



California Housing Law Basics

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Presenter



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Rebecca Wilson is an Associate in Lozano Smith's Sacramento Office. She is dedicated to serving public agencies and is an active member of the Firm's Municipal and Business and Facilities Practice Groups. Ms. Wilson provides counsel on a variety of issues impacting public agencies, including water and environmental matters.

Ms. Wilson is skilled at researching and drafting memos on CERCLA, California Health and Safety Code, Freedom of Information Act, the Cortese List, and Public Records Act topics. She has also reviewed documents regarding housing authority and public benefit notices. She has experience in legal research, case analysis, responding to written discovery, and drafting appeals and hearing requests.

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Topics



- Housing Accountability Act
- Permit Streamlining Act
- Inclusionary Housing Policies
- Accessory Dwelling Units
- Density Bonus Law
- SB 9 Urban Lot Split & Two Unit Residential Developments
- Housing Element & Regional Housing Needs Allocation



Housing Accountability Act

What is the Housing Accountability Act (“HAA”)?

- Establishes limitations on a city’s ability to deny, reduce the density of, or make infeasible housing, including farmworker housing or emergency shelter development projects that are consistent with objective local development standards and contribute to meeting housing needs.
- Purpose:
 - Address the ongoing housing crisis.
 - Promote the development of housing to meet state-mandated goals.
 - Discourage exclusionary housing practices.
 - Encourage the development of affordable housing.

Processing Applications & Required Findings or Justifications

1. Is it a housing development?
2. Are there sufficient affordable housing allocations?
3. Is there a reason to deny the application?
 - RHNA Compliance is met or exceeded.
 - Specific, adverse impact on public health or safety.
 - Denial is required by law.
 - Project is on unsuitable land.
 - Project conflicts with both zoning and land use designation.
4. Is the project consistent with objective standards?
5. Is there a specific, adverse impact on public health or safety?

Objective Standard Criteria

- Must be consistent with meeting RHNA.
- Facilitate development at the density permitted on the site.
- Be “objective.”

Fees and other exactions may be imposed subject to certain limitations.



Steps for Approval

1. Developer submits an optional preliminary application for review by the city.
2. Developer submits a complete application.
3. Conduct or rule out CEQA review.
4. The city approves, denies, or requires modifications to the application.
5. Developer may appeal.

Denying a Housing Development Project Application and Conditions of Approval



When may a City deny a housing development project?

What Conditions of Approval can be imposed?

When is a project effectively denied?

Violations of the HAA



Court Action

HCD may refer violations to AG

Permit Streamlining Act

What is the Permit Streamlining Act?

- Enacted in 1977.
- Limits the time cities may review and process discretionary development project permits.
- Development projects: Both housing and non-housing development projects.
- Purpose: To expedite decisions on development projects and clarify approval requirements.
- Failure to approve or disapprove a development project within the time limits results in the project being deemed approved.
- A city is required to maintain a publicly-available, updated list of application requirements, review timelines, and completeness criteria for development projects.

Discretionary vs. Ministerial Approval

Discretionary Approval:



- Require judgment/deliberation by cities for approval.

Ministerial Approval:



- Require compliance with objective standards, with little/no public official judgment.

Permit Streamlining Act Timelines

Approval or Disapproval of a Development Project	Timeframe
If an environmental impact report (EIR) is required.	Generally, 180 calendar days
If project consists of either residential units only or mixed uses.	90 calendar days
Where a negative declaration is issued, or if the project is exempt from California Environmental Quality Act (CEQA).	60 calendar days
A one-time only 90-day extension to these deadlines is permissible upon agreement between the city and applicant.	

Steps to Processing Applications

1. Application Processing for Completion.
2. Determination of Public Hearing or Public Notice Requirements.
3. Conduct or Rule Out An Environmental Study.
4. Process the Application.

Right to Appeal a Project Approval

- Developers are entitled to appeal a project denial or condition of approval.
- Project approvals, including those deemed approved under the PSA, are also appealable.



