

# Housing Law Update: Summary of California's New Housing Laws

By John D. Bakker, Jon E. Goetz, and Alex J. Mog

*John D. Bakker (Principal), Jon E. Goetz (Principal), and Alex J. Mog (Associate) are attorneys in Meyers Nave's Municipal & Special District Law Practice Group and Real Estate, Housing and Economic Development Practice Group.*

In an effort to address California's housing crisis, Governor Gavin Newsom signed more than 20 bills into law during the 2019 legislative session. Each new law is designed to tackle a different component of the housing challenge and they reflect different approaches to solving the problem. Together, the new laws create new, complex and sometimes vague requirements for local jurisdictions and public agencies that are involved in the state's housing sector. Complying with these new laws impacts the daily operation and long-term planning of public entities.

Many of the 20+ new laws reflect recent trends in state housing legislation. A number of the bills impose further restrictions on local government discretion over housing project applications, building upon recent efforts of the Legislature to streamline the approval process by replacing subjective approval processes with more objective and transparent standards. The legislation continues recent efforts of the state to increase housing density by strengthening and broadening the applicability of the state's density bonus and accessory dwelling unit laws. The legislation also furthers state efforts to facilitate homeless shelters and programs. Other bills address

the housing problem in new ways. A series of bills aim to make more government owned land available for the construction of affordable housing by reforming the process for the sale and lease of land by municipalities, and expanding notice requirements for available land. Other legislation seeks to extend protections to housing tenants, setting caps on annual rent increases and establishing "just cause" requirements for evictions, as well as extending nondiscrimination laws to holders of government housing vouchers.

The group of 20+ new laws can be divided into the following five categories, each of which is summarized below:

1. Municipal control over housing development
2. Availability of housing sites
3. Homeless issues
4. Finance and development of affordable housing, and
5. Tenants' rights

## **I. NEW LAWS AFFECTING MUNICIPAL CONTROL OVER HOUSING DEVELOPMENT**

### **A. SB 330 [Housing Crisis Act of 2019]**

Until January 1, 2025, the Housing Crisis Act of 2019 suspends certain



restrictions on the development of new housing and expedites the permitting of housing in urbanized areas. SB 330 prohibits an “affected” city or county from enacting or enforcing moratoria on housing development or certain growth-control ordinances and prohibits changes to a “less intensive use,” including “anything that would lessen the intensity of housing.”

SB 330 also strengthens the Housing Accountability Act by prohibiting an agency from disapproving a housing project or approving the project at a lower density if it complies with the applicable, objective standards in place when a project submits a complete “preliminary application” containing certain required information.

In addition, SB 330 contains other provisions designed to eliminate delays in the production of housing, such as prohibiting a jurisdiction from holding more than five hearings of any kind for projects that meet all applicable, objective standards. In order to implement SB 330, jurisdictions are required to develop checklists identifying information required for a project to be considered complete and for a “preliminary application.” The various provisions remain operative only until January 1, 2025.

**B. AB 68, AB 587, AB 670, 671, AB 881, SB 13 [Accessory Dwelling Units]**

The Governor signed a series of bills that significantly limit local jurisdictions’ ability to restrict the development of accessory dwelling units (“ADUs”). Under the new law, a jurisdiction must ministerially approve a detached ADU that is less than 800 square feet, is shorter than 16 feet, and has at least four foot rear and side-yard setbacks, as well as a second “junior” ADU meeting certain requirements constructed within a single-family dwelling on the same parcel.

The legislation includes numerous other restrictions, such as prohibitions on lot coverage restrictions, lot size restrictions, and owner-occupancy requirements. Jurisdictions must generally review and approve compliant ADUs within 60 days, and are prohibited from imposing development impact fees, excluding connect fee or capacity charges, on ADUs smaller than 750 square feet. A jurisdiction may now choose to allow the sale of an ADU in certain circumstances.

In addition, AB 670 prohibits homeowners associations and other common interest developments from

prohibiting or unreasonably restricting the development of ADUs. The laws remain in effect until January 1, 2025.

