21 Elements

What's Left of Local Discretion, and How to Use It Well

How State Housing Laws Shape Your Decisions on Residential Projects

San Mateo County Planning Commissioner Training

October 29, 2026

21 Elements

Temperature Check

Raise your hand if:

1. This is your first year on the planning commission.
2. You've served on the planning commission for five or more years.
3. You've ever Googled a housing bill by its number just to understand what people were talking about.
4. You voted for a project that you personally didn't like in the past year.
5. You were on the receiving end of a resident's frustration about a project that the commission had no power to deny.

21 Elements

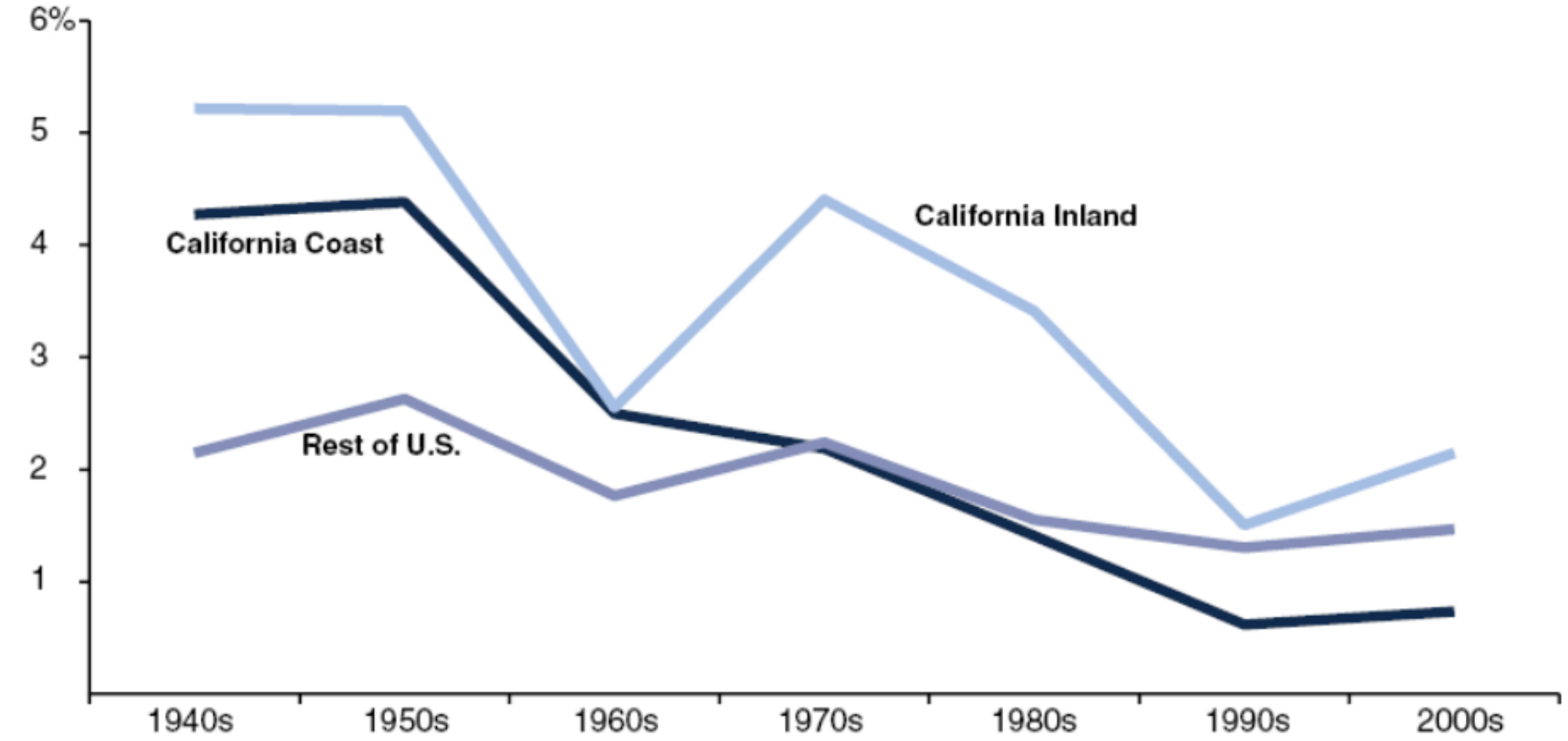
Sand Hill Circle, Menlo Park

Sales Price – 2026 Dollars

Income Needed – 2026 Dollars

Housing Construction Has Slowed in California's Coastal Metros

Annual Growth in Housing Units in Major Metros



21 Elements

San Mateo County Trends

21 Elements

2026 California Housing Legislation Highlights

as of May 10, 2025

DISASTER PREVENTION

AB 1888 Labor standards for home hardening grants.
AB 1934 Home hardening certification program.
AB 1971 Property tax break for home hardening.
AB 2102 Firebreaks and fuel reduction.
AB 2517 More outreach during making of fire hazard maps.
SB 894 Low cost loans for hardening and defensible space.
SB 1270 More funding for home hardening.

