



21 Elements

March 6, 2018 TAC Meeting

# New State Housing Laws



**New  
Housing  
Laws!!!**





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- ✓ **Takeaways**
- ✓ **Carefully Venture into the Weeds**
- ✓ **Handouts**
- ✓ **Pop Quiz**
- ✓ **Small Group Exercise**
- ✓ **Experts** (Barbara Kautz and Eric Phillips, Goldfarb and Lipman, LLC)
- ✓ **HCD Phone-In for Q&A** (Paul McDougall)

## ADU Takeaways

- **AB 494/SB 229** continue to ease ADU restrictions (*less parking, more zones, fewer fees*)
- “Null and void” still in effect
- Continues **exterior** And “**interior**” distinction



# Changes to ADU Rules

- **Parking Requirements:**

- No parking for studios and **INTERIOR ADU** and 1 maximum for other units
- Parking in setbacks generally OK

- **Existing ADU Processing:**

- **INTERIOR ADU** must be permitted in any district where single family homes are permitted

# Changes to ADU Rules

- **Utility Fees:**

- Applies fee reductions rules to special districts (interior no connection fee, exterior scaled down fee)

## Housing Laws Takeaways

- Reduced ability of local jurisdictions to reduce density or deny development
- More streamlining and ministerial review using 'objective' standards required
- Increased accountability
- Rental inclusionary is back
- Funding increased

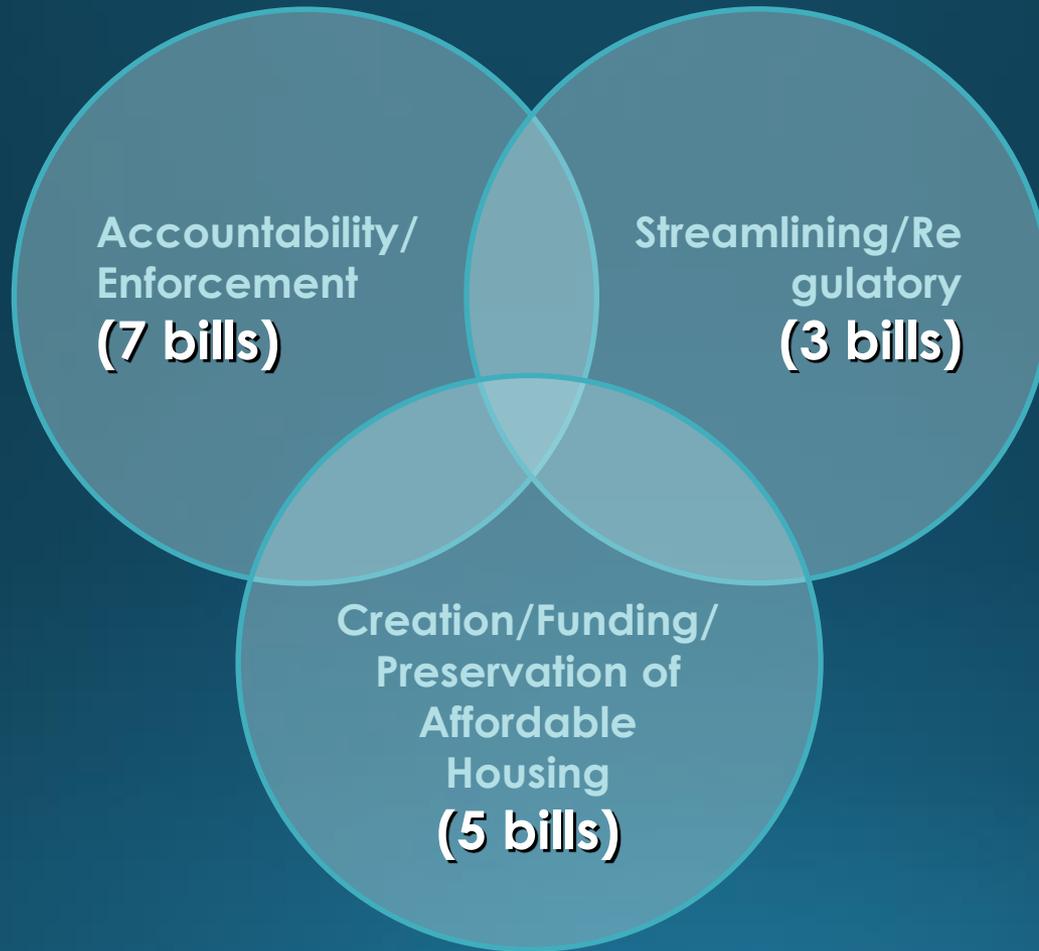


# The State's View of the Housing Crisis

“The Legislature’s intent . . . **curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects. . . .**”

Housing Accountability Act as amended

# Package of 15 Housing Bills



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## Accountability/Enforcement

**Strengthen the Housing Accountability Act (HAA)** AB 678/SB 167

**Reasonable Person Standard** AB 678/SB 167

**Enforcement of Housing Element Law** AB 72

**Adequate Housing Element Sites** AB 1397

**No Net Loss by Income Category** SB 166

**Annual Housing Element Report Requirements\*\* (2019)** SB 879

## Streamlining/Regulatory

**Streamlined Approval Process** SB 35

 **Streamline and Incentivize Housing Production** AB 73

 **Workforce Housing Opportunity Zones** SB 540



State funding attached

Optional for jurisdictions

Jurisdiction requirement

## Creation/Preservation



**Recording Fee Funding Source** SB 2



**Veterans and Affordable Housing Bond Act** (November ballot) SB 3

**Inclusionary Ordinances (return of rental housing)** AB 1505

**Preserve Existing Affordable Housing** AB 1521



**Low Income Housing Credits for Farmworkers** AB 571

## Immediate Takeaways

- Need to move quickly! — Housing Accountability Act (HAA), SB 35 (streamlining) and “No Net Loss” two months ago!
- HAA affects ALL proposals
- SB 35 streamlining affects developments that qualify and jurisdiction category
- “No Net Loss” affects ALL proposals