Streamlined Ministerial Approval (SB 35)

- Enacted in 2017.
- Creates a streamlined ministerial process for specific housing development projects.
- Applies when:
 - City fails to issue enough permits for its housing allocation.
 - Housing element annual report is not submitted by April 1.

Streamlined Ministerial Approval (SB 35) (Cont.)

- Eligible project qualifications:
 - Urbanized/urban cluster areas with residential or mixed-use zoning.
 - Consistency with local zoning, subdivision, and design standards.
 - Residential Focus: At least 2/3 of project square footage must be residential.
 - Affordable Housing: 10–50% of units must be lower-income, based on agency progress.
 - Labor Compliance: Prevailing wages or skilled/trained workforce required.

Inclusionary Housing Policies

What is Inclusionary Housing?

- Policies that incentivize or require developers to include affordable housing units in developments that would otherwise be entirely market rate.
- Key Policy Elements:
 - Requires 10–30% of new units to be affordable.
 - Affordable units serve low- and moderate-income households.
- Implementation: Typically, by local ordinance.
- Goal: Increase affordability, promote inclusive neighborhoods, and address housing shortages.

Background

- Police Power: Cities regulate land use under their constitutional authority.
- Housing Element Law enacted 1969:
 - Obliges cities to meet fair share of regional housing needs.
 - Encourages improvement and development of housing.
- Planning & Zoning Law:
 - Sets minimum land-use regulation standards.
- Grants cities control over zoning, including inclusionary housing policies.

Legal Challenges

- *Palmer/Sixth St. Properties, L.P. v. City of Los Angeles* (2009)
 - LA's inclusionary housing policy for rentals conflicted with Costa-Hawkins Rental Housing Act.
 - Limited rent control invalidated rental inclusionary requirements and in-lieu fees.
- *Building Industry Assn. of Central California v. City of Patterson* (2009)
 - In-lieu fees invalidated due to lack of a reasonable relationship to public impact.
 - Highlighted the need for clear justification for fees in inclusionary policies.

Legislative Response—Assembly Bill 1505 (2017)

- Key Provisions:
 - Reaffirmed local authority to include rental unit requirements in ordinances.
 - Allows alternative compliance methods (e.g., in-lieu fees, land dedication).
- HCD may review if:
 - An ordinance was amended after September 15, 2017, and no more than 10 years have passed since adoption or amendment of the ordinance; and
 - The ordinance requires more than 15% of rental units for lower-income households; and
 - The City has not met its housing element or has an invalid housing element.
- HCD may request the City provide an economic feasibility study demonstrating that the ordinance does not constrain the production of housing.

Implementation

- **Affordability Targets:** Define percentage and income levels for affordable units.
- **Compliance Mechanisms:** Provide clear guidelines and alternative options for developers.
- **Stakeholder Engagement:** Foster collaboration among agencies, developers, and advocates.
- **Transparency & Accountability:** Ensure thorough review and policy development processes.

Best Practices for Ordinances

1. **Clearly State the Need:** Support policies with robust findings.
2. **Articulate Specifics:** Define unit requirements, income levels, and affordability duration.
3. **Offer Incentives:** Include waivers, fee reductions, or expedited processes.
4. **Establish Standards:** Ensure affordable units match market-rate units in quality and location.
5. **Provide Alternatives:** Allow in-lieu fees, off-site construction, or land donation.
6. **Leverage Resources:** Use grants, tax credits, and public-private partnerships.
7. **Monitor and Evaluate.**

Monitoring and Evaluation



- **Regular Assessment:** Track policy effectiveness and adjust as needed.
- **Evaluate Outcomes:** Identify challenges and refine implementation.
- **Engage Stakeholders:** Involve communities and developers in reviews to maintain trust and effectiveness.

Accessory Dwelling Units

What is an Accessory Dwelling Unit (“ADU”)?

ADU

- Independent living units for one or more persons.
- May be attached, detached, or converted spaces.

Junior ADUs (JADUs)

- Max 500 sq. ft.
- Located within the primary residence.
- May share sanitation facilities.