INSURANCE

AB 1559 Notice required for aerial photos for insurance, bans cancellations based on 6+ month old images.
AB 1680 Major reform of FAIR plan - more options, strategic planning, climate risk assessment, etc.
AB 1986 Requires insurers to provide quotes of what the cost of insurance would be after hardening.
AB 2724 Review and suggestions from Dept of Insurance for areas having hard time getting insurance.
SB 876 Faster payout of claims after disasters.
SB 878 More accountability & data on insurance business.
SB 1076 Requires insurers to cover hardened homes.
SB 1162 Dept of Forestry to work on risk reduction in areas with high use of FAIR plan.
SB 1301 More notice required for non-renewals.

REBUILDING & RELIEF

AB 1857 Extends mortgage forbearance for 2025 wildfires.
SB 1053 Extends deadline to transfer old property tax assessments for reconstructed property.
SB 1090 Bans people and businesses that own over 75 houses from buying houses in wildfire disaster area.
SB 1352 Property tax relief for reconstructed property.

HOMEOWNERSHIP

HOA REGULATIONS

AB 739 More oversight of management fees.
AB 1684 Right to install cooling.
AB 2050 Requirement to build up reserves.
AB 2579 Limits size of many types of HOA fines.
SB 1007 More accountability for assessment increases.

TAXES

AB 1611 Disallows use of 1031 exchange tax break if seller owns 50 or more rental houses.
SB 974 Prop 19 exemption for special needs trusts.
SB 1402 Reduces cost of appealing a tax assessment.

MISCELLANEOUS

AB 1957 Prevents use of straw buyers to take advantage of owner occupancy preference in foreclosure auctions.
AB 2387 First generation homebuyer assistance.
AB 2581 Program to help affordable housing tenants buy homes.
SB 880 Caps document fees for townhouses and condos.
SB 1320 Protects buyers from delays due to hidden liens.

HOMELESSNESS

AB 1556 More rights for residents in drug-free housing.
AB 1573 Adds survivors of domestic violence, human trafficking, and sexual assault to supportive housing priority list.
AB 1708 Makes it easier for small cities to get funding.
AB 2146 Reduces paperwork for moving into supportive housing.
AB 2320 More flexibility for Homekey funding.
SB 967 Allows low barrier shelters to count towards RHNA housing production goals.

YOUTH

AB 673 Housing grants for unaccompanied homeless youth.
AB 1899 Creates statewide office of Youth Homelessness Prevention.
SB 492 Youth housing bond.

REMOVING TENANT PROTECTIONS

AB 1771 Explores removing onsite manager requirements.
AB 2689 Allows affordable housing to evict higher income tenants.
SB 1335 Allows landlords to dispose of tenant property in common space in similar way to property left behind after moveout.

TENANT APPLICATIONS / FAIR HOUSING

AB 1776 Bans anticompetitive conduct by a single firm.
AB 1963 Requires landlords to accept portable screening reports.
AB 2064 Bans discrimination based on criminal history.
SB 1296 Pet policy must be in ads + pet fee transparency.

more details at tinyurl.com/2026housingbills

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PLANNING

AB 2295 Allows local government to fund affordable housing in another jurisdiction and count portion of units toward RHNA housing production goals.
AB 2296 Extends duration & staggers timing of RHNA process.
AB 2741 Allows affordable housing overlays of nonresidential and mixed use zones to count towards RHNA goals.
SB 1361 Bans local government from limiting existing or planned transit to avoid SB79 upzonings.

COASTAL HOUSING PRODUCTION

SB 963 More certainty of timelines for coastal permits.

ACCESSORY DWELLING UNITS

SB 1117 Reduces ADU development impact fees.
SB 1196 Faster electrical connections for ADUs.

COST REDUCTION

AB 1070 Allows use of Residential Code for 3-10 unit buildings
AB 1406 Condo deposit reform.
AB 1815 Standardizes building codes for factory-built housing.
AB 1903 Condo Construction Defect Liability reform.
AB 1926 Requires HCD to review impact of new regulations on housing costs, and also recommend cost reductions.
AB 2044 Requires cost estimate of impact for proposed regulations.
AB 2058 Allows 3rd-party inspections of factory built housing.
AB 2166 Low cost financing for factory built housing.
AB 2252 Allows 6-story single stair buildings.
SB 1036 Limits fees for demolitions, water, sewer, etc.
SB 1415 Funded inclusionary housing: property tax exemption for low & moderate income units in mixed income building.

