

Draft Staff Report: 2019 New Housing Laws

SUBJECT

An overview of the housing legislation recently signed into state law and a summary of the actions or process changes that will be required for local jurisdictions to be in compliance.

RECOMMENDATION

The following actions should be considered to be in compliance with the new state housing laws going into effect on January 1, 2020:

1. Post housing fee and standards information as specified online by January 1, 2020;
2. Create development checklist for qualifying residential projects and preliminary application form under SB 330 or adopt one to be developed by state;
3. Update development application forms to include information needed to determine historic significance and replacement housing obligations under SB 330; also ensure that forms include all information needed from applicants
4. Update ordinances for ADU/JADUs, homeless navigation center approval, and density bonuses or defer to new state laws if conflicting; send any adopted ADU/JADU ordinance to HCD within 60 days after adoption;
5. Update procedures and educate staff on new processes and requirements, especially related to SB 330; develop process for tracking preliminary applications and number of public meetings for affected projects;
6. Develop inventory of surplus land owned by the jurisdiction, conduct annual updates, share with HCD and be prepared to provide a list to requesting parties without charge by April 1, 2021;
7. Apply for new local and regional planning grants as applicable and keep updated on the development of BAHFA, a new regional authority that will administer housing funds; and
8. Begin work on Housing Elements to meet December 2022 deadline.

BACKGROUND

More than 200 housing bills were introduced by state legislators in 2019. On October 9th, Governor Gavin Newsom signed into law a housing package¹ that included approximately twenty bills. In addition, the 2019-2020 state budget adopted included nearly \$2.5 billion for housing and related infrastructure.

In summary, the housing package will:

- streamline the application process for qualifying residential developments
- include middle-income housing in the SB 35 streamlined approval process
- increase the density bonus for 100 percent affordable housing developments
- require jurisdictions to post affordable housing fees and related studies online
- reduce requirements for ADU approval and construction
- adopt tenant protections like just cause eviction and an annual rent cap
- require jurisdictions to inventory and annually report surplus lands

¹ <https://www.gov.ca.gov/2019/10/09/governor-gavin-newsom-signs-18-bills-to-boost-housing-production/>

Draft Staff Report: 2019 New Housing Laws

- approve navigation centers by-right
- create a state ‘prohousing’ certification
- expand welfare tax exemptions and financing opportunities for housing

Since all new housing legislation will go into effect on January 1, 2020, it is important for jurisdictions to prepare for process changes and respond to new requirements immediately. Below is an overview of these laws organized by category.

Streamlining and Removing Barriers

1. **SB 330. 2-Step Application and Approval Process.** This bill changes what was formerly a one-step application process to a two-step process by introducing a new Preliminary Application². An expedited timeline for the approval process and other rules were also added. Changes were made by modifying the Permit Streamlining Act (PSA) and Housing Accountability Act (HAA). Qualifying projects must have at least two-thirds of square footage designated for residential uses. It does not exempt projects from CEQA. The majority of rules are set to sunset January 1, 2025 and notable changes are as follows (See Attachment 1):

- a. ***New Preliminary Application.*** The first step of the new two-step process requires applicants to provide a preliminary application consisting of a limited list of information found in **Section 8** of the bill (See Attachment 1). Jurisdictions may only apply the local rules that were adopted and in effect at the time a complete preliminary application was submitted, with specific exceptions. CEQA determination is still required.

Jurisdictions will need to provide a preliminary application form that may include a checklist of submittal requirements to assist applicants with the preliminary process. Jurisdictions may either develop their own preliminary application form or use one that will be developed by HCD, which has yet to be released. HCD has not announced when the preliminary application form and checklist will be available.

- b. ***Final Application.*** Applicants must submit a final application that includes all of the requirements in the usual application forms within 180 days after a preliminary application has been submitted. Jurisdictions then have 30 days to respond to its completeness. Applicants must then submit a complete final application responding to comments within 90 days after receiving comments.
 - ***Information from Applicants.*** Jurisdictions can only request information listed in their checklist/application forms or first incomplete letter.
 - ***Projects Complying with Objective Standards.*** For these compliant projects, jurisdictions can only deny developments or reduce density if a ‘specific health and safety’ finding can be made. However, this provision does not supersede CEQA or the Coastal Act.