Types of Accessory Dwelling Units



JADU - Interior Conversion



ADU - New Construction Detached
Government Code § 66332(a)(2) & (4)



JADU - Garage Conversion
Government Code § 66332(a)(3)



New Construction ADU – Attached
Government Code § 66332(a)(1)

Purpose of ADUs

Increase affordable housing supply.

Essential for addressing California's housing needs.



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Historical Overview

ADUs can be used as a tool for housing production.

In 2003, approval of permits require ministerial approval.

Post-2017: Laws to streamline permit approvals and remove barriers.

State Law Requirements



- **Approval Process:**

- Applications must be approved/denied within 60 days.
- Denials require a list of deficiencies and corrections.

- **General Requirements:**

- Size, parking, setbacks, height, and owner-occupancy rules.

Design Requirements

Size

- **Min:** 850 sq. ft. (1-bedroom) / 1,000 sq. ft. (2+ bedrooms).
- **Max:** 1,200 sq. ft. for detached ADUs.

Parking

- **Min:** 1 space/unit or bedroom.
- No parking required under specific conditions (e.g., near transit).

Setbacks & Height

- **Side/Rear:** Max 4 ft.
- **Height:** 16-25 ft., depending on location and structure type.

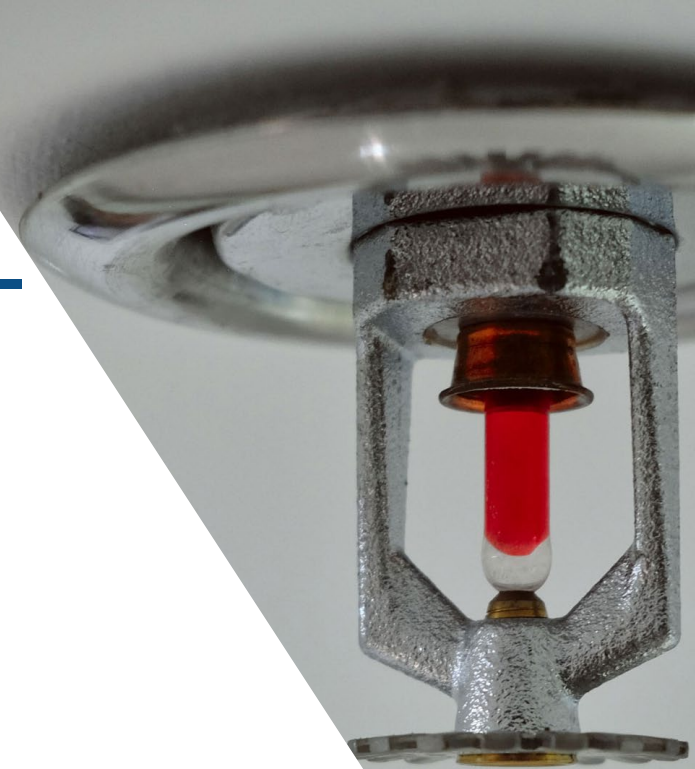
City Ordinance



- **Ordinance Guidelines:**
 - May impose standards if compliant with state law.
 - HCD reviews all adopted ordinances.
- **Consequences of Noncompliance :**
 - Projects default to state ADU law standards.

Limitations on Development Impact Fees

- **Development Impact Fees:**
 - None for ADUs under 750 sq. ft.
 - Proportional fees for larger units.
- **Code Enforcement:**
 - Fire sprinklers not required unless in primary dwelling.
 - Unpermitted ADUs built before 2018 are protected from denial unless necessary for health and safety.



Density Bonus Law



What is Density Bonus?

- Encourages developers to include affordable housing units within development projects.
- Requires cities to grant density bonuses to qualifying housing developments.
- A density bonus is a density increase, over the maximum allowable gross residential density allowed in the city as of the date of application.

Incentives and Concessions

- Upon request, cities may authorize:
 - Relaxed site development standards (e.g., setbacks, parking).
 - Approval of mixed-use zoning.
 - Other cost-reducing regulatory incentives.
- Granted Based on Affordable Housing Levels.