FASTER APPROVALS

AB 748 Requires local govts to have preapproved plan programs.
AB 1294 Statewide standardized planning application.
AB 1621 Speeds up building permit review.
AB 1710 Locks in regulations at time of application.
AB 1738 Allows remote inspections for nonstructural work for small ADUs / JADUs + minor renovations of 1-2 unit buildings.
AB 1751 CEQA exemption for townhouses except in San Francisco.
AB 1997 Faster approvals and more certainty in the process.
AB 2118 Cleanup bill for housing in commercial zones (AB2011).
AB 2390 Cleanup bill for streamlined approvals (SB35/SB423).
AB 2433 More flexibility & faster approvals for Density Bonus bldgs.
AB 2601 Allows lot splits & condo maps to be done in parallel, and allows SB9 condos so all 4 homes can be sold separately.
SB 1014 Transparency of required onsite/offsite improvements.
SB 1258 Streamlines cleanup & redevelopment of brownfields.
SB 1344 Stronger deterrent against lawsuits against affordable housing.

OTHER PRODUCTION BILLS

AB 2005 Allows investors to do SB9 lot splits as long as the lots are sold to owner-occupants.
AB 2252 Allows small bldgs with up to 6 floors with 1 stair.
AB 2074 Cities over 400,000 people required to have at least one downtown highrise zone with streamlined approvals..
AB 2676 Strengthens 2019's SB330, extends ban on housing moratoriums to sphere of influence around a city.
SB 677 Cleanup bill for housing near transit (SB79).
SB 1116 Cleanup bill for small lot subdivisions (SB684/SB1123).
SB 1169 Extends tentative subdivision expiration date.
SB 1216 Allows cities that build lots of housing to opt out of some state housing laws.

NEW ZONING RESTRICTIONS

AB 1674 Requires replacement of grocery stores if no others nearby.
AB 2415 Allows smaller cities with multiple SB79 zones near transit to reduce zoning in some already designated historic districts.
AB 2576 Allows more historic sites to be exempted from SB79.
SB 979 Subjects RHNA housing goals to judicial review.
SB 1229 Limits coastal permit exemption for rebuilding after a disaster to pre-disaster owners.
SB 1326 Expanded protection for tribal cultural resources during CEQA.
SB 1383 Bans use of density bonus to remove labor standards.

AFFORDABLE HOUSING

COST REDUCTION

AB 1265 Tax incentives for rehabbing historic bldgs for housing.
AB 2626 Allows HCD to waive certain ongoing fees.
AB 2748 Partial exemption from EV charging requirements.
SB 1170 Allows nonprofits to join a JPA to get cheaper insurance.

FUNDING

AB 736 / SB 417 $10 billion housing bond ballot measure.
AB 1165 Earmarks state funding for housing.
AB 2020 Allows reserves to be transferred between properties.
AB 2110 Allows tax increment financing districts for housing.
AB 2185 Removes barriers to funding factory built housing.
AB 2552 Allows transportation fees to fund housing near transit.
SB 1091 Community Anti-displacement and Preservation Program: purchasing existing bldgs for affordable housing.
SB 1322 Aligns state grants for tribes with federal requirements.

SOCIAL HOUSING

AB 2094 Establishes Social Housing coordinator in HCD.

STUDENT & EDUCATOR/STAFF HOUSING

AB 1623 Counts student housing towards RHNA housing production goals.
AB 1732 CEQA exemption for UC, CSU, & community college housing.
AB 2176 Creates working group with admin, faculty, & students.
AB 2480 Moderate income student housing density bonus.
AB 2766 Rent discounts for foster & homeless youth.
SB 916 Deters lawsuits against student housing.

RESIDENTIAL CARE FACILITIES

AB 1567 Allows residential care facilities to count towards RHNA housing production goals.

VETERANS

AB 2022 & SB 888 Expanded eligibility for property tax discount for disabled veterans & their families.

TENANT PROTECTIONS

AB 2128 Bans housing authorities & landlords receiving vouchers from putting work requirements or term limits on tenants.
AB 2350 Bans predatory "Rent Now, Pay Later" loans.
AB 2609 Caps on pet rent and pet deposits.
AB 2616 Maximum indoor temperature + right to install cooling.
SB 1155 Eviction moratorium for federal workers during shutdowns.
SB 1243 Protections for immigrant tenants affected by ICE.
SB 1365 Expanded enforcement of price gouging laws.

FARMWORKER HOUSING

AB 2264 Allows district ag associations to build affordable housing.
AB 2270 Tax credit funding for farmworker housing.

