

CALIFORNIA HOUSING LAW BASICS

1





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What to Expect in this Presentation

Agenda Outline

- ▣ Housing Accountability Act
- ▣ Objective Design Standards
- ▣ Permit Streamlining Act
- ▣ Five Hearing Limitation
- ▣ Preliminary Applications
- ▣ Density Bonus
- ▣ Inclusionary Ordinances
- ▣ Builders Remedy
- ▣ Ministerial Approvals

HOUSING ACCOUNTABILITY ACT (GOV. CODE § 65589.5)



5



- .. **Oldest/most important law addressing housing shortage**
- .. **Limits local actions that may deny or reduce density of housing projects**
- .. **Applies to both market rate and affordable housing development projects**

HOUSING ACCOUNTABILITY ACT (GOV. CODE § 65589.5)



Housing Development Project Defined:

- ▣ Residential units only
- ▣ Mixed-use projects developments that contains:
 - at least 2/3 square footage is designated for residential use
 - No portion of the project is designated for transient lodging
 - BUT- portion that does not contain the transient lodging can still be considered a housing development project and approved separately

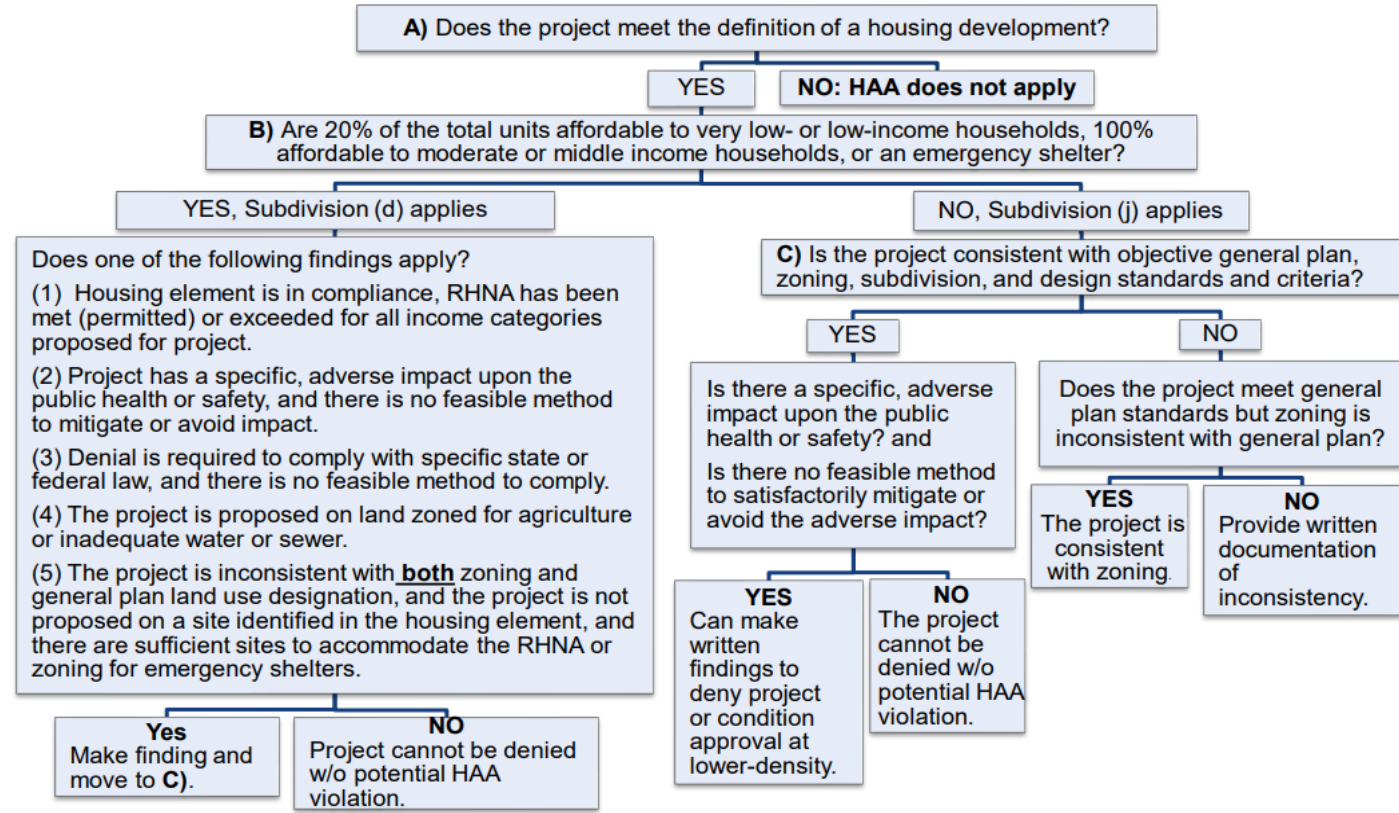
- .. **If a housing development project is compliant with objective standards, a local agency must approve the project and cannot reduce the density**
 - ▣ Unless certain specific findings are made

