



Under One Roof: New California Housing Law Updates

Articles and Analysis by BB&K to
Help Communities Respond to
Housing Crisis Legislation

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Omnibus Housing Bill Adds Teeth to Housing Element Law Enforcement

Part 1: New California Housing Laws

The California Department of Housing and Community Development was given more tools to hold cities accountable for housing-element compliance. Spanning 140 pages, Assembly Bill 101, signed last week, is unlike most bills from this session. The other laws generally take effect in January, but most of AB 101 took effect immediately. Here are the highlights:

Regulatory

- **Judicial Enforcement:** After HCD flags a noncompliant housing element, the Attorney General is now required to seek a court order directing the city to bring its housing element into compliance. To secure compliance, the court is directed to retain jurisdiction, hold status conferences, and impose fines, and may appoint a receiver to step in, take the process over from the city, and “bring the jurisdiction’s housing element into substantial compliance.”
- **Financial Enforcement:** Cities with compliant housing elements get preference in applying for housing and infrastructure programs. Cities that don’t comply are ineligible for certain programs.
- **“Low Barrier Navigation Center” Now Allowed by Right in Zones Allowing Multifamily or Mixed Uses:** Supportive housing has no limit on length of stay and is already allowed as a “use by right” wherever multifamily residential and mixed uses are allowed, subject only to ministerial standards that apply to multifamily generally. This bill introduces “Low Barrier Navigation Center” as a “low-barrier, service-enriched shelter focused on moving people into permanent

housing,” such as supportive housing – and allows an LBNC by right wherever multifamily or mixed uses are allowed on any basis.

- **Qualifying Threshold for Streamlining Easier to Satisfy:** Before, an applicant had to show that 2/3 of the square footage of the project was residential to qualify for streamlining. Now, proposed density-bonus units and area must be included in the 2/3 calculation. The bill also adds the Department of Public Health and the State Water Resources Control Board to the list of state agencies that may clear a hazardous waste site for streamlining.

Financial

- **HCD and Housing Finance Directors Added to Tax Credit Allocation Committee:** Before, the Committee was just the Governor, Controller and Treasurer. The bill adds these housing directors to the Committee, potentially changing the Committee’s perspective on how to allocate tax credits to housing projects.
- **New \$650 Million Grant Program to Address Homelessness:** The bill establishes the Homeless Housing, Assistance, and Prevention Program and puts the Business, Consumer Services, and Housing Agency in charge of distributing \$650 million in one-time grant funds for regional coordination and expanding or developing “local capacity to address homelessness challenges.” *The deadline to apply for funds is Feb. 15.*



- **New \$250 Million Grant Program to Accelerate Housing Production and Satisfy RHNA:** The bill establishes the Local Government Planning Support Grants Program and puts HCD in charge of allocating \$250 million in one-time grants to cities, counties and councils of government (half to cities and counties, half to COGs). The funds are for technical assistance, preparation and adoption of planning documents, and “process improvements” to “accelerate housing production and ... facilitate compliance with” sixth-cycle regional housing needs assessments. The amount available to a particular city depends on its population. The deadline for cities and counties to apply for funds is July 1 (COGs have until January 2021).
- **HCD May Now Use CalHome Program Funds to Make Grants for ADUs and Disaster Relief:** The bill authorizes HCD to use existing, continuously appropriated CalHome Program funds to make grants to local agencies and nonprofits for the construction or rehabilitation of accessory dwelling units and junior ADUs, as well as to assist disaster victims.
- **Housing Trust Grant Funds Now Available for Native American Tribes and ADUs:** Previously, only local housing trusts were eligible for grants from the Local Housing Trust Fund Matching Grant Program. Now, Native American Tribes may receive funds from this Program. Permissible uses of the funds have also been extended to include construction or rehabilitation of ADUs and junior ADUs.
- **New \$500 Million Grant Program for Infill Infrastructure:** The bill establishes the Infill Infrastructure Grant Program of 2019 and puts HCD in charge of allocating \$500 million in grant funds to capital improvement projects that are needed to facilitate development of qualifying infill projects and areas. HCD will release a notice of funding availability by Nov. 30.
- **\$500 Million in Additional Tax Credits:** The bill provides for an additional \$500 million in tax credits to qualifying low-income housing projects and changes some of the criteria to qualify.
- **\$500 Million Added to Self-Help Housing Fund for Special-Needs Housing:** The bill appropriates \$500 million to HCD for the Self-Help Housing Fund to facilitate low- and moderate-income housing for people with intellectual or developmental disabilities.

If you have any questions about AB 101 and how it may impact your agency, or housing issues generally, please contact the author of this Legal Alert listed below in the firm’s Municipal Law practice group, or your BB&K attorney.

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Todd Leishman
(949) 263-6576
Todd.Leishman@bbkllaw.com



Elizabeth Hull
(949) 263-2608
Elizabeth.Hull@bbkllaw.com



Surplus Land Act Requirements Expand for Local Agencies

Part 2: New California Housing Laws

Agencies will have expanded roles under the Surplus Land Act, and will have to satisfy new housing element requirements under Assembly Bill 1486, signed by Gov. Gavin Newsom on Wednesday. The legislation will impact existing practices, add new reporting requirements and subject agencies to penalties for noncompliance. The legislation is intended to address California's shortage of affordable housing. AB 1486 takes effect Jan. 1, with penalty provisions going into effect Jan. 1, 2021.