SB 9 Urban Lot Split & Two Unit Residential Developments

Purpose & Summary

Passed in 2021, effective January 1, 2022.

Purpose:

- Simplifies the creation of up to four housing units in single-family zones.

Summary:

- Ministerial approval for two housing units or subdivision of one lot into two.
- Eligibility includes environmental, anti-displacement, and historic protections.

Types of Housing Units

Primary Units

- Single family homes, duplexes, four-plexes.

ADUs

- Independent living units on lots with a primary residence.

JADUs

- Max 500 sq. ft., located within a single-family residence.

Key Provisions

One Unit Development:

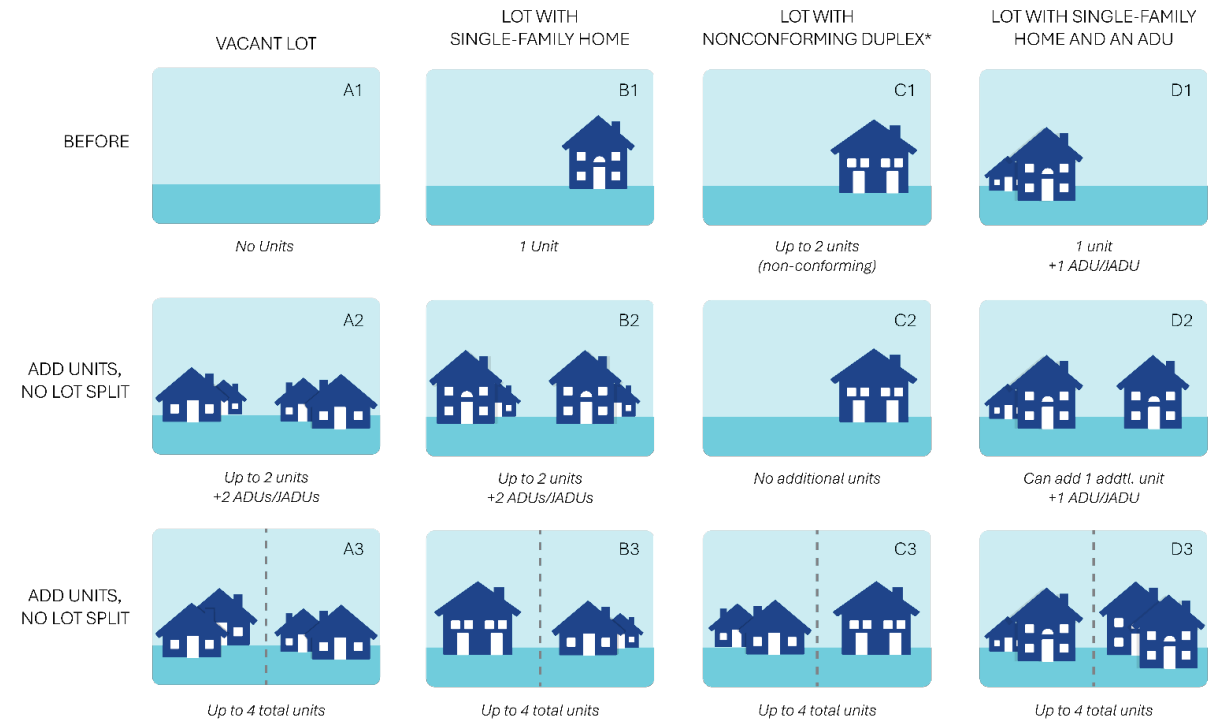
- Allowed under SB 9 provisions.

Two Unit Development:

- Environmental constraints apply (e.g., not on farmland or wetlands).
- Anti-displacement measures prevent tenant housing demolition.
- Not allowed in historic districts or protected properties.

Urban Lot Splits

- Urban lot splits divide one lot into two equal parcels (min. 1,200 sq. ft. each).
- Restrictions:
 - Multiple lot splits over time for the same property.
 - Adjacent lots cannot both be split by the same owner.