- **Findings to deny or reduce density of project that is consistent with objective standards:**
 - ▣ Project would have a specific, adverse impact on public health or safety;
 - Must be quantifiable and based on objective written public health or safety standard
 - Standard must have existed when application was deemed complete
 - ▣ No feasible mitigation exists other than denial or conditions that reduce the density

FROM HCD
TECHNICAL
GUIDANCE:

Housing Accountability Act Decision Matrix

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



HOUSING DENIAL– PENALTIES



10

- **Court Orders and Compliance**

- Courts may compel approval of the project if City acted in bad faith
- May order the City to comply within a specified timeframe

- **Monetary Penalties**

- Minimum fines of \$10,000 per housing unit
- Increased penalties for bad faith violations

- **Attorney's Fees**

- Mandatory award of attorney's fees to the applicant

- **Additional Remedies**

- Courts may impose further sanctions for continued noncompliance
- Potential loss of local control over the project

HAA CASE EXAMPLES – ATTEMPTED DENIALS VS. OUTCOMES

11

Jurisdiction	Attempted Denial Strategy	Outcome
Huntington Beach	Argued "Charter City" status meant state housing laws didn't apply.	Lost. In 2025, the CA Supreme Court upheld that they must follow state mandates.
La Cañada Flintridge	Denied a mixed-income project (80 units) claiming their housing plan was "sufficient."	Lost. A judge ruled they were in "Builder's Remedy" and must approve the project.
Elk Grove	Denied a supportive housing project for the homeless based on zoning technicalities.	Settled. Under threat from the Attorney General, the city agreed to approve the project and pay fines.

TAKE AWAY

A lot of public agency discretion has been taken away with recent housing legislation. It is very difficult to deny a housing development project.

CASE STUDY Q&A



13

You're a Commissioner reviewing a High-Density Housing project proposed next to a single-family neighborhood. 50 neighbors attend the hearing -

- ▣ Project is too intense
- ▣ Not compatible with neighborhood
- ▣ Too much traffic, overlooks single family

Can you require the applicant to redesign the project to reduce the size of the project (shorter height)?



Definition of Objective Standards

- ▣ Standards involving no personal or subjective judgment
- ▣ Uniform, verifiable, and measurable criteria by reference to an external and uniform benchmark
- ▣ Knowable by both the applicant and public official



MINISTERIAL VS. DISCRETIONARY REVIEW



15

.. Ministerial Review

- ▣ Ensure the proposed project meets the applicable objective standards
- ▣ No special discretion or judgment in reaching the decision
- ▣ No CEQA review

.. Discretionary Review:

- ▣ Review on case by case basis, looking at more than just whether objective standards have been met
- ▣ Ability to shape the project – design changes; mitigation measures to avoid impacts

OBJECTIVE STANDARDS AND HOUSING PROJECTS



16

- **Housing Development Project Applications:**
 - ▣ Agencies may only require project consistency with objective standards
- **Not a requirement for non-residential projects**

Why This Matters?

- ▣ Limits discretion and denial basis
- ▣ Conditions must be objective and written

Subjective vs. Objective Examples



18

Subjective (Prohibited for Denial)

- ❑ Building should be compatible with the neighborhood character.
- ❑ Provide a high-quality, welcoming entry.
- ❑ Use complementary colors to ensure harmony.
- ❑ Provide adequate open space for residents.
- ❑ Minimize massing through creative design.

Objective (SB 330 Compliant)

- ❑ Buildings within 50 feet of a single-family zone shall not exceed 35 feet in height.
- ❑ The primary entrance must be at least 40 square feet and face the public street.
- ❑ Building exteriors shall utilize at least two different colors from the approved palette.
- ❑ Provide 100 square feet of usable open space per unit with a minimum dimension of 15 feet.
- ❑ For every 100 feet of building length, there shall be a plane-break of at least 5 feet in depth.