The new law expands the number of agencies subject to Surplus Land Act requirements. The definition of "local agency" was revised to include not only every city, county, city and county, and district, including school districts, but also specifically covers sewer, water, utility, and local and regional park districts, among others.

Revisions to existing law will include, but are not limited to:

- Requiring legislative bodies to take formal action in a regular public meeting to declare land surplus. That declaration must be supported by written findings.
- Prohibiting the negotiations between a disposing agency and interested entities from including deal terms that would reduce or disallow residential use of the site.

- Requiring a disposing agency to send a notice of availability to housing sponsors that have notified the Department of Housing and Community Development of their interest. HCD is also required to maintain a listing of all notices of availability throughout the State on its website.
- Requiring a disposing agency, prior to agreeing to the terms for the disposition of surplus land, to provide specified information about its disposition process to HCD. HCD then has 30 days to review the information and submit written findings to the disposing agency if HCD determines the proposed land disposal will violate requirements of this new law. Violations would be subject to monetary penalties or enforcement action. HCD is required to implement these provisions beginning Jan. 1, 2021.
- Adding a requirement that the planning agency of a city or county include a listing of specified sites owned by the city or county that have been sold, leased or otherwise disposed of in the prior year. The list must include the entity to whom each site was transferred and the intended use for the site.

In light of AB 1486's expanded requirements under the Surplus Land Act, as well as changes related to general plan housing elements, local agencies should carefully evaluate their existing policies and procedures relating to the disposal of surplus land, particularly as it relates to affordable housing, to ensure compliance with the new requirements.



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If you have any questions about AB 1486 and how it may impact your agency, please contact the authors of this Legal Alert listed below or your BB&K attorney.

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Jeff Ferre

(951) 826-8271

Jeff.Ferre@bbklaw.com



Amanda Daams

(951) 826-8236

Amanda.Daams@bbklaw.com



Tenant Protection Act Sets Statewide Rent Caps and Eviction Rules

Part 3: New California Housing Laws

As California cities consider local rent control measures and other mechanisms to address the impacts of escalating residential rents on local housing, the California legislature passed Assembly Bill 1482 as a statewide solution to this concern. Signed by Gov. Gavin Newsom Thursday, the bill, known as the Tenant Protection Act of 2019, limits landlords' ability to increase residential rents and to remove residential tenants without just cause. This legislation could take some pressure off local governments to address rising rents through local enactments.

Limits on Residential Rent Increases

AB 1482 provides that, over the course of any 12-month period, a residential landlord cannot increase a tenant's rent by 5 percent plus the percentage change in the cost of living (set by regional Consumer Price Index) or 10 percent, whichever is less. It applies to all rent increases after March 15, 2019.

The bill exempts certain housing types from the cap on rent increases, including:

- Housing constructed in the past 15 years,
- Affordable housing subject to a deed restriction, or agreement arising from subsidies for very low-, low- or moderate-income households,
- College dormitories,
- Single family homes or condominiums rented by the owner, unless owned by a real estate investment trust, corporation or a limited liability company in which at least one member is a corporation,

- Duplexes where the owner occupies one unit and rents the other, or
- Units that are already subject to local rent control measures.

The bill also prevents landlords from increasing a tenant's rent more than twice over a 12 month period, except to set new rental rates at the start of a new tenancy.

Just Cause for Termination of Residential Tenancies

As with most rent control measures, AB 1482 also includes tenant protections in the form of a just cause showing for landlords wanting to terminate residential tenancies. These restrictions prevent landlords from simply evicting tenants to set new rents with their new tenants, thus avoiding the rent caps established by the new law. These just cause protections apply when all the tenants in a unit have occupied the unit for 12 months or more or some of the tenants have occupied the unit for less than 12 months, but at least one tenant has occupied the unit for 24 months or more.

The bill enumerates several "at fault" just causes for eviction, including failure to pay rent, material breach of the lease and criminal or nuisance activity. It also enumerates some "no fault" just causes, including removal of the unit from the rental market or providing it to an immediate relative, substantially remodeling the unit, vacating the unit to address habitability issues, or responding to an administrative or court order.



Similar to the rent cap, the bill exempts certain housing types from the tenant protections requiring a just cause showing prior to terminating a residential tenancy. These include:

- Housing constructed in the past 15 years,
- Affordable housing that is subject to a deed restriction, or agreement that provides subsidies for very low-, low- or moderate-income households,
- Dormitories for both colleges and K-12 schools,
- Housing associated with a nonprofit hospital, religious facility, extended care or licensed residential care facility,
- Hotels,
- Individual rooms or accessory dwelling units rented out by the home owner,
- Single family homes or condominiums rented by the owner, unless they are owned by a real estate investment trust, corporation, or a limited liability company in which at least one member is a corporation or
- Duplexes where the owner occupies one unit and rents the other.

The new bill does not preempt existing local just cause eviction protection ordinances. Instead, it allows local jurisdictions to adopt more protective just cause ordinances.