² https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=2019202005B330

Draft Staff Report: 2019 New Housing Laws

- **Historic Significance.** Jurisdictions must determine historic significance at the time a final application is deemed complete. However, this provision also does not supersede CEQA. Jurisdictions must add information required to determine historic significance to the application form if it is not already included.
- **Determination of Consistency with Objective Standards.** Jurisdictions must provide applicants a determination of consistency with objective standards within 30-60 days (depending on the size of the project) after the final application is deemed complete.
- **Public Meetings Conducted by the City.** Jurisdictions can hold no more than five public meetings after the full application is deemed complete IF the project is consistent with all standards and does not require any legislative approvals. Jurisdictions must approve or disapprove of the project during the process. Meetings include workshops, continued meetings, board or commission meetings, etc. Again, however, this provision cannot prevent an agency from complying with CEQA.
- **Final Approval.** Jurisdictions must issue final approval 60-90 days after the certification of an EIR, a change from 90-120 days.

c. **Jurisdiction Limitations on Downzoning, Moratoriums and Design:**

- Downzoning is restricted below local rules in effect January 1, 2018 unless upzoning at same time.
- Housing moratoriums are not allowed unless there is an “Imminent Health & Safety Threat” and HCD approval.
- No new unobjective design standards may be adopted on or after January 1, 2020.

d. **Developer Replacement Housing Requirement:**

- Developers must replace all demolished units one-for-one, including demolished *protected units* – lower income households for past 5 years and those vacated under Ellis Act in past 10 years.
- Developers must also provide State relocation benefits.
- Jurisdictions must amend their application forms so that they can determine replacement housing requirements.

2. **AB 1485. SB 35 Middle-Income Housing Amendments.** Amends SB 35, Affordable Housing Streamlined Approval, to include projects with 20 percent of units up to 120 percent AMI in cities not meeting above-moderate RHNA goals³. It also clarifies the two-thirds mixed-use calculation, approval expiration dates, subsequent permit issuing and standards of review and consistency with other laws.

³ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1485

Draft Staff Report: 2019 New Housing Laws

Density Bonus

3. **AB 1763. Density Bonus for 100% Affordable Housing.** Provides enhanced density bonus for 100% affordable developments including 80 percent density bonus and no density limit if within ½ mile major transit stop under State Density Bonus Law⁴. Projects are also entitled to four concessions, and those within 1/2 mile of a major transit stop are entitled to a 33-foot, three-story height increase.

Fee Transparency

4. **AB1483. Fee Transparency.** Jurisdictions are required to publicly share fee and standards information on websites by January 1, 2020⁵. Items to post are:
 - a. Zoning, design and other development standards
 - b. Fees
 - c. Affordability requirements
 - d. Public Art/Mello-Roos Fees
 - e. Application Forms
 - f. Current and past 5 annual Mitigation Fee Act Reports
 - g. Archive of Nexus and Fee Studies completed after January 1, 2018

Tenant Protections

5. **AB 1482. Rent Increase Limits.** Restricts rents from being increased more than 5 percent plus inflation annually for the next 10 years and requires landlords to demonstrate “just cause” prior to evicting tenants of at least one year. Property owners evicting tenants for renovations or condo constructions must provide relocation fee equal to one month’s rent.
6. **SB 329. Section 8 Voucher Anti-Discrimination.** Prohibits landlords from discriminating against tenants paying for housing with public assistance, such as Section 8 vouchers.

Surplus Lands

7. **AB 1255. Annual Reporting of Surplus Lands.** Jurisdictions are required to report surplus lands in urbanized areas to the state and to develop a digitized inventory beginning April 1, 2021⁶. Updates will be provided to HCD each year after by April 1st.
8. **AB 1486. Housing Elements and APRs to Include Surplus Lands.** Expands Surplus Land Act, requiring local jurisdictions to include surplus land in housing elements and annual progress reports (APRs). Also requires HCD to create a database.
 - a. Applies to almost all land dispositions including those of successor agencies.

