

Governor's Housing Package

10.23.2017

The Governor signed a package of bills intended to address California's housing crisis. The bills seek to address both the *affordable* housing crisis, as well as the State's housing *shortage*. A brief synopsis of the various bills can be found below. In the coming weeks, we will provide our clients with detailed advice about how to ensure compliance with the new laws.

A number of the bills seek to streamline the construction of new housing. Through SB 35, the Legislature enacted California Government Code Section 65913.4, which establishes a streamlined housing approval process for multifamily housing in urban infill areas. If a proposed development satisfies the detailed statutory requirements, the local agency may not require a discretionary permit for the development. These projects also must meet certain labor requirements, including the payment of prevailing wages.

The Legislature also bolstered the "Housing Accountability Act" in an attempt to prevent local agencies from *denying* the development of both market-rate and affordable housing. The Legislature amended Government Code Section 65589.5 (through AB 678, SB 167, and AB 1515) to reduce local agencies' ability to *deny* or *reduce the density* of new affordable housing projects and new market-rate housing developments. In addition to other requirements, in order to deny a housing project proposal, a local agency now must make certain findings based on a *preponderance of evidence*, instead of merely *substantial* evidence. The bills also establish significant fines for local agencies that fail to comply with court orders requiring compliance with the Housing Accountability Act.

The Legislature also amended the requirements in Government Code Section 65583 applicable to housing elements. Under AB 879 and AB 1379, a housing element must now include an inventory of land suitable *and available* for residential development, including sites that have a "realistic and demonstrated potential for redevelopment during the planning period" to meet the agency's identified need for *each* income level. In addition to other detailed requirements, the housing element now must address the effect of locally adopted ordinances on the cost and supply of residential development.

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Under SB 166, the Legislature also amended Government Code Section 65863 to strengthen the “no net loss” provisions, which require that local agencies retain adequate sites to meet the unmet housing need for the jurisdiction’s share of the regional housing need. Agencies now must ensure that such sites are identified and maintained for each income level throughout the planning period.

The package of bills also provides local agencies tools to *encourage* the development of affordable housing. In 2009, an appellate court held that cities could not impose mandatory inclusionary housing requirements on rental housing (*Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*). AB 1505 expressly overturns the holding in *Palmer*, now allowing – though not requiring – local agencies to apply inclusionary housing requirements to rental housing. If a local ordinance requires that more than 15 percent of the units in a rental development be reserved for below-moderate households, AB 1505 allows the California Department of Housing and Community Development (HCD) to review the local ordinance and require an economic feasibility study to ensure that inclusionary requirements do not stifle housing development.

The Legislature also created two types of area planning tools with streamlined environmental analysis mechanisms. SB 540 establishes a process for local agencies to adopt a specific plan intended as a “Workforce Housing Opportunity Zone,” to encourage the development of affordable housing near transit and for affordable housing. Similarly, AB 73 establishes a process for local agencies to adopt “Housing Sustainability Districts,” to encourage the development of housing near public transit and existing public infrastructure.

Two other bills grant HCD a greater amount of authority to address the housing shortage by allowing HCD to more closely monitor local agencies’ efforts to meet their fair share of regional housing needs. AB 72 amends Government Code Section 65585 to allow HCD to revoke a local agency’s status as compliant with housing element law if it finds that a local agency has taken an action that is inconsistent with its adopted housing element. In addition, the Legislature amended Government Code Section 65400 (through AB 879 and SB 35) to create additional requirements for the annual housing reports that must be provided to HCD. Local agencies must now include specified additional information in their annual reports, and identify sites that were rezoned to accommodate the fair share of regional housing. Local agencies’ annual housing reports will now be posted on the HCD website.

Finally, two housing bills create funding sources for the development of affordable housing, while two other bills assist affordable housing developers in preserving existing affordable housing and developing affordable housing for farmworkers. SB 2 creates the “Building Homes and Jobs Trust Fund” and imposes a \$75 fee on the recording of documents. In 2018, these funds are intended to help local agencies cover the cost of updating planning documents and zoning ordinances, and support homelessness assistance programs. Funds collected after January 1, 2019 will be allocated according to a separate formula, with much of the funding expected to support workforce and multifamily housing.

The second funding bill is SB 3, which places a bond measure on the November 2018 state ballot, asking the voters to approve a \$4 billion bond. The bond proceeds would be used to develop low-income housing, transit-oriented housing, and veterans' housing assistance programs. In addition to these two bills, AB 571 seeks to strengthen the impact of the Low Income Housing Tax Credit program for farmworker housing, while AB 1521 seeks to preserve *existing* affordable housing by adding tenant notification and other requirements to the process for purchasing assisted housing developments.