

IMPACT OF 2017 HOUSING LEGISLATION ON PUBLIC AGENCIES

Recent Developments in Housing Law

21 Elements –
Community Development
Directors Meeting
October 19, 2017

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OVERVIEW

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- Changes in Processing Housing Applications Effective January 1, 2018
 - ▣ Housing Accountability Act
 - ▣ SB 35
 - ▣ 'No Net Loss'
- Housing Element & Annual Report Requirements
- New Funding & Streamlining Approaches
- Accessory Dwelling Units
- Return of Rental Inclusionary Requirements

PROCESSING HOUSING APPLICATIONS

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- **AB 678/SB 167; AB 1515:** Housing Accountability Act Bills Affecting All Projects
- **SB 35:** ‘Streamlining’ for Some Projects
- **SB 166:** ‘No Net Loss’ by Income Level

PROCESSING HOUSING APPLICATIONS: HOUSING ACCOUNTABILITY ACT (65589.5)

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Applies to **ALL** “housing development projects” and emergency shelters:

- ▣ Residences only;
- ▣ Transitional & supportive housing;
- ▣ Mixed use projects with at least 2/3 the square footage designated for residential use.

Affordable AND market-rate

PROCESSING HOUSING APPLICATIONS: HOUSING ACCOUNTABILITY ACT (65589.5(j))

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- If complies with “objective” general plan, zoning, and subdivision standards, can only reduce density or deny if “specific adverse impact” to public health & safety that can’t be mitigated in any other way.”
 - “Lower density” includes conditions “that have the same effect or impact on the ability of the project to provide housing”
- *Honchariw v. County of Stanislaus (2011)*

PROCESSING HOUSING APPLICATIONS: HOUSING ACCOUNTABILITY ACT (65589.5(j))

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- If desire to deny or reduce density:
 - ▣ Identify **objective** standards project does not comply with.
 - ▣ If project complies with all, must make public health & safety finding.

- **Not objective:** “suitability”

PROCESSING HOUSING APPLICATIONS: **AFFORDABLE HOUSING (65589.5(d))**

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- Additional protections for projects:
 - ▣ Emergency shelters;
 - ▣ 20% low income; or
 - ▣ 100% moderate (120% of median) or middle income (150% of median).
- Must make specific findings to deny or add condition making project infeasible

PROCESSING HOUSING APPLICATIONS: **SB167/AB678; AB 1515**

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- Must provide list of any inconsistencies with:
 - “Plan, program, policy, ordinance, standard, requirement or similar provision”;
 - Within 30-60 days of completeness;
 - Explaining why inconsistent; or
 - “Deemed consistent.”
- Also “deemed consistent” if: “substantial evidence that would allow a reasonable person to conclude” is consistent
- How to treat pipeline projects complete before January 1, 2018?

PROCESSING HOUSING APPLICATIONS: **SB167/AB678; AB 1515**

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- City findings evaluated based on ‘preponderance of the evidence,’ not merely ‘substantial evidence’
- Attorneys’ fees to both market-rate & affordable
- \$10K/unit fine if ignore court