The Legislature declares in AB 1482 that these restrictions are needed for a limited time to address the statewide housing crisis and, in particular, concerns with residential rent gouging. As a consequence, these protections will expire on Jan. 1, 2030.

If you have any questions about AB 1482 and how it may impact your agency, please contact the authors of this Legal Alert listed to the right in the Municipal Law practice group or your BB&K attorney.

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Ethan Walsh
(916) 551-2825
ethan.walsh@bbklaw.com



SB 330 Limits Local Laws Over Housing Developments

Part 4: New California Housing Laws

As part of Gov. Gavin Newsom's pledge to create 3.5 million new housing units by 2025, he signed Senate Bill 330 on Oct. 9. The new law makes numerous changes to the Permit Streamlining Act and the Housing Accountability Act, many of which are in effect only until Jan. 1, 2025, and establishes the Housing Crisis Act.

Under the new rules, cities and counties will be limited in the ordinances and policies that can be applied to housing developments. "Housing development" is now defined to include residential projects, mixed-use projects with 2/3 of the square footage dedicated to residential units and transitional or supportive housing projects.

New Preliminary Application Process

The legislation creates a preliminary application process. A housing development will be deemed to have completed the preliminary application process by providing specified information regarding:

- site characteristics,
- the planned project,
- certain environmental concerns,
- facts related to any potential density bonus,
- certain coastal zone-specific concerns,
- the number of units to be demolished and
- the location of recorded public easements.

With limited exceptions, housing developments will only be subject to those ordinances and policies in effect when the completed preliminary application is submitted. The public agency must make any historic site determination at the time the developer has complied with the preliminary

application checklist. That determination can only be changed if archaeological, paleontological or tribal cultural resources are found during development.

To facilitate the preliminary application process, all public agencies must compile a checklist that specifies what is required to complete a development application. The application checklist must now be made available in writing and on the public agency's website.

The developer has 180 days from the submittal of the preliminary application to submit a development application. Under SB 330, the local agency now has additional disclosure obligations when rejecting an application as incomplete and cannot request anything that is not identified on the application checklist.

Streamlining Provisions

The Housing Accountability Act was amended to prohibit more than 5 hearings when reviewing a project that complied with the general plan and zoning code objective standards when the application was deemed complete. "Hearing" is broadly defined to include any workshop or meeting of a board, commission, council, department or subcommittee.

Additionally, a housing development cannot be required to rezone the property if it is consistent with the objective general plan standards for the property. The public agency may require the housing development to comply with the objective zoning code standards applicable to the property, but only to the extent they facilitate the development at the density allowed by the general plan.



SB 330 also shortens the timeframes for housing development approval under the Permit Streamlining Act. Local agencies now have 90 days, instead of 120 days, following certification of the environmental impact report, to approve the project. For low-income projects seeking tax credits or other public funding, that time frame is 60 days.

Housing Crisis Act of 2019

The HCA freezes many development standards in affected cities and counties starting Jan. 1. Generally, an affected city or county will be a U.S. Census Bureau-designated urbanized area. Under the HCA, the Department of Housing and Community Development will determine the affected cities and counties by June 30. HCD may revise this list after Jan. 1, 2021 to address changes in urbanized areas based upon the new census data.

Among other changes, the HCA provides that, where housing is an allowable use, an affected public agency, including its voters by referendum or initiative, may not change a land use designation (general plan or zoning) to remove housing as a permitted use or reduce the intensity of residential uses permitted under the general plan and zoning codes that were in place as of Jan. 1, 2018. The exception is if the city concurrently changes the standards applicable to other parcels to ensure there is no net loss in residential capacity.]

Affected public agencies are also prohibited from imposing a moratorium or similar restriction on a housing development, including mixed-use developments, except to specifically protect against imminent threats to public health and safety. Additionally, affected public agencies cannot enforce a moratorium or other similar restriction on a housing development until the ordinance has been approved by HCD. As of Jan. 1, affected cities or counties are prohibited from imposing or enforcing subjective design standards on housing developments where housing is an allowable use. Objective standards are limited to design standards that involve no personal or subjective judgment by a public official. They must be verifiable by reference to an external and uniform benchmark available to both the applicant and the public official prior to application submittal

An affected city or county is also prohibited from establishing or implementing any growth-control measure adopted by the voters after 2005 that:

- limits the number of land use approvals for housing annually,
- acts as a cap on the number of housing units that can be constructed or
- limits the population of the city or county.

The HCA also prohibits development approvals that require residential unit demolition. Unless the project will replace all existing or previously demolished affordable restricted units, it will include at least as many units as existed on the site within the previous 5 years. Existing residents are allowed to remain until 6 months before construction begins, and displaced residents are provided relocation benefits and a right of first refusal for a comparable unit in the new project at an affordable rent.

If you have any questions about SB 330 and how it may impact your agency, please contact the author of this Legal Alert listed to the right in the firm's Municipal Law practice group, or your BB&K attorney.

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Elizabeth Hull
(949) 263-2608
Elizabeth.Hull@bbklaw.com



California Paves Way for More ADUs

Part 5: New California Housing Laws

As part of its response to California’s housing crisis, the Legislature passed a handful of new laws that further limit local regulation of accessory dwelling units, or ADUs. The Legislature’s goal is to accelerate ADU development throughout the State. Historically, an ADU is usually a second small residence on the same grounds as a single-family home, such as a back house or an apartment over a garage.