**Legally constructed but not currently permitted. Check your local ordinance for nonconforming use policies.*

USING SB 9 WITHOUT A LOT SPLIT:

- Without a lot split, SB 9 does not limit the number of ADUs or JADUs (B2, D2) - but other laws might.
- SB 9 could be interpreted to allow 3 new units beyond an existing unit (up to 3 units/lot, plus any allowed ADUs/JADUs).

USING SB 9 WITH A LOT SPLIT:

- SB 9 does not require jurisdictions to approve more than 4 units total, including any ADUs/JADUs.

SINGLE-UNIT DEVELOPMENTS

SB 9 can be used to develop single units - but projects must comply with all SB 9 requirements.

Objective Standards & Zoning



■ Objective Standards:

- Local zoning/design rules apply but cannot prevent two 800 sq. ft. units.
- Four-foot side and rear setbacks enforced; no greater setbacks allowed.

■ Permitted Zones:

- Applies only to single-family residential zones.

Ministerial Approval & CEQA Exemption

Ministerial Review:

- City staff ensures the proposed development meets objective standards but makes no discretionary judgments.

Permitted Zones:

- Projects under SB 9 are exempt from CEQA requirements.

Findings for Denial



- **Two Unit Developments:**
 - Can only be denied for specific, adverse impacts to public health, safety, or the environment.
- **Urban Lot Splits:**
 - Denial requires written findings of specific adverse impacts with no feasible mitigation.

Interaction with Other Legislation

ADU Compatibility:

- Combines ADUs with primary units to meet housing goals.

Housing Element Law:

- SB 9 projections can count toward regional housing needs if documented.

Housing Accountability Act:

- Protects qualifying housing projects from unjust denials.

Housing Element & Regional Housing Needs Allocation

Housing Element

The Housing Element of a City's General Plan must:

- Identify and analyze existing and projected housing needs.
- Establish goals, policies, quantified objectives, financial resources and scheduled programs for the preservation, improvement, and development of housing.



Regional Housing Needs Allocation (“RHNA”)

Regional Housing Needs Allocation (“RHNA”):

- HCD determines the regional housing needs.
- Helps to distribute housing fairly across regions.

Housing Element Requirements

- The city may submit its draft Housing Element to HCD for review once it has:

Described housing needs;

Analyzed site inventory;

Set goal timelines;

Assessed development constraints;

Worked to remove barriers to meeting RHNA; and

Encouraged public participation.

Process for Adopting Housing Element



- Cities must allow 30 days for public comment and incorporate feedback.
- Cities must submit their draft Housing Element to HCD 90 days before adoption.
- HCD will review and provide feedback within 90 days of receiving the draft.

Non-Compliant Housing Elements

- If a city doesn't adopt a compliant Housing Element by the start of the next planning period, it's invalid.
- There is no grace period; it must adopt a compliant element within 120 days.
- If not, the city must rezone sites to meet its RHNA within one year.
- Failure to meet this deadline will result in HCD findings and a 30-day response period before HCD takes action.

What Does it Mean to Affirmatively Further Fair Housing?

In 2018, the state approved Assembly Bill (“AB”) 686, which requires cities to include programs to affirmatively further fair housing (“AFFH”). Cities must take actions to facilitate housing for all income levels. Failing to zone enough sites for RHNA is considered a failure to AFFH, and enforcement can be pursued through a writ proceeding.

Consequences of Invalid Housing Element

- If any element of the General Plan is not compliant with state law, it may face legal challenge.
- Cities that miss the housing element deadline are presumed invalid, unless proven otherwise.
- A successful challenge requires compliance within 120 days.
- The court may suspend a city's authority to issue permits or approve changes.





Takeaways

- General Understanding of:
 - Housing Accountability Act
 - Permit Streamlining Act
 - Inclusionary Housing Policies
 - Accessory Dwelling Units
 - Density Bonus Law
 - SB 9 Urban Lot Split & Two Unit Residential Developments
 - Housing Element & Regional Housing Needs Allocation



Questions?