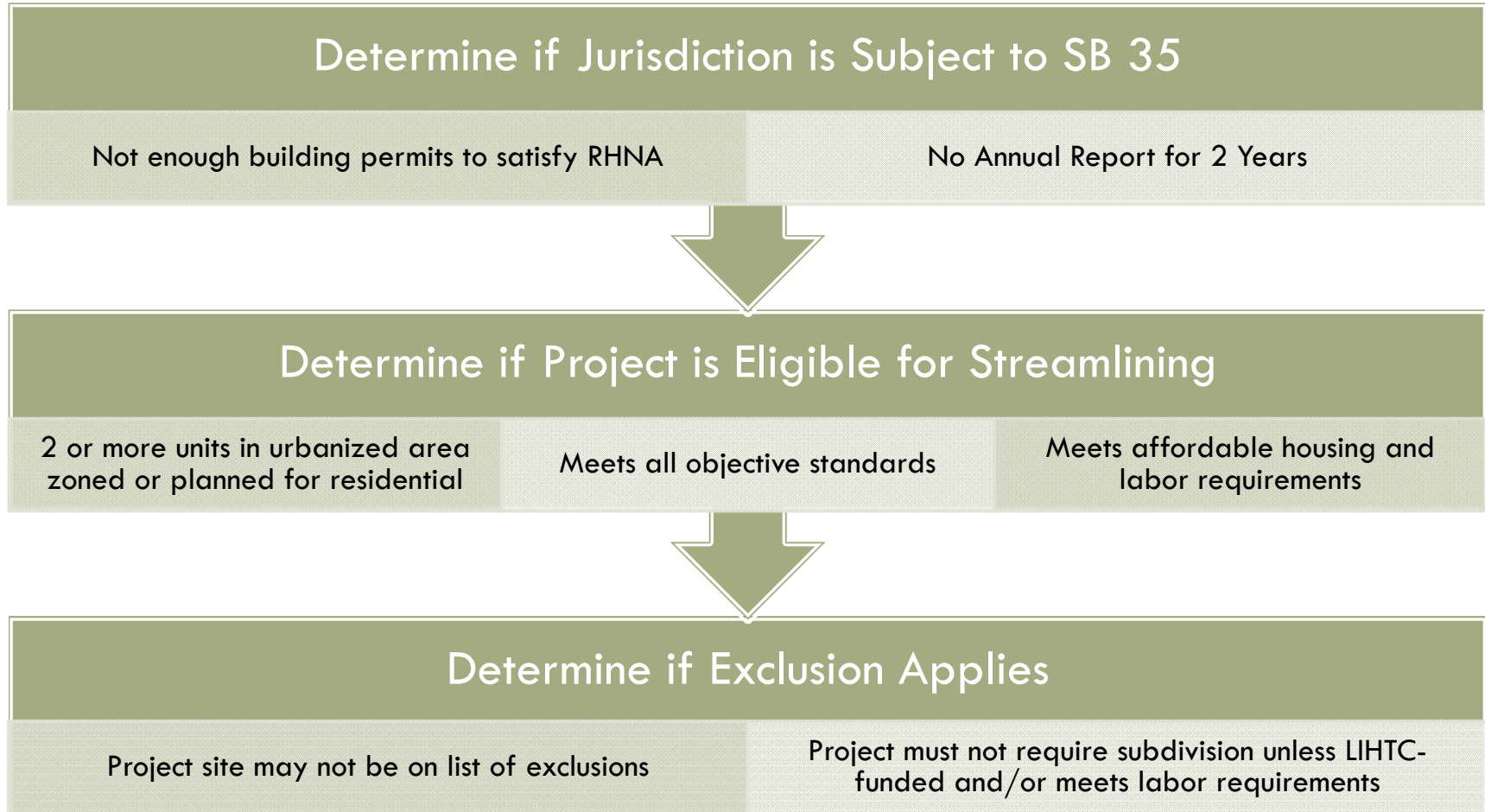
PROCESSING HOUSING APPLICATIONS: **HAA, CEQA & COASTAL ACT (65589.5(e))**

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- *Kalnel Gardens LLC v. City of LA* (2016): in dicta Court said Coastal Act trumps HAA
- *Schellinger Bros. v. City of Sebastopol* (2009): must get out of CEQA before can invoke HAA
- *Sequoyah Hills HO Ass'n v. City of Oakland* (1993): upheld finding that legally infeasible to reduce density due to HAA

PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING'

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PROCESSING HOUSING APPLICATIONS: SB 35: 'STREAMLINING'

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- Regional Housing Need Allocation (RHNA)
 - Typically: 40% low and very low; 20% moderate; 40% above moderate

Model City

Lower Income (Very Low and Low)	Moderate Income	Above Moderate Income	TOTAL RHNA
400 units	200 units	400 units	1,000 units