AB 881, SB 13 and AB 68[1]

More Locations

- State law now clearly prohibits a city from requiring a minimum lot size.
- ADUs are now allowed on lots with multifamily dwellings (not just single-family dwellings).
- The no-setback rule is expanded beyond just nonconforming garages to include any existing structure, or any new structure in the same place and with the same dimensions as an existing structure.
- The most a city may require for a side or rear setback is now 4 feet.
- Before, the adequacy of water and sewer services and ADU impact on traffic flow and public safety were just examples of reasons that might justify a city in restricting ADUs in a certain area. Now, they’re the only allowed reasons, and cities must consult with utility providers before deciding that water and sewer services are inadequate.

Fewer Opportunities to Regulate Size

- Minimum size must be 220 square feet, or as low as 150 square feet if the city has adopted a lower efficiency-unit standard by local ordinance.

- Maximum size must be at least 850 square feet for attached and detached studio and one-bedroom ADUs and at least 1,000 square feet for two or more bedrooms. In practice, an ADU might be limited to less than these minimum maximums by the application of development standards, such as lot coverage and floor-area ration. But another new provision prohibits the application of any standard that wouldn’t allow for at least an 800-square foot, 16-foot tall ADU with 4-foot side and rear setbacks.
- Converted ADUs may now include an expansion of the existing structure of up to 150 square feet for ingress and egress.
- Attached ADUs are no longer limited to 1,200 square feet – just 50 percent of the existing primary dwelling.

Less Parking

- Cities may no longer require replacement parking when a garage is converted to an ADU.
- A city cannot require ADU parking within a 1/2 mile of public transit. State law now clarifies that “public transit” includes any bus stop, which may considerably expand parking-exempt areas for many cities.

More Limited Review

- Whether or not a city has a compliant ADU ordinance, it must ministerially approve a compliant ADU, and now a junior ADU as well, within 60 days of receiving a complete application – a decrease from 120 days. But the city must extend that time if an applicant requests it. Cities may charge a fee to recover review costs.



- Any new primary dwelling that requires a discretionary review may still be subjected to the normal discretionary process, and consideration of an ADU on the same lot may be delayed until the primary dwelling is approved. But the ADU decision must remain ministerial.
- Cities now have to approve new detached ADUs with only a building permit (as they do for converted ADUs), without applying any standard except for 4-foot setbacks, an 800-square foot max and a 16-foot height limit.
- Cities may not require correction of physical nonconforming zoning conditions for an ADU or junior ADU.

Multiple ADUs and Multifamily

- Cities must now allow both a junior ADU and either a converted ADU or a detached building-permit-only ADU on the same lot.
- A city must now allow junior ADUs even if the city doesn't have an ADU ordinance, in which case it may only impose the few standards in state law.
- Cities must now allow multiple converted ADUs on lots with a multifamily dwelling.
- Cities must now allow up to two detached ADUs on lots with a multifamily dwelling, subject only to a 16-foot height limit and 4-foot setback.

More Limited Fees

- Utility providers are now more limited in whether and how they can charge connection fees and capacity charges.
- Impact fees are prohibited for ADUs smaller than 750 square feet. They're allowed for large ADUs, but only proportional to the primary dwelling.

No Owner-occupancy

- All ADUs are exempt from owner-occupancy requirements until Jan. 1, 2025. Cities may then impose occupancy requirements, but only to ADUs created after that date.

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No Short-term

- Cities may no longer allow short-term rentals of ADUs.

Heavier Consequences for Cities

- Now, a local ADU ordinance is null and void if it does not fully comply with whatever the current state law requires – not just with the 2017 amendments (which was previously the case). So cities will have to proactively conform their ordinances before changes in state law take effect or continually risk voiding their entire local ordinance.
- Cities are more accountable now to the California Department of Housing Community Development for confirming their local ordinances to the state ADU law, and HCD may refer a violation to the Attorney General.

AB 671 and AB 139[2]

Housing elements must now promote ADUs for affordable rent. HCD must provide financial incentives.

Every general plan housing element must now include, as part of its program to make adequate provision for the housing needs of all economic segments of the community, a “plan that incentivizes and promotes the creation of [ADUs] that can be offered at affordable rent ... for very low, low, and moderate-income households.” For its part, HCD is charged with developing “a list of existing state grants and financial incentives” for ADU developers and operators by the end of 2020.

In practice, cities and counties will likely need to not only discuss their ADU ordinance and report on ADU development in their housing elements, but also report on what they are doing to promote affordable rental of those ADUs. The upside is that affordable ADUs may count toward fulfilling regional housing needs allocations, also known as RHNA, requirements.

AB 670

Home Owner Associations are now limited like local agencies in restricting ADUs.

State law has limited local agencies in restricting ADUs for a while now, but hasn't addressed private restrictions such as HOA Covenant, Conditions & Restrictions, or CC&Rs. AB 670 makes any governing HOA document void and unenforceable to the extent that it prohibits, or effectively prohibits, the construction or use of ADUs or junior ADUs.