CITY OF IRVINE - OBJECTIVE DESIGN STANDARDS



19



1.3 Eligibility/Applicable Project Types

The Objective Design Standards established in this Manual apply to all new construction projects that meet the following criteria:



Multi-family Projects: a project consisting of multi-family residential uses only with two or more dwelling units at a density equal to or greater than 30 units per acre, including detached and attached condominiums.

The Residences on Jamboree, Irvine, CA
Source: Romero Thorsen Design



Mixed-Use Projects: a project featuring a combination of residential and other uses where at least two-thirds of the square footage of the development is designated for residential uses at a density equal to or greater than 30 units per acre.

Rendering of Aurum, Irvine, CA
Source: AO Architects

2.3 Pedestrian Circulation and Access

2.3.1 General

Paved or hardscape on-site pedestrian circulation and access shall be provided according to the following standards:

- Pedestrian walkways shall connect residential units to areas throughout the site, such as vehicle parking areas, bicycle parking areas, common open space, waste and recycling enclosures, and other amenities.
- Pedestrian walkways shall connect public sidewalks to all building entrances and vehicle and bike parking areas.
- Pedestrian walkways shall connect primary building entrances through the site interior to all transit stops directly adjacent to the project, if applicable.
- Pedestrian walkways shall connect multiple buildings throughout the site, if applicable.



Rendering of Bluebird Row, Chattanooga, TN. Source: Genesis Studios



Rendering of Winter Park Townhomes, Winter Park, FL. Source: Genesis Studios

B. Architectural and Building Design

1. Massing and Articulation

- a. After two hundred (200) feet of continuous building length, a mid-block courtyard space of a minimum area of three hundred (300) square feet shall be used to relieve the building mass and add variation. *(Figure 41)*
- b. All building walls shall be broken up using a change in the wall plane that is a minimum of twenty four (24) inches in depth. A break in the wall plane, shall be required at a minimum of every forty (40) feet horizontally along building walls. *(Figure 42)*



(Figure 41)



(Figure 42)

CASE LAW: CARLA V. CITY OF SAN MATEO



21

Background

- ▢ Apartment project denied
- ▢ Question on whether a standard relied on for denial was objective within the meaning of Housing Accountability Act

Key Legal Issues

- ▢ Whether a development standard is an objective standard

Court Findings

- ▢ Set strict criteria for determining whether a standard is objective
- ▢ Court found the design standard relied on to deny the project was not objective



CASE LAW: CARLA V. CITY OF SAN MATEO



22

Outcome and Lessons

- ▣ Strengthened HAA protections
- ▣ Highlights importance of clear, adopted objective standards
- ▣ Subjective compatibility findings are insufficient for denial

CASE STUDY Q&A



23

You're a Commissioner reviewing a High-Density Housing project proposed next to a single-family neighborhood.

50 neighbors attend the hearing -

- ▣ Project overlooks single family

City's Design Guidelines say "Taller buildings next to single family neighborhoods must provide a step back design to reduce visual intrusion"

Can you require the applicant to redesign the project to step down the building heights next to single family?



Application Review Deadlines and Requirements

- ▣ Provides statutory timelines for processing development applications
- ▣ Highlights the volume and pace of staff review prior to Planning Commission hearings

Key Phases

- ▣ Application Completeness
 - Determination within statutory timeframe
- ▣ Application Consistency
 - Review for compliance with zoning, objective standards, and adopted plans
- ▣ Approval or Denial
 - Staff-level decisions for ministerial permits or where authorized by code
 - Planning Commission or Council for discretionary approvals or where required by code





- Lays out timelines that must be met for review and approval of project applications
- **Deadlines and CEQA**
 - ▣ Decision timelines vary depending on the level of CEQA review
 - ▣ Exempt, Negative Declaration, and EIR projects have different statutory clocks
 - Ministerial housing projects added this year

FIVE HEARING LIMITATION (GOV. CODE § 65905.5)

26

- **Applies after an application is deemed complete**

- ▣ Limits the number of hearings for a housing development project to five

- **What Is Included**

- ▣ All Planning Commission and City Council hearings following completeness and project appeals

- **What Is Not Included**

- ▣ Developer-initiated or sponsored community meetings
- ▣ CEQA-related hearings (e.g., scoping meetings)



FIVE HEARING LIMITATION (GOV. CODE § 65905.5)

Why This Matters

- Ensures timely decision-making and reduces delay

Why Staff May Recommend Against Continuances

- Preserves remaining hearings in case of an appeal, or if other advisory bodies will also hold a meeting to review the project
- Helps ensure compliance with statutory limits and litigation risk

TAKE AWAY

Housing development projects have strict timelines that must be followed. City staff do a lot of the work and keep track of the timeline in the background.