PROCESSING HOUSING APPLICATIONS:

SB 35: 'STREAMLINING'

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- Requires ministerial approval of housing if HCD determines city has not issued enough building permits to satisfy its RHNA by income category or no annual report for 2 years
- Eligible Projects:
 - ▣ Two or more units proposed
 - ▣ In urban area with 75% of perimeter developed
 - ▣ Site zoned or planned for residential use
 - ▣ Consistent with 'objective' planning standards

PROCESSING HOUSING APPLICATIONS:

SB 35: 'STREAMLINING'

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- Eligible Projects (cont.):
 - ▣ Must meet affordable housing requirements
 - ▣ Projects with 10 or more units must pay prevailing wages
 - ▣ Must use “skilled and trained workforce” if 75 units or more in coastal or bay counties over 225,000 population and other counties over 550,000 population

PROCESSING HOUSING APPLICATIONS:

SB 35: 'STREAMLINING'

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□ Exclusions:

- Site must not have contained housing occupied by tenants within last 10 years
- Site must not be in the coastal zone, agricultural land, wetlands, fire hazard areas, hazardous waste sites, former mobilehome park, floodplain, floodway, fault zone, or other specified areas
- Project may not involve a subdivision unless financed with low income housing tax credits and pays prevailing wage or satisfies all labor requirements

PROCESSING HOUSING APPLICATIONS:

SB 35: 'STREAMLINING'

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- No parking standards may be imposed if the project is:
 - ▣ Located within one-half mile of public transit
 - ▣ Located within an architecturally and historically significant historic district
 - ▣ In an area where on-street parking permits are required but not offered to the occupants of the development
 - ▣ Within one block of a car share vehicle
- No more than 1 space/unit for all other projects

PROCESSING HOUSING APPLICATIONS:

SB 35: 'STREAMLINING'

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- Within 60 to 90 days of **submittal**:
 - ▣ Provide list of all inconsistencies with 'objective' zoning and design review standards in effect at submittal or project "deemed consistent"
 - 'Objective' means "no personal or subjective judgment by a public official and uniformly verifiable by reference to an external and uniform benchmark."
 - Development is consistent with density requirements if it is within the **maximum** density permitted by general plan or zoning

PROCESSING HOUSING APPLICATIONS: **SB 35: 'STREAMLINING'**

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- Within 90 to 180 days of **submittal**:
 - ▣ Complete any design review or “public oversight” of a housing development
 - Prohibited from in any way “inhibiting, chilling or precluding” the ministerial approval of a project
 - Review must be “objective and be strictly focused on assessing compliance with criteria required for streamlined projects”

PROCESSING HOUSING APPLICATIONS: HAA AND SB 35 STRATEGIES

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- ❑ Critical to assemble complete packet of “plans, programs, policies, ordinances, standards, requirements”
- ❑ Detailed list of eligibility requirements for SB 35
- ❑ Require applicant to evaluate “consistency” as part of complete application (doesn’t work for SB 35)
- ❑ Use planning funds to create ‘objective’ guidelines (but are coastal zone policies excluded?)
- ❑ Can conditions of approval be incorporated?
- ❑ How will CEQA be integrated?

PROCESSING HOUSING APPLICATIONS: LONG TERM EFFECTS

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- May eliminate decisions based on “character of the community” and other subjective criteria other than in coastal zones
- Applicants will need to devote extensive time to evaluating consistency; may need to provide more detailed plans
- CEQA may still allow project denial
- Must still comply with Local Coastal Plan

PROCESSING HOUSING APPLICATIONS: 'NO NET LOSS' OF INVENTORY SITES (65863)

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□ Applies when:

- Any site in inventory either downzoned to reduce density; or approved at lower density than shown;
OR
- Site approved with fewer units at the income level shown in the inventory.