⁴ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1763

⁵ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1483

⁶ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1255

⁷ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1486

Draft Staff Report: 2019 New Housing Laws

- b. Jurisdictions must notify HCD about disposition process – HCD must provide written findings within 30 days.
 - c. After a jurisdiction has received a notice of interest to buy or lease land, they must enter into a good faith negotiation with the interested buyer in no less than 90 days, with priority given to proposals for affordable housing. If price and terms cannot be agreed upon, jurisdictions may dispose of land without further regard to bill, with specific exceptions.
 - d. Jurisdictions are penalized 30 to 50 percent of land price if Act is violated.
9. **SB 6. Surplus Land Public Inventory.** Requires the state to create a public inventory of local surplus land sites suitable for residential development, along with state surplus land sites⁸. Effective on or after January 1, 2021.

ADUs

Six bills were signed into law that will change the rules that regulate Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs)⁹. Local ordinances that do not conform to new laws will be declared null and void. Therefore, jurisdictions should update their ordinance as soon as possible. Once adopted, jurisdictions will have 60 days to provide their new ordinance to HCD for review. While jurisdictions are in the process of updating their ADU ordinance, CEQA is exempt. Local ordinances are allowed to be more generous in permitting ADUs than state requirements but cannot be stricter.

10. **SB 13, AB 68 and AB 881. ADU Approvals and Regulations.** Signed in succession, these bills define the maximum standards that local jurisdictions can apply to ADUs. Special rules apply to four types of ADUs/JADUS, including 1) conversions of existing space, 2) new construction of a detached ADU up to 800 sq ft, with a JADU also permitted 3) multi-family with two detached units and 4) multi-family with one detached unit and one within existing non-livable space up to 25 percent of the existing unit space.
- a. **Review and Approval.** The approval process for ADUs is now ministerial, with specific exemptions. Jurisdictions will have 60 days from submittal of a complete application – currently 120 days – to act on applications. If an ADU is being built in conjunction with a single-family home, the approval process timeline will be the same as the home.
 - b. **JADUs Must be Allowed.** Jurisdictions must allow JADUs. Both a JADU in an existing space and a new detached ADU up to 800 sq ft may occur on the same single-family lot, with some limitations.
 - c. **Mandatory Approval on Single-Family Lots.** Generally, cities may not prohibit an owner of a single-family lot from building an ADU if it is:

⁸ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB6

⁹ An Accessory Dwelling Unit is defined as a housing unit with kitchen facilities, sleeping space, and a separate entrance and address. A Junior Accessory Dwelling Unit is an Accessory Dwelling Unit under 550 sq ft, which must be a conversion of interior space in a house and can, but does not have to, share a bathroom with the existing house.

Draft Staff Report: 2019 New Housing Laws

- Existing space – Conversion of existing space including up to 150 sq ft extension for existing accessory structures
- Detached – Up to 800 sq ft, 16 feet high and with 4-foot rear and side setbacks. Lot coverage, floor area ratio, open space, and size standards must be waived if they prevent the construction of an 800 sq ft ADU.

d. **Multifamily Lots may include ADUs/JADUs**

- Existing space – Multifamily units may add ADUs limited to 25% of the existing unit space (example: 4-unit building would be allowed 1 ADU). They must meet building code and the existing space must not be currently used for living (storage units and garages would qualify).
- Detached – ADU owners may add up to two detached units in a newly constructed building (no more than 16 feet high with 4-foot side and rear setbacks)