SB 330 PROJECTS – PRELIMINARY APPLICATIONS (GOV. CODE § 65941.1)



29



• Preliminary Application Process

- Allows applicants to submit early project information
- Triggers statutory protections and timeline requirements

• Lock-In Provisions

- Freezes certain zoning, development standards, and fees
 - Changes in law that occur after submittal of the preliminary application do not apply to the project

SB 330 PROJECTS – PRELIMINARY APPLICATIONS (GOV. CODE § 65941.1)



30

Why This Matters

- Limits ability to apply new or revised standards, including new or increased fees
- Provides certainty to applicants
- Requires agencies to track timing and standards carefully

TAKEAWAYS

Preliminary applications create certainty for developers of what standards and city imposed costs will apply to a project, but limit a jurisdiction's ability to apply new standards.

DENSITY BONUS (GOV. CODE § 65915)



32



Core Concept

- ❑ Affordable housing provides increased density and flexibility in development standards
- ❑ Includes concessions, waivers, reduced parking, and other incentives

Eligible Project Types

- ❑ Moderate-, Low-, and Very Low-Income housing
- ❑ Senior housing, student housing, and land donation projects
- ❑ 100% affordable housing developments

DENSITY BONUS (GOV. CODE § 65915)



33

Waivers

- Removal of development standards that physically preclude the project as proposed, with the density and concessions granted
- Generally unlimited, except for certain 100% affordable projects receiving enhanced benefits

Can only deny if (burden of proof is on city):

- Specific adverse impact on health or safety
- Adverse impact on property listed in the California Historical Register
- Contrary to state or federal law

DENSITY BONUS (GOV. CODE § 65915)



34

- **Concessions / Incentives:**

- ▣ Modifications to development standards, zoning standards, or design requirements to reduce project costs
- ▣ Must result in identifiable and actual cost reduction to provide affordable housing
- ▣ Limited number based on level of affordability

- **Can only deny if (burden of proof is on city):**

- ▣ No identifiable and actual cost saving to the project to provide affordable housing;
- ▣ Specific adverse impact on public health, safety, or on property listed on the California Register of Historical Resources and no feasible method to mitigate
- ▣ Contrary to state or federal law

DENSITY BONUS (GOV. CODE § 65915)



35

Additional Benefits:

- ▣ Reduced or eliminated parking requirements
- ▣ Unlimited density and increased height for certain 100% affordable projects
- ▣ Projects generally deemed consistent with objective standards for entitlement processing

LEGACY SQUARE BY NATIONAL CORE



36

- **Location:** Santa Ana
- **Entitled:** 2019
- **Project Type:** 100% affordable mixed-use residential development
- **Units Proposed:** 93 total units
- **Site Size:** 1.74 acres
- **Base Density:** 30 du/ac = **52 units**
- **State Density Bonus (35%):** +18 units
- **Inclusionary Housing Ordinance Bonus (35%):** +24 units
- **Requested Incentives/Concessions:**
 - Reduced Front Yard Setback
 - Increased Encroachments
- **Requested Waiver:**
 - Building Type and Architectural Style
- **Parking:**
 - Provided per State Density Bonus standards at 1.1 spaces per unit



TAKE AWAY

Density Bonus Law provides a tool for developers to provide affordable housing (or other specified housing types) in exchange for deviance from development standards.

CASE STUDY Q&A

38

You're a Commissioner reviewing a High-Density Housing project in an area where the City standards require onsite open space.

The Developer has provided Below Market Rate units onsite and is eligible for a Density Bonus.

With that, they have used a Density Bonus "waiver" to not provide any open space –stating that they need to build out the property completely to make it financially feasible.

The project is located in an area where there is little open space and there are no parks nearby and you think it's critical that that there be some element of open space onsite.

Can you deny the waiver and require any open space?



HOUSING CRISIS ACT (GOV. CODE § 66300 ET SEQ.)