PROCESSING HOUSING APPLICATIONS: ADEQUATE RHNA SITES

22

- ❑ Must designate specific sites that can “accommodate” the RHNA at each income level during the planning period (65583.2)
- ❑ Sites “accommodating” lower income housing must be at “default densities” of 10 – 30 du/A

APN	Zone	DU/A	Acres	Units	Use	Income Category
041-0042-002	R-3	20-30 du/ac	2.0	40	Vacant	Lower
037-0400-027	R-2	10-20 du/ac	0.75	7	Duplex	Moderate
038-0100-040	R-1	5-10 du/ac	4.5	22	Vacant	Above Moderate
039-1100-039	CMU	20 du/ac	1.5	25	Parking	Moderate

PROCESSING HOUSING APPLICATIONS: 'NO NET LOSS' REQUIRED FINDINGS

23

- OK if:
 - ▣ Reduction consistent with GP and Housing Element; and
 - ▣ Remaining sites in Element are adequate at all income levels. Must quantify unmet need and remaining capacity by income level.
- If remaining sites are not adequate, can ID “additional, adequate, and available sites” so ‘no net loss.’
- Solely city’s responsibility unless developer’s application had lower density; developer has no responsibility for income level. City cannot deny because developer’s project results in need for additional sites.

PROCESSING HOUSING APPLICATIONS: 'NO NET LOSS' OPTIONS

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- Remaining sites in Element adequate to meet the RHNA at all income levels; or
- City approved more units on some site than shown in inventory or has other units at that income category; or
- Other sites NOT in Element can make up difference; or
- Another site “identified and made available.” Time limit of 180 days for income category only.

PROCESSING HOUSING APPLICATIONS: 'NO NET LOSS' ISSUES

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- Does not require that Housing Element be amended when additional sites are identified; but must be reported in annual report
- How should CEQA review of any necessary rezoning be accomplished?
- Can cities require that lower income sites be 100% lower income, and moderate income sites 100% moderate income?

