Planning Commission’s Role and the State Limits on Its Discretion

Planning Commissioners Academy
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Parties Relevant to Land Use Planning

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Planning Commission’s Role

Planning Commission

Quasi-Legislative Body
- General Plan Amendment
- Zoning Code Amendment
- Specific Plan

Quasi-Judicial Body
- Variance
- Conditional Use Permit
- Design Review Permit
Commission & Planning Director

Quasi-Legislative Body
- Commission Provides Recommendation
- Planning Director Provides Staff’s Proposal to Commission
- Planning Director Provides Commission’s Recommendation to City Council

Quasi-Judicial Body
- Applicant Appeals Decision
- Planning Director Renders Decision
- Commission Renders Decision

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Commission & City Council

**Quasi-Legislative Body**
- Commission Provides Recommendation
- Council Provides Policy Direction
- Council Acts on Recommendation

**Quasi-Judicial Body**
- Applicant Appeals Decision
- Commission Renders Decision
- City Council Renders Decision

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Limitations on Quasi-Legislative Discretion
Limitations on Quasi-Judicial Discretion

- Quasi-Judicial Review
  - Ministerial Review
  - Discretionary Review
  - Objective Findings
  - Objective and Subjective Findings
Key Housing Legislation

• Housing Accountability Act (Skinner, 2017) SB 167
  • “HAA”

• Affordable Housing Streamlined Approval (Weiner, 2017) SB 35
  • “SB 35”

• Housing Crisis Act (Skinner, 2019) SB 330
  • “SB 330”
Who Do These Laws Apply to?

- **HAA**
  - All Cities

- **SB 330**
  - “Affected Cities” based on HCD’s determination;
  - Excludes cities with a population of less than 5,000 and not located within an urbanized area

- **SB 35**
  - Cities failed to meet their housing targets;
  - Cities that failed to submit their Housing Element Annual Progress Reports

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Definition: Housing Development Project

- Residential units only.
- Mixed-use developments - at least two-thirds of the square footage designated for residential use.
- Transitional housing or supportive housing.
Limitations on Role as Quasi-Legislator
SB 330: No Net Loss Intensity

Existing Law (Gov. Code § 65863(c)(1))

- The City cannot reduce general plan or zoning densities of residential parcels, unless the City identifies other sites where it can proportionally increase densities.

New Law (Gov. Code § 66300(b)(1)(A))

- The City cannot reduce the building intensity of residential parcels below that in effect as of January 1, 2018, unless the City identifies other sites where it can proportionally increase intensity
SB 330: HCD-Approved Moratoria

Existing Law (Gov. Code § 65858)

• City can adopt urgency measure to protect public safety, health, and welfare by blocking approval of entitlements for a limited term

New Law (Gov. Code § 66300(b)(1)(B))

• City cannot adopt a development policy, standard, or condition that would impose a moratorium on housing development, unless approved by HCD

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SB 330: Objective Design Review Standards

Existing Law (Gov. Code § 65858(d))
- City cannot disapprove an affordable housing project due to design review standards, unless it makes written findings

New Law (Gov. Code § 66300(b)(1)(C))
- City cannot impose or enforce design standards established after January 2020 that are not objective
Limitations on Role as Quasi-Adjudicator
SB 330: No Net Loss of Housing Units

City cannot approve demolition of residential dwelling unit unless the project creates at least as many residential dwelling units as demolished.

More stringent requirements for protected units, which include units that are:

| Subject to affordability covenants or laws | Subject to local rent or price controls | Occupied by lower income households | Withdrawn from market for owner occupancy |
SB 35: Streamlined, Ministerial Review

- Multifamily Housing Development
- On a legal parcel, zoned residential or mixed-use, with 75% adjoining urban uses
- Not located within excluded zones
- Construction workers paid prevailing wage
- 10%–50% of units deed-restricted affordable
- Project employs trained & skilled workforce
- Satisfies Objective Development Standards
- Historic, rental, or affordable units not demolished

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HAA Decision Matrix

1. Housing Development Project?
   - YES: Meet affordability thresholds?
     - YES: 20% or more units for Lower Income Households
       - Standard for Affordable Units Applies
     - NO: Not subject to HAA
       - YES: 100% of units for Moderate Income Households
       - Standard for Affordable Units Applies
   - NO: Market rate or doesn’t meet the affordability thresholds
     - Default Standard Applies

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HAA Default Standard of Review

- Satisfies Objective Development Standards
- Cannot Disapprove or Reduce Density
- Unless Health/Safety Impacts Cannot Be Mitigated
HAA Special Standard of Review for Projects with Affordable Units

- Compliant Housing Element + RHNA
- Health/Safety Impacts Cannot Be Mitigated
- State or Federal Law
- Agricultural Land or Water/Sewer Issues
- Inconsistent with Zoning + General Plan
## Expanded Legal Remedies Under HAA

### Who can initiate litigation?
- The applicant;
- Any person who would be eligible to apply for residency in the project; or
- A housing organization.

### If liable, Court will:
- order the City to approve the project within 60 days.
- Grant attorneys’ fees and costs.

### Fines issued for non-compliance
- If action not taken within 60 days, the court will issue a minimum $10,000 fine per housing unit.
- If the inaction was in bad faith, the minimum fine award is multiplied by five.

HCD can also refer the matter to the Attorney General.