaining discretion:

- CEQA still applies
- Can probably still apply subjective Coastal Act standards

SB 35 Applicability Takeaways

- Is jurisdiction subject to SB 35 streamlining?
- Is development proposal consistent with SB 35 streamlining?
- Do SB 35 exclusions apply?



How SB 35 Works

Determine if Jurisdiction is Subject to SB 35

Not enough building permits to satisfy RHNA

No Annual Report for 2 Years



Determine if Project is Eligible for Streamlining

2+ m-f units in urbanized area
zoned or planned for residential

**Meets all objective
standards**

Meets affordable housing and
labor requirements



Determine if Exclusion Applies

Project site may not be on list of exclusions

Project must not require subdivision unless LIHTC-
funded and/or meets labor requirements

San Mateo County Jurisdictions

Jurisdictions NOT SUBJECT to SB 35 Streamlining

Foster City

Hillsborough

10% based on no
Annual HE Report
and/or not meeting
above moderate
income RHNA (pro-
rated)

50% based on not
meeting very low and
low income RHNA
(pro-rated)

Jurisdictions Required Streamlining for 10% or More Affordability

Belmont

Colma

East Palo Alto

Half Moon Bay

Menlo Park

Millbrae

Pacifica

Redwood City

San Bruno

San Mateo County

South San Francisco

Jurisdictions Required Streamlining for 50% or More Affordability

Atherton

Brisbane

Burlingame

Daly City

Portola Valley

San Carlos

San Mateo

Woodside

Application Review Takeaways

- General Plan trumps inconsistent zoning standards
- Exempts coastal zone, agricultural land, wetlands, fire hazard areas, hazardous waste sites, former mobilehome park, floodplain, floodway, fault zone or other specified areas
- Faster ministerial review using objective standards for 2 or more units in urban area
- Reduced parking standards



SB 35 Application Review

- Project must be consistent with **'objective'** zoning and design review standards:
 - Consistent with zoning if consistent with maximum density in general plan, without consideration of maximum unit allocation;
 - Density bonuses are consistent;
 - General plan standards trump inconsistent zoning standards.

SB 35 Application Review

- **Ministerial review ONLY** based on ‘objective’ standards
- Within 60 to 90 days of **submittal** — provide list of all inconsistencies with ‘objective’ zoning and design review standards in effect at submittal or project “deemed consistent”
- Review can’t last more than **90 – 180 days** from submittal

SB 35 Parking Standards

- **No parking standards** may be imposed if:
 - Located within one-half mile of public transit
 - Located within an architecturally and historically significant historic district
 - In an area where on-street parking permits are required but not offered to the occupants of the development
 - Within one block of a car share vehicle
- **No more than 1 space/unit** for all other projects

SB 35 Application Review/Eligibility

- **Eligible Projects:**

- Two or more units proposed
- In urban area with 75% of perimeter developed
- Site zoned or planned for residential use
- Consistent with 'objective' planning standards
- Must meet affordable housing requirements

SB 35 Application Eligibility

- **Eligible Projects** (cont.):
 - Projects with 10 or more units must **pay prevailing wages**
 - Must use “**skilled and trained workforce**” if 75 units or more in coastal or bay counties over 225,000 population and other counties over 550,000 population

Exclusions from SB 35

- **Exclusions:**

- Site must not have contained housing occupied by tenants within last 10 years
- Site must not be in the coastal zone, agricultural land, wetlands, fire hazard areas, hazardous waste sites, former mobilehome park, floodplain, floodway, fault zone, or other specified areas
- Project may not involve a subdivision unless financed with low income housing tax credits and pays prevailing wage or satisfies all labor requirements

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Other Takeaways

- Application content changes
- Objective standards for ministerial review
- Development application processing times and procedures (ministerial review)
- Content of the General Plan
- Community understanding and acceptance





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“Pop Quiz”