AB 670 does permit an HOA to place “reasonable restrictions” on ADUs and junior ADUs in common interest developments, as long as the restrictions do not discourage ADU or junior ADU construction or unreasonably increase the cost to construct them. (Like cities, HOAs are bound to disagree with ADU proponents over what those standards mean in practice.) The new law does not define what sort of “restrictions” are “reasonable,” but the bill does not require an HOA to follow the same exact standards that the city or county has adopted, leaving open the possibility that the HOA might still have its own “reasonable restrictions” that differ from those of the local agency.

While HOA regulation of ADUs is not directly a local agency’s business, it is helpful for cities and counties to keep this in mind since they receive complaints from time to time from residents concerned about government approval of uses that violate CC&Rs.

AB 587

Separate sale or conveyance of ADUs is now okay in limited situations.

State law generally prohibits local ADU ordinances from allowing ADUs to be sold or otherwise conveyed separately from the primary dwelling. But AB 587 creates a limited exception by allowing (though not requiring) cities to adopt ordinances authorizing ADUs to be conveyed separately from the primary dwelling if certain conditions are met. These conditions include, among others, that the property was built by a qualified nonprofit, there is an enforceable restriction on the use of the land between the nonprofit and qualified low-income buyer and the property is held in a tenancy-in-common agreement that:

- gives the low-income buyer an undivided, unequal interest in the property based on the size of the dwelling,
- gives the nonprofit a right of first refusal to buy back the property if the buyer wishes to sell,
- requires the buyer to occupy the residence as his or her principal residence, and
- contains affordability restrictions on the sale or conveyance of the property ensuring that the property will remain low-income housing for at least 45 years.

This new, narrow exception appears to be a concession aimed at a particular project or model.

Note that this exception is not automatic. The local agency must choose to provide it, and it will likely be of only limited interest to most jurisdictions where there is no qualified nonprofit ready to proceed under this model.

The Bottom Line

Nearly every – if not every – city and county in the state will need to amend its ADU ordinance in time to take effect before Jan. 1, or the ordinance will be void and the agency will have to approve ADUs ministerially without applying any architectural, landscaping, zoning or development standard.

With California’s housing shortage reaching crisis levels, the state Legislature and Gov. Gavin Newsom approved a slew of new bills this session aimed at helping the situation. Using a mix of carrots and sticks, these laws will change how cities and counties address housing shortages in their own communities. Watch for more Legal Alerts analyzing the new laws and how they impact your agency.

If you have any questions about new ADU laws and how they may impact your agency, please contact the authors of this Legal Alert listed to the right in the firm’s Municipal Law practice group, or your BB&K attorney.

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Elizabeth Hull
(949) 263-2603
Elizabeth.Hull@bbklaw.com



Todd R. Leishman
(949) 263-6576
Todd.Leishman@bbklaw.com



Isaac Rosen
(213) 787-2564
Isaac.Rosen@bbklaw.com



Housing Density Bonus and Reporting Changes for Local Agencies

Part 6: New California Housing Laws

As part of the 2019 housing package, Gov. Gavin Newsom signed a number of bills modifying density bonus rules, and information and reporting rules. Each of these bills is designed to increase housing production by easing regulations on development or making information readily available to potential developers.

Density Bonus

Assembly Bill 1763 amends California's density bonus law to authorize significant development incentives to encourage 100 percent affordable housing projects. In response to a need for housing for low- and moderate-income households, the bill allows up to 20 percent of the units to be available for moderate income households, while the remainder of the units must be affordable to lower income households. The affordability restrictions apply to both the base units and the extra units granted through the density bonus.

These 100 percent affordable housing projects can receive an 80 percent density bonus from the otherwise maximum allowable density on the site. If the project is within 1/2 mile of a major transit stop, the city may not apply any density limit to the project. In addition to the density bonus, qualifying projects will receive four regulatory concessions. And, if the project is within 1/2 mile of a major transit stop, it will also receive a height increase of up to three additional stories, or 33 feet. The 100 percent affordable housing projects are also not subject to any minimum parking requirements.

Essentially, this bill encourages 100 percent affordable housing projects to provide as many units as possible on the site, and the limits on project size come from other standards, such as maximum height limits and setbacks (which are also subject to any allowable deviations through the four available concessions). Under existing law, cities are already required to have an ordinance that implements the state density bonus law. Cities should update their density bonus ordinances to codify this new bonus for 100 percent affordable projects.

Information and Reporting Requirements

Under existing law, counties are required to establish a central inventory of all surplus governmental property located in the county. AB 1255 amends the Government Code to extend this obligation to cities. It requires that on or before Dec. 31 of each year, each county and city create an inventory of surplus land (land no longer necessary for the agency's use) and excess land (land in excess of the agency's foreseeable needs) within its jurisdiction. Upon request, the agencies are required to make the inventory available to a citizen, limited dividend corporation or nonprofit corporation free of charge. For each site identified in the inventory, the agency must provide a description of the parcel and its present uses, and report that information to the California Department of Housing and Community Development before April 1 of each year. HCD must then report that information to the Department of General Services for inclusion in an inventory of all state-owned parcels that are in excess of state needs.