PROCESSING HOUSING APPLICATIONS: 'NO NET LOSS' PRACTICE TIPS

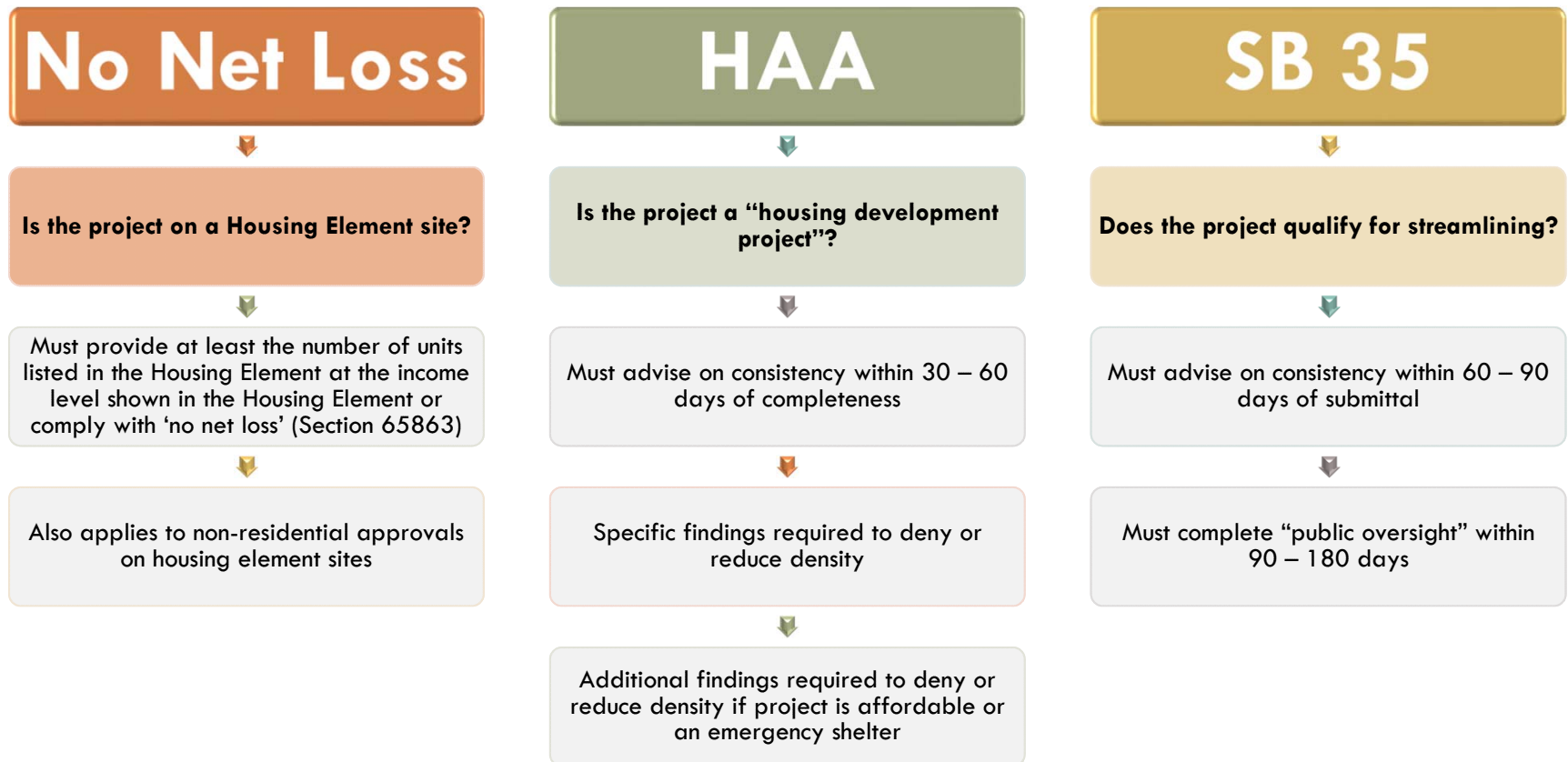
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- Maximize inclusionary percentages; consider ALWAYS requiring actual production of units
 - ▣ Can ADUs be required to be affordable with *Palmer* fix?

- Keep a log of:
 - ▣ All housing element sites;
 - ▣ All approved housing by income category on other sites;
 - ▣ All sites not in housing element identified as 'available.'

PROCESSING HOUSING APPLICATIONS: PUTTING IT ALL TOGETHER

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HOUSING ELEMENTS & ANNUAL REPORTS

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SB 35, AB 879, AB 1397, & AB 72

- Increased Annual Reporting
- Increased Enforcement of Housing Laws
- Future Housing Element
 - ▣ Sites Restricted
 - ▣ New Analysis Required

Department of Housing and
Community Development

ANNUAL HOUSING ELEMENT PROGRESS REPORT

City or County Name: _____

Mailing Address: _____

Contact Person: _____ Title: _____

Phone: _____ FAX: _____ E-mail: _____

Reporting Period by Calendar Year: from _____ to _____

These forms and tables, (see sample - next page) must be submitted to HCD and the Governor's Office of Planning and Research (OPR) on or before April 1, of each year for the prior calendar year; submit separate reports directly to both HCD and OPR (Government Code Section 65400) at the addresses listed below:

Department of Housing and Community Development
Division of Housing Policy Development
P.O. Box 962053
Sacramento, CA 95825-2053

-and-

Governor's Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

HOUSING ELEMENTS & ANNUAL REPORTS:

NEW ANNUAL REPORTS

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- Prior year **Applications**
 - ▣ Housing development applications received
 - ▣ Units in all applications: approved & disapproved
- **Sites** rezoned to accommodate RHNA
- **Sites** identified or rezoned for No Net Loss
- Production Report
 - Net new units entitled, permitted, or occupied
 - ▣ For sale or rental
 - ▣ RHNA income category
 - ▣ Assessor Parcel Number
- SB 35 Report
 - ▣ Applications & sites
 - ▣ Units by type & RHNA

HOUSING ELEMENTS & ANNUAL REPORTS: REZONED SITES

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- If not enough sites at appropriate densities, City must complete necessary rezoning within 3 years (4 years if findings). G.C. 65583(c), (f)
- Element must designate specific sites to be rezoned and units that can be built on each site after rezoning. G.C. 65583(c)(1)(B).