**C. AB 1485, SB 235 [SB 35 Expansion]**

SB 35 (Government Code section 65913.4) allows for streamlined ministerial approvals of multifamily residential projects that meet certain criteria. Where a jurisdiction has produced less than its share of the state-mandated Regional Housing Needs Allocation (“RHNA”) during the reporting period, a developer is eligible for the streamlined process if, among other requirements, 10% of the units in the development are affordable to households making at or below 80% of the area median income.

In those circumstances, AB 1485 and SB 235 will allow developments in the nine-county San Francisco Bay region the option of instead producing 20% of the units affordable to households making at or below 120% of the area median income, with an average income of 100% of area median income. Households in these units may not spend more than 30% of their incomes on housing. The bills make various other minor changes to SB 35.

**D. SB 450, SB 744 [CEQA Exemption for Transitional or Supportive Housing]**

SB 450 provides that the conversion of a structure certified for occupancy as a motel, hotel, residential hotel, or hostel into a supportive or transitional housing facility is exempt from CEQA. In order for this exemption to apply, the conversion may not result in more than a 10% expansion of the floor area in any living unit within the structure, or result in any significant effects relating to traffic, noise, air quality, or water quality.

SB 744 adopts changes to the circumstances under which a supportive



housing project must be treated as a permitted use, and provides that applying for funding for supportive housing projects under California's No Place Like Home Program is not a project under CEQA.

## II. NEW LAWS ENHANCING AVAILABILITY OF HOUSING SITES

### A. AB 1486, AB 1255 [Strengthening Surplus Lands Act]

The Surplus Land Act requires local agencies to notify other public agencies and certain non-profit housing developers and engage in good faith negotiations with them prior to disposing of surplus property. The purpose of these requirements is to make land available for open space, recreation, and affordable housing. AB 1486 continues the Legislature's recent tightening of those requirements. Among other things, it requires an agency, prior to disposing property, to either declare it surplus or exempt surplus property; expands the definition of exempt surplus property; prohibits negotiations prior to the notification; requires notification of California's Department of Housing and Community Development ("HCD") of compliance with the Surplus Lands Act's requirements; and establishes a penalty of 30% of sales price.

Additionally, AB 1255 also requires cities to create a "central inventory" of its surplus lands and report the following information to HCD as part of its annual progress report: address, parcel numbers, existing use, and size. HCD is required to make the information available in an existing publicly available database of state-owned surplus land.

### B. SB 6 [Inventories of Land Suitable for Residential Development]

Cities and counties are required to identify land suitable for residential development in their housing elements.

SB 6 requires local agencies to submit an electronic copy of "inventories of land suitable for residential development" included in their housing elements that are adopted on or after January 1, 2021. The submittal must be made using standards, forms, and definitions adopted by HCD. HCD in turn will make this information available to the Department of General Services, which is required to include the information in an internet-accessible database.

### C. AB 1483 [Housing Data and Collection]

AB 1483 adds Government Code section 65940.1 to require cities, counties and special districts to put various housing development-related information on their websites and update it within 30 days of any changes. The reported information includes a schedule of fees, exactions, and affordability requirements; zoning ordinances and development standards; the list of information required of applicants for development projects under Government Code section 65940; financial reports on fees required by the Mitigation Fee Act; and an archive of impacts fee studies prepared on or after January 1, 2018.

The Legislature asserts that the foregoing are not unfunded mandates because local agencies have the authority to levy fees to pay for the effort. AB 1483 also requires HCD to develop a housing data strategy that identifies the date useful to enforce existing housing laws and inform state housing policy making.

## III. NEW LAWS TARGETING HOMELESS ISSUES

### A. AB 101 [Budget Trailer Bill]

The Attorney General is authorized to enforce the Housing Element Law and various related provisions. AB 101 establishes a process that HCD must

follow prior to the Attorney General doing so. It goes on to require fines of at least \$10,000, and up to \$100,000, per month for a jurisdiction's failure to comply with a court order to bring its housing element into compliance with state law.

AB 101 also makes "Low Barrier Navigation Centers" a "by right use" in areas "zoned for mixed use and nonresidential zones permitting multifamily uses." Finally, AB 101 directs HCD to "develop a recommended improved regional housing need allocation process and methodology that promotes and streamlines housing development and substantially addresses California's housing shortage." HCD must submit its report to the Legislature by December 31, 2022.