Similar to AB 1255, Senate Bill 6 requires DGS to develop and host a publicly available database on its website that lists the “inventory sites” that local agencies have identified as suitable and available for residential development in their respective housing elements. Under existing law – including, specifically, Housing Element Law section 65583(a)(3) – these inventory sites are required to be included in each local agency’s housing element. However, SB 6 obligates local agencies to prepare their respective inventory sites consistent not only with existing law, but also with standards, form, and definitions adopted by HCD. SB 6 further authorizes HCD to adopt, amend and repeal these standards, forms, and definitions to implement Housing Element Law section 65583(a).

Beginning Jan. 1, 2021, all agencies that amend or adopt their housing element must deliver to HCD, along with the copy of its adopted housing element or amendment, an electronic copy of their inventory sites. HCD is responsible for then furnishing the DGS with the list of inventory sites to be included in the database. DGS’ database will also include State lands determined or declared excess pursuant to Government Code section 11011.

AB 1483 creates more transparency requirements. Existing law requires public agencies to provide a development project applicant with a detailed list of the information that will be required from the applicant. Existing law also requires a local agency that establishes or increases a fee as a condition of a development project’s approval to determine a reasonable relationship between the fee’s use and the type of development project on which the fee is imposed. AB 1483 adds section 65940.1 to the Government Code to require that a city, county, or special district post on its website all of the following:

1. a current schedule of fees, exactions and affordability requirements imposed by the agency that are applicable to a proposed housing development project (defined as a residential project, mixed used project or transitional or supportive housing project),
2. all zoning ordinances and development standards, including an identification of the zoning ordinances and development standards applicable to each parcel,
3. the list of information required from a development project applicant

4. the current and five previous annual fee reports or annual financial reports and
5. an archive of impact fee nexus studies or cost of service studies conducted by the public agency after Jan. 1, 2018.

The public agency must update this information within 30 days of any changes.

AB 1483 also amends the Health and Safety Code to add new requirements for HCD regarding its updates to the California Statewide Housing Plan, completed every 4 years. AB 1483 requires that HCD include in the next revision (due on or after Jan. 1), and each subsequent revision, a 10-year housing data strategy. This includes, among other things, an assessment of data submitted by annual reports, and a strategy to achieve more consistent terminology for housing data across the State. In establishing the data strategy, HCD is required to establish a workgroup that includes representatives from local governments, the Department of Technology and other groups.

Next Year

It should be noted that there were a number of housing-related bills that did not make it out of the Legislature, but may be back next year. The most well-known was SB 50, which would have created new incentives for developers to build apartments and condominiums near train and bus stations, even in areas zoned strictly for single-family homes. As proposed, it would waive or relax local minimum parking requirements and density restrictions for developers looking to build housing near train stations and “high-quality” bus stops. It also allows developers to build up to four-stories within 1/2 mile of a train station and up to five stories within 1/4 mile. SB 50 was converted to a 2-year bill and will be back in the process in January.

A second bill that was proposed but didn’t make it out of the Legislature was Assembly Constitutional Amendment 1. ACA 1 was the repeal of Article XXXIV. Article XXXIV requires a vote of the people before a local agency can provide financial support for an affordable housing project where the local agency restricts more than 49 percent of the units to be built. Although its future is less certain than SB 50, it is possible this bill will be reintroduced in the near future.



If you have any questions about new housing laws and how they may impact your agency, please contact the authors of this Legal Alert listed below in the firm's Municipal Law practice group, or your BB&K attorney.

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Megan Garibaldi
(949) 263-6592
Megan.Garibaldi@bbklaw.com



Lauren Langer
(310) 220-2176
Lauren.Langer@bbklaw.com



Victoria Hester
(619) 525-1365
Victoria.Hester@bbklaw.com



In Housing Crisis, Calif. Lawmakers Look for Ways to Increase Livability

Livability Discussion Part 1

Previously published in the Oct. 15, 2019 issue of PublicCEO

There's little debate: California is facing a housing crisis. The dispute lies in finding solutions.

The current state of California's housing shortfall is well documented.

Nine out of the nation's 15 urban areas with the highest median home values are in California. The median price of a home in San Diego County is just under \$550,000 and in the San Francisco Bay Area, it's well over \$800,000. Rent affordability issues continue to affect the State: Four California cities made *Apartment List's* top 10 for rent growth over the past 5 years. Homelessness, too, is on the rise: Los Angeles County's homeless population was up 12 percent over the year.

The State also faces home shortages. The California Legislative Analyst Office estimates that some 3.5 million new homes need to be built to adequately house the State's population. That's also the number of new homes Gov. Gavin Newsom has promised to build by 2025.

Which, of course, raises the question of whether California is prepared to build this many new homes.

In the first 5 months of 2019, California cities and counties issued residential building permits for an average of 111,000 units, according to data recently released by the California Department of Finance. This number of permits is down

12.2 percent from the same time frame in 2018. A recent study also found that current planning mechanisms across California only allow for an additional 2.8 million new housing units to be built. That's a 700,000-home shortage from what the LAO estimates is actually needed. It's also not the only challenge the State faces to fulfill its housing needs.

While it's not entirely outside the realm of possibility for 3.5 million new units to be built in California, a discussion that focuses purely on gross numbers obscures the role that the community plays in providing homes that are "livable." That is, from a community-building perspective, the goal is to construct new homes that are affordable to different income levels, connect to job and economic opportunities, have access to safe and reliable transportation, and put residents in close proximity to their friends and family.