e. **Standards and Additional Limitations**

- a. *Correction of Nonconforming Zoning:* Not allowed as condition of approval for ADUs that fall under subsection (e) of AB 68
 - b. *Owner Occupancy:* Cities may not require on new ADUs built between 2020-2025 but must require for JADUs.
 - c. *Short-term Rentals:* Jurisdictions may prohibit rentals for fewer than 30 days and in certain cases doing so is a requirement, such as if ADU falls under subsection (e) of AB 68
 - d. *Location:* ADUs are allowed in all residential and mixed-use zones with limited exceptions, including adequacy of water and sewer, impact to traffic flow and public safety
 - e. *Lot Size:* Jurisdictions can no longer consider lot size for approval; lot coverage can still be considered if ADU is over 800 sf ft
 - f. *Impact Fees:* None if less than 750 sq ft and proportional to primary unit if more than 750 sq ft
 - g. *Maximum:* Must allow at least 850 sq ft for 1 bedroom and 1000 sq ft for 2 bedrooms
 - h. *Setbacks and Height:* 4-foot side and rear setbacks and 16-foot height
 - i. *Parking:* Applicants do not need to replace parking that was lost by demolishing/converting garage, carport, or covered parking
- f. **Amnesty Program.** Allows owners to request delayed enforcement for five years if there are no health and safety issues. Sunsets in 2030.

11. **AB 587. ADU Sale or Separate Conveyance.** Provides a narrow, jurisdiction opt-in exemption for affordable housing developers to sell deed-restricted ADUs to eligible low-income homeowners.

Draft Staff Report: 2019 New Housing Laws

12. **AB 671. ADU Incentives.** Requires local jurisdictions to encourage affordable ADU rentals in their housing elements and requires the state to develop a list of grants and financial incentives.
13. **AB 670. ADU Common Interest Developments.** Does not allow single-family HOAs to ban ADUs or "unreasonably" restrict them.

Homelessness and New Prohousing Designation

14. **AB 101. By-Right Navigation Centers and Prohousing Designation.** Jurisdictions are required to approve low barrier navigation centers by-right in mixed use and nonresidential zones that allow multifamily uses. Additionally, if a locality has been designated *prohousing* by HCD – compliant with housing element requirements and enacted policies that advance the planning, approval and construction of housing – extra points will be given on IIG, AHSC and TTC grant program applications. Awards will be based on categories including favorable zoning, faster processing, reducing costs and financial subsidies.

Financing and Taxing

15. **AB 116. EIFD Bond Issuing.** Removes the requirement for Enhanced Infrastructure Financing Districts (EIFDs) to receive voter approval prior to issuing bonds¹⁰.
16. **AB 1487. New Regional Housing Finance Authority.** Allows ABAG and MTC to place measures on the ballot to generate revenue for affordable housing and tenant protections, as well as oversee coordination, allocation of funds and technical assistance to local jurisdictions¹¹. The new Bay Area Housing Finance Authority (BAHFA) – governed and staffed by MTC – will be tasked with raising and distributing funds to localities.
17. **AB 1743. Welfare Tax Exemption Expansion.** Expands properties exempt from community facility district taxes to include those qualifying for the property tax welfare exemption and limits the ability to deny housing projects due to qualifying¹².
18. **SB 196. Welfare Exemption for Land Trusts.** Enacts a new welfare exemption from property tax for property owned by a Community Land Trust (CLT) and makes other property tax assessment changes subject to contracts with CLTs¹³.
19. **State Budget.** On June 26, 2019 the governor signed the 2019-2020 budget into law. A breakdown of the 2.5 billion allocated for housing and related infrastructure is as follows:
 - \$750 million short-term planning & infrastructure
 - \$500 million low- and moderate-income housing
 - \$500 million to increase housing tax credit

¹⁰ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB116

¹¹ https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200AB1487

¹² https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1743

¹³ http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB196

Draft Staff Report: 2019 New Housing Laws

- \$20 million legal assistance to renters
- \$650 million shelter / permanent supportive housing

20. **Early Action Planning Grants as Part of Prohousing Designation.** Local Early Action Planning Grants (LEAP) and Regional Early Action Planning Grants (REAP) will be available to jurisdictions beginning in 2020 to establish prohousing policies that eventually could result in a Prohousing designation from HCD. The LEAP grants will be available to cities over the counter (noncompetitive process). Prohousing policy areas include financial incentives, reduced parking requirements, meeting or exceeding housing needs for the current housing element cycle, adopting ordinances that advance ADUs, faster processing times and reducing impact fees. Applications for LEAP open in January and the deadline for submittal will be July 1, 2020. Collaboration is encouraged but the details have yet to be determined.