### B. AB 761 [Use of State Armories as Homeless Shelters]

Currently, state-owned armories in certain counties are available to the city or county in which the armory is located for use as a temporary homeless shelter during the winter months. AB 761 would authorize, at the sole discretion of the Adjutant General, the head of the California National Guard, any vacant armory to be used throughout the year as a shelter from hazardous weather for homeless individuals.

## IV. NEW LAWS ASSISTING IN THE FINANCE AND DEVELOPMENT OF AFFORDABLE HOUSING

### A. AB 1763 [Density Bonus for 100% Affordable Housing Projects]

AB 1763 provides an 80% density bonus and four incentives or concessions for housing projects that contain 100% affordable units (including the density bonus units but excluding manager's units) for low and very low income households. If the project is located within a half mile of a major transit stop,

the bill goes even further by eliminating all restrictions on density, and allowing a height increase of up to three stories or 33 feet. For housing projects that qualify as a special needs or supportive housing development, the legislation eliminates all local parking requirements.

The legislation is particularly suited to projects obtaining low income housing tax credits, as it adopts rent affordability standards from the low income housing tax credit program. It is also designed to be compatible with the state's Mixed Income Loan Program, which provides financing for projects restricting units up to 120% of area median income.

#### **B. AB 1487 [Bay Area Housing Finance Authority]**

AB 1487 creates the Bay Area Housing Finance Authority within the nine-county San Francisco Bay Area. The Authority is jointly governed by the Board of the Metropolitan Transportation Commission ("MTC") and the Association of Bay Area Government's ("ABAG") executive board. The Authority is authorized, subject to voter approval where required, to levy parcel taxes, business license taxes, special business taxes based on number of employees, and commercial linkage fees. It can also issue general obligation bonds. Any ballot measure authorizing one of the levies can be placed on the ballot of as few as four of the Bay Area counties.

Authority revenue must be used for construction of new affordable housing, affordable housing preservation, tenant protection programs, planning and technical assistance related to affordable housing, and for infrastructure to support housing. The law also contains guidelines for how the revenue will be distributed across the region.



#### **C. AB 1743 [Affordable Housing Project Exemption from Mello-Roos Taxes; Housing Accountability Act]**

AB 1743 provides that affordable housing properties receiving a welfare exemption from property taxes are exempt from Mello-Roos district special taxes adopted after January 1, 2020. This bill further provides that under the Housing Accountability Act, obtaining a welfare exemption is not considered an "adverse impact" on public health or safety allowing a local government to disapprove a proposed housing project.

#### **D. SB 196 [Property Tax Exemption for Community Land Trust Property]**

SB 196 provides a "welfare exemption" from property taxes for property owned by a community land trust that will be developed or rehabilitated for an affordable ownership or rental housing development. The exemption remains in effect from the time of the community land trust's acquisition of the property until the completion and sale of the affordable homes. For completed homes located on 99-year community land trust leases, the bill establishes a rebuttable presumption that the sale price of the home is the value of the property for property tax assessment purposes.

This bill is an important protection for community land trusts, which are nonprofit organizations that promote affordable housing by retaining permanent ownership of land underlying affordable for sale and rental housing.

#### **E. AB 101 [Budget Trailer Bill]**

The Governor's proposed Budget hinted at the possibility of withholding state funds for jurisdictions that failed to meet state housing requirements. Ultimately, the Legislature took a carrot rather than a stick approach in the final budget. Jurisdictions will be given additional points in competitive grant programs for jurisdictions designated by HCD as "prohousing." The legislation defines "prohousing local policies" as "policies that facilitate the planning, approval, or construction of housing."

Such bonus points will be awarded in the following grant programs: (1) Affordable Housing and Sustainable Communities Program; (2) The Transformative Climate Communities Program; (3) The Infill Incentive Grant Program of 2007; and "other state grant programs where already allowable by state law."