In this two-part series, we look at trends in California housing legislation and how communities throughout the State (and across the nation) are considering and dealing with the complex livability discussions of affordability, density, land use and transportation on a local level.

An Approach that Values Local Control

Local leaders, being responsive to their constituents, must have hyper-local conversations regarding what their community will look and feel like to find housing solutions that best fit their community's resources, environment and needs.



Housing has endured as a hot-topic among state lawmakers who, over the last few years, have passed and proposed legislation aimed to increase affordable housing production statewide by removing local land use controls in exchange of greater state authority and streamlined approval processes. But such measures may also risk exchanging livability for efficiency, resulting in a net negative.

The discussion on increasing housing stock has often taken aim at single-family residential zones, looking for statewide rather than community measures to increase density in such areas.

Eliminating single-family zoning may make more housing development opportunities available on paper, but it might also transform existing neighborhoods without community input. While single-family zones are one area where new housing can be developed, it is certainly not the only area.

Communities can also look at increasing their housing stock by developing their mixed-use commercial zones, repurposing commercial and industrial properties or utilizing code enforcement efforts to eliminate and remediate dilapidated and vacant housing.

Reforms eliminating single-family zoning provide a quick centralized fix because they can be implemented statewide, but lawmakers can also look to preserve existing single-family neighborhoods while creatively increasing local participation to meet housing demands.

Investing in Local Communities

Too often, the discussion around housing has avoided a key policy change: The elimination of redevelopment. Though redevelopment was not a perfect system, it did provide a mechanism for cities and other local agencies, through their redevelopment agencies, to directly fund and provide for housing.

Simply identifying alternative housing opportunities is one component of meeting needs. The biggest challenge for local agencies, however, is being able to spur investment in such areas.

Fortunately, there has been some progress in developing new funding mechanisms. For example, Senate Bill 5, or the “Affordable Housing and Community Development Investment Program,” would allocate millions in property tax revenues annually to local entities to build affordable housing and transit-oriented projects, infill developments and housing-related infrastructure. [Editor’s Note: Since publication, Gov. Gavin Newsom vetoed SB 5]

The bill is aimed at reviving some of the State’s former redevelopment programs that were ended in 2011. Instead of directly creating new redevelopment agencies, it would establish a statewide fund for local affordable housing. Cities and other public agencies could then apply for program funding. The bill has received support from a broad range of stakeholders, including numerous cities and housing advocates as well as real estate and building industry groups.

Cities and other public agencies provide an important link in the housing development chain: They can leverage community needs and demands, develop creative opportunities for livable spaces and connect developers and housing providers to these opportunities. Continuing to provide cities with the tools and funding will be critical to the development of new, livable housing.

And while the approach in Oregon, long a national leader in tight land-use controls that promote urban development, has been to eliminate single-family zoning statewide, there is no cookie cutter approach to nudge development and make a community livable.

Communities can, however, learn from one another to model their own solutions.

How can local governments take a community-centric approach to improve livability and increase housing opportunities? And, in what ways can transportation and innovation lead to more housing?

Delve further into the discussion with Best Best & Krieger LLP’s three-part webinar series, “Innovating Livability for Communities,” which explores how communities across the nation are implementing innovative housing and transportation policies that can be used as a model at the national and local level.



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Ruben Duran
(213) 787-2569
Ruben.Duran@bbklaw.com



Michael Maurer
(213) 787-2557
Michael.Maurer@bbklaw.com



Connecting Housing and Transportation for Livable Cities

Livability Discussion Part 2

Previously Published in the Oct. 16, 2019 issue of PublicCEO

California Gov. Gavin Newsom sent a strong warning to cities and counties early this year: Meet your state housing goals or forfeit your Senate Bill 1, or “Gas Tax,” road repair dollars.

“Housing is transportation, and transportation is housing,” he said when announcing his budget plans in January. “If you’re not hitting your [housing] goals, I don’t know why you get the [transportation] money.”

The plan to withhold state transportation dollars from communities and link SB 1 funding to a compliance with housing, zoning and entitlements to meet the State’s housing goals didn’t make the final budget.

It did, however, demonstrate just how closely housing and transportation are connected in the mind of the Governor, and perhaps others in Sacramento.

It’s this intersection of housing and transportation that presents an opportunity for local governments to embrace innovative technologies and partnerships to meet the growing needs of their communities.

In part one of this series, we looked at California’s housing crisis, explored the recent trends in State housing legislation and opened up the conversation about how local governments can take a community approach to find housing solutions that best fit their local resources, environment and needs.

This second installment takes a deeper look at how communities throughout the State (and across the nation) are addressing the complexities of density, land use and transportation on a local level.

Building Upward

Since the ’70s, Oregon has set tight land-use controls to protect farmlands from urban sprawl.

In its latest push to spur urban development, the state eliminated single-family zoning. To increase housing availability, parcels that were once reserved for single-family homes can now be used for multi-family duplex, triplex, fourplex and “cottage cluster” developments in cities with more than 25,000 residents.

Local governments can still regulate siting and design (so long as the intent of the legislation isn’t discouraged) and will have to adopt new land-use ordinances or amend comprehensive plans. To aid this, the legislation’s drafters are developing a model for how communities can implement changes locally.