39



.. Definition of Affected City/County

- Jurisdictions that are located in urbanized area or urban cluster, as designated by the United States Census Bureau.
- HCD publishes a list

.. Definition of Protected Units

- Units occupied by low- or moderate-income households, subject to affordability restrictions, or rent-controlled within a specified timeframe

.. Replacement Housing Requirements

- Housing Projects: Must replace protected units on a one-for-one basis
- Non-Residential Projects: Replacement required if demolition of protected units occurs
- Requirements generally aligned with Density Bonus Law

• **Tenant Protections**

- ▣ Tenants may remain until at least 6 months prior to demolition
- ▣ Right to return at prior rent if project does not proceed
- ▣ Relocation benefits for lower-income tenants
- ▣ Right of return to comparable units for lower-income households

• **Limitations on Density Reduction**

- ▣ No Net Loss of residential density

INCLUSIONARY HOUSING ORDINANCES



41

- .. **What Is Inclusionary Housing?**
 - ▣ Requires a percentage of units in new residential projects to be affordable
 - ▣ May require non-residential projects to pay a fee
- .. **Adopted by Ordinance**
 - ▣ If more than 15% low-income requirement, then potential HCD review of ordinance
- .. **Ordinance must include alternatives to providing affordable housing units**
 - ▣ E.g. in-lieu fee, land donation, etc.

INCLUSIONARY HOUSING ORDINANCES



42

- **Income Categories**

- ▣ Moderate-, Low-, Very Low-, and Extremely Low-Income households
- ▣ Other percent of AMI as specified by jurisdiction

- **Relationship to Density Bonus**

- ▣ Inclusionary units count towards meeting Density Bonus requirements
 - projects may increase density and utilize incentives/concessions and waivers

INCLUSIONARY HOUSING ORDINANCES

43

- .. **Interplay with Housing Element and RHNA**
 - ▣ Helps meet RHNA targets and Housing Element commitments

- .. **Common Questions**
 - ▣ Unit size, bedroom mix, and comparability
 - ▣ Location and integration
 - ▣ Affordable Housing Agreements and long-term restrictions

TAKE AWAY

Many jurisdictions have inclusionary ordinances which require a certain percentage of a project be affordable to moderate or lower income households, or pay an in lieu fee. Affordable units provided in the project count towards Density Bonus increased density, concessions/incentives, and waivers.

BUILDER'S REMEDY (GOV. CODE § 65589.5(D)(5))



What Is the Builder's Remedy?

- ▣ Allows for projects that are not consistent with objective development standards, including density
 - Limits the ability to deny qualifying housing projects
 - ▣ Applies when a jurisdiction does not have a compliant Housing Element (ie. HCD approval)
 - Often comes into play with respect to specific timelines to adopt updated housing elements for each housing element cycle
 - ▣ Project must provide affordable units
- .. **Major changes went into effect in 2025: including max densities, reduced affordability requirements, determined standards applicable to project, provided for CEQA exemptions, etc.**

Background

- Multiple housing projects submitted during Housing Element noncompliance
- Included proposals significantly exceeding local zoning limits

Legal Issues

- Scope of Builder's Remedy and local authority
- Validity of project eligibility and affordability thresholds

Outcome and Lessons

- Reinforced importance of maintaining Housing Element compliance
- Demonstrates risk of loss of local control
- Highlights need for clear objective standards and timely updates

PLANNING COMMISSION TAKE AWAY



47

.. **Where Can Decision-Makers Still Engage?**

- ▣ Focus on objective development standards (height, setbacks, design details)
- ▣ Site planning, circulation, and operational considerations
- ▣ Conditions that improve compatibility, safety, and quality of life
- ▣ Collaboration with applicants to achieve better project outcomes

.. **Positive Approach**

- ▣ Emphasizes shaping projects rather than denying them
- ▣ Supports housing production while addressing community priorities

.. **Why This Matters**

- ▣ Encourages constructive dialogue and legally defensible decisions

Overview

- Several State housing laws require ministerial (non-discretionary) approval
- These projects do not typically go to the Planning Commission

Common Ministerial Housing Types

- Accessory Dwelling Units (ADUs)
- SB 9: Urban lot splits and duplexes
- SB 1123: Streamlined small-scale housing and mixed-use
- SB 35 and AB 2011: Streamlined affordable and mixed-income projects
- SB 4 (Yes In God's Backyard): Religious and institutional sites
- Supportive Housing: Ministerial in multifamily zones

Why This Matters

- Increasing share of housing approvals occur at the staff level
- Reflects State focus on predictability, timelines, and objective standards
- Highlights importance of clear local development standards



Questions?