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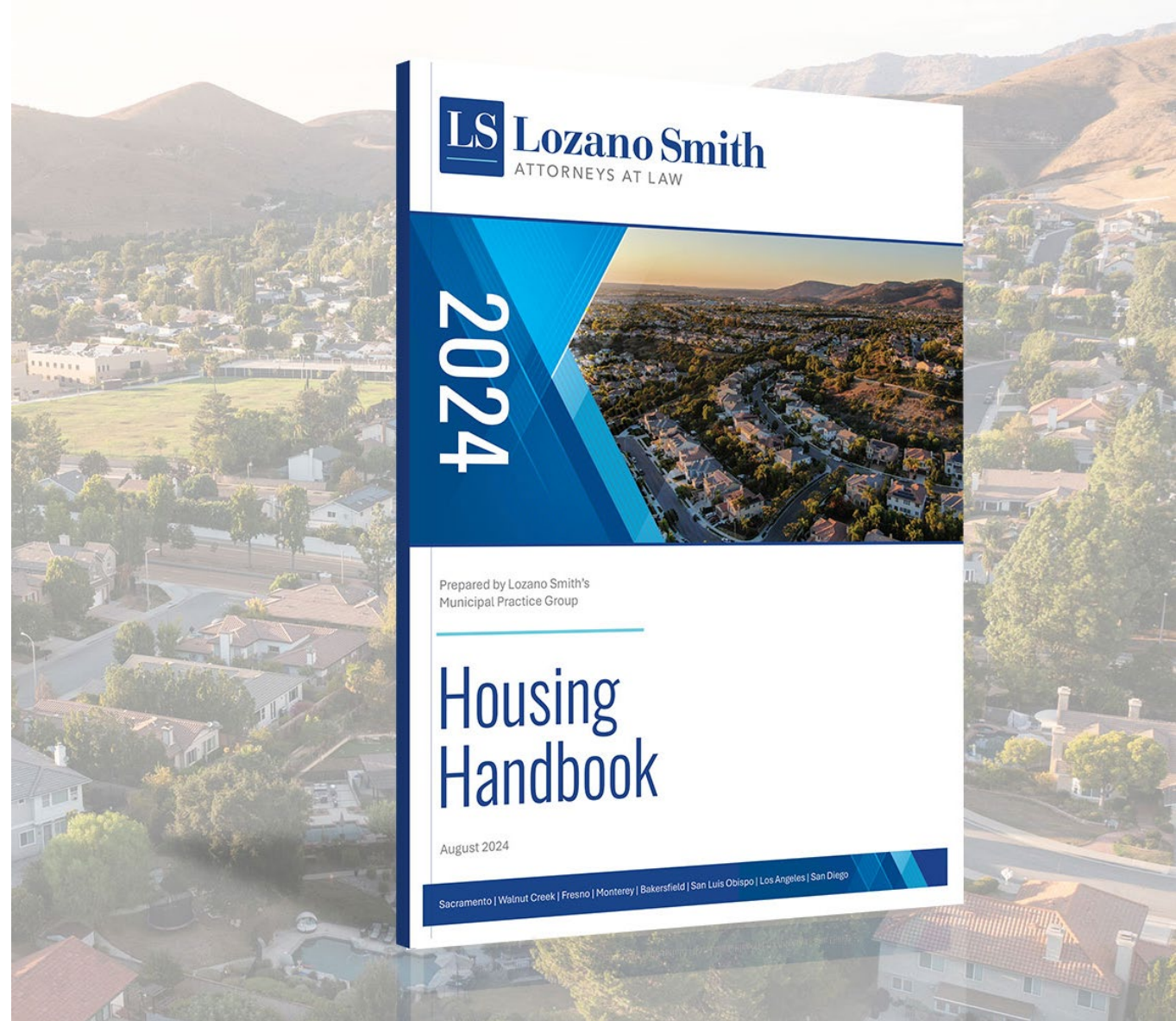
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