Similar residential “upzoning” policies are being implemented nationwide to head off housing shortages.



Minneapolis passed ambitious zoning guidelines last year that upzone nearly the entire city. Seattle – a startup rich city with the third largest homeless population in the country – loosened its zoning laws in March to allow denser construction in 27 transit-oriented urban areas and required developers to integrate affordable housing. Austin’s City Council also recently approved an ordinance allowing more units on single-family zoned sites, so long as a certain percentage of development is affordable.

Meanwhile, a similar measure in California (Senate Bill 50) is stuck in limbo until 2020.

The conversation is also prevalent on the presidential campaign trail, where several Democratic candidates have proposed policies to overhaul restrictive zoning codes. President Trump recently signed an executive order that forms a commission to examine restrictive zoning and building regulations.

And, even as legislators push policies aimed at stimulating urban growth, rural communities also continue to grow.

The spatial distribution in Southern California’s planned capacity for new housing is particularly skewed toward inland and rural regions and counties that are already experiencing large amounts of growth.

With growth comes longer commute times and added stress on existing roadways and modes of transit.

The conversation for planners has long centered on the first and last 50 feet of a person’s commute. From an equity standpoint, this is still a vital piece of the transportation discussion. But today’s discussion needs to be expanded like our communities, to consider the first and last five or even 50 miles of a residents’ commute in some communities.

While emerging technologies like autonomous vehicles and shared rides, as well as expanded bus rapid transit and commuter rail service can help alleviate congestion, big questions remain: How can you incentivize people to get out of their cars to utilize new transit? How do you ensure the mode of transportation is safe, reliable and efficient? How could an added bus lane or rail line impact congestion? And how will it all be paid for?

Expanding Public Transit, Building Nearby

The San Diego City Council recently approved two development plans in Pacific Beach that call for 9,000 homes to be built adjacent to future trolley stations along Interstate 5.

The City’s current plan only allows for another 1,200 housing units in the area. But with a more than \$2 billion, 11-mile extension of San Diego Metropolitan Transit System’s Blue Line Trolley that will add nine new stops set to come online in 2021, the City is looking to meet its housing needs and boost ridership.

City staffers recommended reducing one of the project’s major thoroughfares down to three lanes from four, to increase the size and buffer zones for bike lanes – but traffic congestion concerns prevailed.

The plan was amended, though, to require that 15 percent of the homes be designated as affordable for moderate-income households, or those earning less than the area’s median income of \$86,300 for a family of four.

In Phoenix residents recently voted to continue financing the City’s long-planned light-rail extension. The ballot measure, Proposition 105, required the City to divert funding for new light rail extensions to other transportation-specific projects. Phoenix’s share of funds allocated for light-rail expansions comes from a \$31.5 billion, 35-year transportation plan funded by a sales tax increase that voters approved in 2015.

Opponents of the expansion argued the system was too costly and that cutting down the Central Avenue thoroughfare from two vehicle lanes in each direction to one would negatively impact their community.

Similar tensions between transit and roads are playing out in communities across the nation.

Solving these challenges is not easy, and solutions aren’t solely reserved for individual cities, or even metropolitan areas. They extend into regional corridors – or megaregions – with many stakeholders.



A move toward greater regional collaboration and public-private partnerships, that bring innovative models, financing and alliances to the table, could help communities reimagine the way they house and move people, build new infrastructure and support new jobs.

Delve further into the discussion with Best Best & Krieger LLP's three-part webinar series, "Innovating Livability for Communities," which explores how communities across the nation are implementing innovative housing and transportation policies that can be used as a model at the national and local level.

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Ruben Duran
(213) 787-2569
Ruben.Duran@bbklaw.com



Michael Maurer
(213) 787-2557
Michael.Maurer@bbklaw.com



Housing Law Webinars from Best Best & Krieger

BB&K Webinar Series: Innovating Livability for Communities



Focusing on the “US” in HoUSing: Merging Housing, Transportation, Incentives and Community

Housing is a serious and growing issue for communities across the country. During this webinar, we provide a high-level overview around what is being deemed an “affordability crisis” and the legal and policy issues that arise when a city may not be meeting state housing standards.

Watch the July 11, 2019 webinar at bbk.law/hlw1



Innovative Partnerships to Overcome Housing Challenges in Communities

Funding and partnership opportunities can help communities address the housing crisis. During this webinar, we discuss strategies and approaches to those opportunities. In addition, we present ideas on how to closely align housing and transportation through innovation and land use. All of this will be discussed from the perspective of ensuring stable and productive foundations for our communities of the future.

Watch the July 25, 2019 webinar at bbk.law/hlw2



Advancing the Policy Discussion Around Housing

There are communities that are implementing innovative policy around housing, including the important connection between housing and transportation. Through such examples, we discuss emerging best practices and how new innovative models can be advanced at the national level.

Watch the Aug. 8 webinar at bbk.law/hlw3

Housing and Land Use Legislative Update



With California’s 2019 legislative session wrapped up, this Best Best & Krieger LLP webinar looks back on the key housing and land use bills from 2019. We discuss which bills passed, which failed and what to look for in 2020.

Watch the Oct. 30 webinar at bbk.law/hlw4