## V. NEW LAWS ADDING TENANTS' RIGHTS

### A. SB 329 [Prohibition on Discrimination Against Section 8 Participants]

SB 329 prohibits landlords from discriminating against tenants or applicants for tenancy on the basis of their use of Section 8 or other housing vouchers. State law has long prohibited housing discrimination on the basis of a tenant's source of income, but this is the first time that the law has specifically prohibited landlords from refusing to rent to holders of housing vouchers. Many landlords dislike the burdensome administrative requirements of the Section 8 program, and widespread refusal to honor vouchers has made it difficult for voucher holders to secure rental housing. While this new law will prevent landlords from barring voucher holders, it does not impact a landlord's right to disapprove applicants for other reasons.

### B. AB 1482 [Tenant Protection Act of 2019]

AB 1482 aims to protect tenants from "rent gouging" and evictions by adopting a cap on annual rent increases and "just cause" eviction requirements. Beginning January 1, 2020, landlords may not increase rents more than the increase in the consumer price index plus five percent, up to ten percent per twelve month period. In recent years, the increase in the consumer price index has typically been in the range of two to three percent, so this would translate to typical rent increase caps of seven to eight percent per year. Rents which increased after March 15, 2019 in amounts higher than the cap must be rolled back on January 1 to the capped amount. The limits apply to existing tenants only, and landlords are not restricted in the initial amounts they can charge to new tenants. There are a number of exceptions to the rent cap requirement, including housing

less than fifteen years old, deed-restricted affordable housing, single family homes and condominiums (except those owned by REITs and corporations), and duplexes where the owner occupies one of the units. The AB 1482 rent cap does not preempt local rent control ordinances, which remain in effect.

AB 1482's "just cause" limits on evictions may prove to have even more impact than the rent cap. The legislation eliminates landlords' ability to evict long-term tenants for no reason, something that is currently permitted primarily for month-to-month tenants. Tenants who have lived in the property for more than a year can only be evicted for specified "at-fault" or "no-fault" reasons. At-fault events include typical lease defaults such as nonpayment of rent, breach of other lease terms, or criminal activity, nuisance or waste. Landlords can terminate leases for at-fault reasons after providing tenants written notice and an opportunity to cure the default. No-fault events include things such as owners and their family members moving into the unit, removal of the unit from the rental market, or substantial remodels (not mere cosmetic changes) that require the tenants to vacate the unit for more than thirty days. Landlords must pay tenants or waive one month of rent as a relocation payment for no-fault evictions. The exceptions from the just cause eviction rules are similar to the exemptions from the rent cap requirements. The legislation's "just cause" provisions do not apply in jurisdictions that had just cause ordinances in effect prior to September 1, 2019.

At first glance, passing more than 20 housing bills into law seems like an impressive accomplishment and, indeed, it indicates determination to act in response to a real crisis faced by constituents in local communities and a statewide crisis that is garnering critical national attention. However, the Legislature did not approve some of the most controversial and

aggressive proposals, including SB 50 that would have preempted local zoning to allow for taller and denser housing near mass transit and job centers.

Looking ahead, signs point to an ongoing effort by California legislators to aggressively introduce legislation aimed to confront the state's housing problems in 2020 and beyond. It is possible that more laws will be introduced and passed in the next legislative session even before the 2019 package of 20+ new laws has time to demonstrate measurable and meaningful impact. Reflecting the dire situation, employers are among those who are not waiting to see what happens on the legislative front as they create their own housing development initiatives. For example, Apple recently announced<sup>1</sup> "a comprehensive \$2.5 billion plan to help address the housing availability and affordability crisis in California," Google announced<sup>2</sup> a "\$1 billion investment in housing across the Bay Area" and Facebook announced<sup>3</sup> "\$1 billion to help address the affordable housing crisis." While these three companies might be uniquely positioned—for a variety of reasons—at the forefront of private enterprise taking action on housing, other businesses could follow their lead and similarly reach out to local jurisdictions to try to collaboratively figure out ways that they can help solve the commonly shared challenges of available and affordable housing for current and future employees, customers, vendors and business partners. Municipalities and public agencies involved in housing should be prepared for a very active 2020 on the housing crisis landscape in California.

1. <https://www.apple.com/newsroom/2019/11/apple-commits-two-point-five-billion-to-combat-housing-crisis-in-california/>
2. <https://www.blog.google/inside-google/company-announcements/1-billion-investment-bay-area-housing/>
3. <https://about.fb.com/news/2019/10/facebook-commits-1-billion-to-address-housing-affordability/>