HOUSING ELEMENTS & ANNUAL REPORTS:

NEW ANNUAL REPORTS

31

- Prior year Applications
 - ▣ Housing development applications received
 - ▣ Units in all applications: *approved & disapproved*
- Sites rezoned to accommodate RHNA
- Sites identified or rezoned for No Net Loss
- **Production Report**
 - Net new units entitled, permitted, or occupied
 - ▣ For sale or rental
 - ▣ RHNA income category
 - ▣ Assessor Parcel Number
- **SB 35 Report**
 - ▣ Applications & sites
 - ▣ Units by type & RHNA

HOUSING ELEMENTS & ANNUAL REPORTS: NEW ANNUAL REPORTS

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California Department of
Housing and Community Development

- HCD to publish new reporting forms
 - ▣ HCD will publish each report online

- Annual Reports due by April 1 each year
 - ▣ Potential court order if not received by May 31
 - ▣ Failure to submit two or more consecutive Annual Reports triggers SB 35 streamlining

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NEW HOUSING FUNDING SOURCES

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- **SB 2:** Permanent Source for Housing—Recording Fee
 - ▣ Estimated \$200- \$300 million/year for local governments and HCD to fund affordable housing development
- **SB 3:** Veterans and Affordable Housing Bonds



NEW HOUSING FUNDING SOURCES:

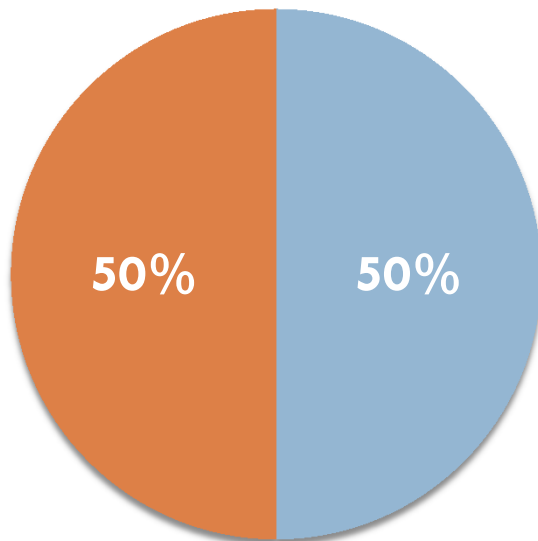
SB 2: PERMANENT SOURCE FOR HOUSING

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Year 1

Allocation of Funds

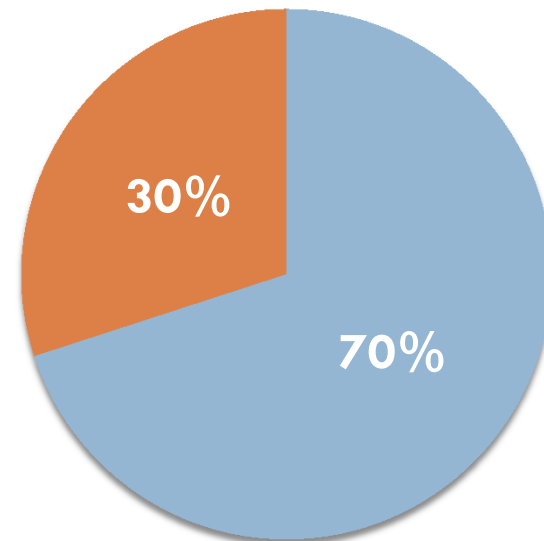
Local Governments HCD



Year 2 and Beyond . . .