# HAA and SB 35

**Both laws** — Difficult to deny projects that meet **objective** rules. Need to move quickly or “deemed compliant”

## HAA

- Almost all development
- All jurisdictions (coastal zone?)
- Very fast timelines
- Conditions OK
- CEQA Applies

## SB 35

- Some developments
- Some jurisdictions (tied to production)
- Fast timelines
- No conditions
- General plan maximum densities
- CEQA exempt

## Objective Standards Takeaways

- Objective standards must be used when reviewing applications
- Standards must be very clear (reasonable person standard)
- **“Specific adverse effect”** must be significant, quantifiable, direct and cannot be mitigated



# Objective Standards

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.”

# Objective Standards Defined

What Is an “**Objective**” Standard?

**SB 35:**

“Standards that involve **no personal or subjective judgment by a public official and are uniformly verifiable** by reference to an external and uniform benchmark or criterion **available and knowable** by both the development applicant and the public official prior to submittal.”

# Not Objective Standard

Examples of standards found not to be “objective:”

- “Address unmet need for senior housing.”
- “Special care shall be taken to avoid obstructing views to the surrounding hills.”
- “Produce high quality authentic design.”
- “Reflect look and feel of the community.”
- “Consistency with small town character”

## HAA Takeaways

- Cities must evaluate proposals very quickly or they are “deemed compliant”
- Applies to all jurisdictions and almost all developments
- Cannot deny or reduce density, conditions OK
- Additional protections for affordable and special needs housing



# HAA Applicability

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

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

# HAA Applicability

Additional protections for projects:

- Emergency shelters;
- 20% low income;
- 100% moderate (up to 120% of median) or middle income (150% of median).

# HAA Application Review

- 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

# HAA Denial or Reduction in Density

- **If desire to deny or reduce density:**
  - Identify **objective** standards project does not comply with.
  - If project complies with all, must find specific adverse effect on public health & safety.
- **“Specific adverse effect”** must be significant, quantifiable, direct, and unavoidable based on written health & safety standards on date project deemed complete, and no way to mitigate.

# HAA Jurisdiction Decision

- 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

# HAA Application Review

## Some remaining discretion:

- CEQA still applies
- Can probably still apply subjective Coastal Act standards

## SB 35 Applicability Takeaways

- Is jurisdiction subject to SB 35 streamlining?
- Is development proposal consistent with SB 35 streamlining?
- Do SB 35 exclusions apply?



# How SB 35 Works

Determine if Jurisdiction is Subject to SB 35

Not enough building permits to satisfy RHNA

No Annual Report for 2 Years



Determine if Project is Eligible for Streamlining

2+ m-f units in urbanized area zoned or planned for residential

**Meets all objective standards**

Meets affordable housing and labor requirements



Determine if Exclusion Applies

Project site may not be on list of exclusions

Project must not require subdivision unless LIHTC-funded and/or meets labor requirements

# San Mateo County Jurisdictions

## Jurisdictions NOT SUBJECT to SB 35 Streamlining

**Foster City**

**Hillsborough**

**10%** based on no Annual HE Report and/or not meeting above moderate income RHNA (pro-rated)

**50%** based on not meeting very low and low income RHNA (pro-rated)

## Jurisdictions Required Streamlining for 10% or More Affordability

**Belmont**

**Colma**

**East Palo Alto**

**Half Moon Bay**

**Menlo Park**

**Millbrae**

**Pacifica**

**Redwood City**

**San Bruno**

**San Mateo County**

**South San Francisco**

## Jurisdictions Required Streamlining for 50% or More Affordability

**Atherton**

**Brisbane**

**Burlingame**

**Daly City**

**Portola Valley**

**San Carlos**

**San Mateo**

**Woodside**

## Application Review Takeaways

- General Plan trumps inconsistent zoning standards
- Exempts coastal zone, agricultural land, wetlands, fire hazard areas, hazardous waste sites, former mobilehome park, floodplain, floodway, fault zone or other specified areas
- Faster ministerial review using objective standards for 2 or more units in urban area
- Reduced parking standards



# SB 35 Application Review

- Project must be consistent with **'objective'** zoning and design review standards:
  - Consistent with zoning if consistent with maximum density in general plan, without consideration of maximum unit allocation;
  - Density bonuses are consistent;
  - **General plan standards trump inconsistent zoning standards.**

# SB 35 Application Review

- **Ministerial review ONLY** based on ‘objective’ standards
- 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”
- Review can’t last more than **90 – 180 days** from submittal

# SB 35 Parking Standards

- **No parking standards** may be imposed if:
  - 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

# SB 35 Application Review/Eligibility

- **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
- Must meet affordable housing requirements

# SB 35 Application Eligibility

- **Eligible Projects** (cont.):
  - 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

# Exclusions from SB 35

- **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

# HAA and SB 35 Takeaways

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## Other Takeaways

- Application content changes
- Objective standards for ministerial review
- Development application processing times and procedures (ministerial review)
- Content of the General Plan
- Community understanding and acceptance





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## “Pop Quiz”