Allocation of Funds

Local Governments HCD



NEW HOUSING FUNDING SOURCES

SB 2: PUTTING IT ALL TOGETHER

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Year 1

- Opportunity for public agencies to create planning documents to streamline housing applications

Year 2 and beyond

- Minimal standards in legislation
- HCD guidelines will be critical to determine how funds are used

NEW HOUSING FUNDING SOURCES:

SB 3: VETS & AFFORDABLE HOUSING BONDS

36

- Bond measure on Nov 6, 2018 ballot to raise:
 - ▣ **\$3 billion** for existing state affordable housing programs
 - ▣ **\$1 billion** for veterans' home purchase program



NEW APPROACHES TO STREAMLINING

37

SB 540

- Workforce Housing Opportunity Zones

AB 73

- Housing Sustainability Districts

AB 1568

- Neighborhood Infill Finance and Transit Improvement Districts

ACCESSORY DWELLING UNITS

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- **AB 494/SB 229** continue to ease ADU restrictions
- Local ordinances are void unless they comply with Government Code Sec. 65852.2
- HCD expressly authorized to review ordinances



ACCESSORY DWELLING UNITS: PROCESSING REQUIREMENTS

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Exterior ADUs

- ❑ Local governments may designate areas where ADUs are permitted
- ❑ Areas can include anywhere existing or proposed single-family home is permitted

Interior ADUs

- ❑ Local government must approve in any district where single family homes are permitted

ACCESSORY DWELLING UNITS: OTHER REQUIREMENTS

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□ Parking

- ▣ For exterior ADUs, limited to 1 space per unit or bedroom, “whichever is less”
- ▣ Reduced ability to limit tandem parking or parking in setbacks

□ Utility Fees

- ▣ Restrictions on charges extended to special districts and water corporations, along with other defined local agencies

RETURN OF RENTAL INCLUSIONARY HOUSING

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- AB 1505 restores the ability of cities and counties to adopt inclusionary housing policies for rental projects
- The Bill explicitly supersedes the California Court of Appeal's 2009 decision in *Palmer/Sixth Street Properties LP v. City of Los Angeles (Palmer)*
- The policies must meet certain standards and the Department of Housing and Community Development (HCD) may review the policies in certain circumstances

RETURN OF RENTAL INCLUSIONARY HOUSING: ORDINANCE REQUIREMENTS

42

- Local governments may require new rental housing include percentage of affordable units
- Ordinances must provide “alternative means of compliance” with inclusionary requirements
- Alternatives *may* include, but are not limited to:
 - ▣ In lieu fees
 - ▣ Land dedication
 - ▣ Off-site development of units
 - ▣ Acquisition and rehabilitation of existing units

RETURN OF RENTAL INCLUSIONARY HOUSING: IMPLEMENTATION OPTIONS

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□ Existing Inclusionary Ordinances:

- ▣ May be implemented after January 1, 2018.
- ▣ If the ordinance was adopted before September 15, 2017, no HCD review or economic feasibility study required

□ New Inclusionary Ordinances:

- ▣ May be subject to an HCD request for an economic feasibility study if:
 - it requires more than 15 percent of rental units be affordable to low-income households or
 - affordability for extremely low income or very low income households.

RETURN OF RENTAL INCLUSIONARY HOUSING: **ECONOMIC FEASIBILITY**

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- HCD may require that a city or county submit an economic feasibility study to support certain inclusionary ordinances.
- If the economic feasibility study does not meet HCD standards, the city or county may not impose an ordinance requiring higher than a 15 percent rental inclusionary requirement.

RETURN OF RENTAL INCLUSIONARY HOUSING: IMPLICATIONS FOR LOCAL GOVERNMENTS

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- Need for ordinance: AB 1505 authorizes local communities to adopt rental inclusionary requirements by *ordinance*. An ordinance should be adopted to implement inclusionary requirements contained in general plans, housing elements, or other policy documents.
- No nexus study needed: No nexus study is required to justify a rental inclusionary requirement.

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