MOBILE HOMES / MANUFACTURED HOUSING

AB 1543 **Cap on annual** mobile home rent increases.
AB 1817 More accountability in filing mobile home evictions.
AB 2012 Makes it easier to transport a mobile home.
AB 2596 Protections for age 55+ mobile home parks.
SB 996 Allows mobile homes to be classified as real property, to make financing easier.
SB 1092 More transparency and time for resident organizations to buy a park being sold.
SB 1093 Post-disaster assistance and protections.

Contact your Legislators at
findyourrep.legislature.ca.gov

21 Elements

Housing Accountability Act

The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by **meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects** and emergency shelters.
California Government Code § 65589.5(a)(1)(K)

Conceptual Framework for State Housing Laws

Tonight's Focus

- California has passed **209 housing-related laws** since 2017.
- **Many decisions are now ministerial.** Discretion moved upstream, before projects reach the commission.
- Tonight covers **where commissioners still exercise judgment with respect to housing** and how to use it well.

State Mandates, Local Realities

- **Volume:** Dozens of new housing laws every year
- **Ambiguity:** Unclear how to interpret or apply
- **Capacity:** Insufficient funding and staffing to keep up
- **Control:** Less local discretion, narrower Commission role

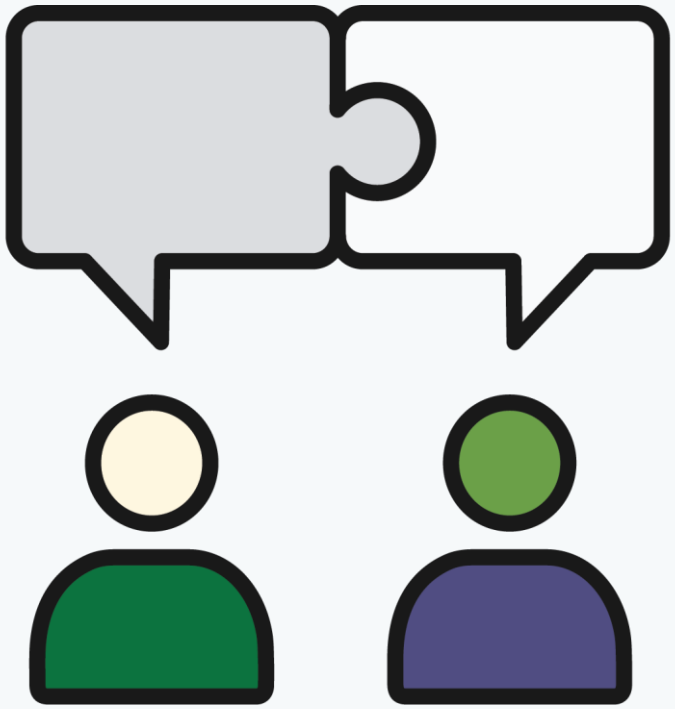
“There used to be a time this commission had real discretion to approve or deny projects.

But in recent years and decades, the state of California has taken most of the discretion away from us. There’s definitely been a debate in recent months about the future of this commission. Why do we exist? If we don’t have any discretion, we just have to approve projects. Why do we exist?”

David S. Gregoire, Chair, West Hollywood Planning Commission

One Team, One Problem

- **Same pressure, different seats.** Staff carries the legal burden. Commissioners carry the political one.
- **Staff's hands are tied too.** "Ministerial" and "locked in at submittal" are legal limits, not staff preferences.
- **Public friction costs public trust.** Public friction between staff and commission erodes public confidence in the process itself.
- **The systems, they are a changin'.** Over time, the system will work more smoothly.



Working Effectively with Staff

- **Clearly communicate to staff** what the commission needs in order to make well-informed decisions.
- **Raise legal or procedural questions** with staff before the hearing.
- Remember that **staff is often constrained by advice from legal counsel.**
- If you disagree with a staff recommendation, **state specific reasons for your decision**.
- **Do not assume** that staff is wrong and a critic is right.
- When you're unsure whether something is discretionary, **ask directly.**

2026 New State Housing Laws

- The Legislature passed several housing bills this session. Most made technical updates to details in existing law.
- Tonight, we focus on the core framework, not the 2026 changes.
- For details on new housing laws, attend the ABAG Regional Housing Technical Assistance Program's **New State Housing Laws webinar**.

Tier 1: Full Discretion

- **Your discretion did not disappear. It moved upstream.**
- Commissions once exercised judgment project by project.
- State law removed that case-by-case judgment for housing projects that meet objective standards.
- The state left you the authority to shape and recommend those standards.
- **General Plans, specific plans, rezonings, objective design/development standards** remain core commission work.

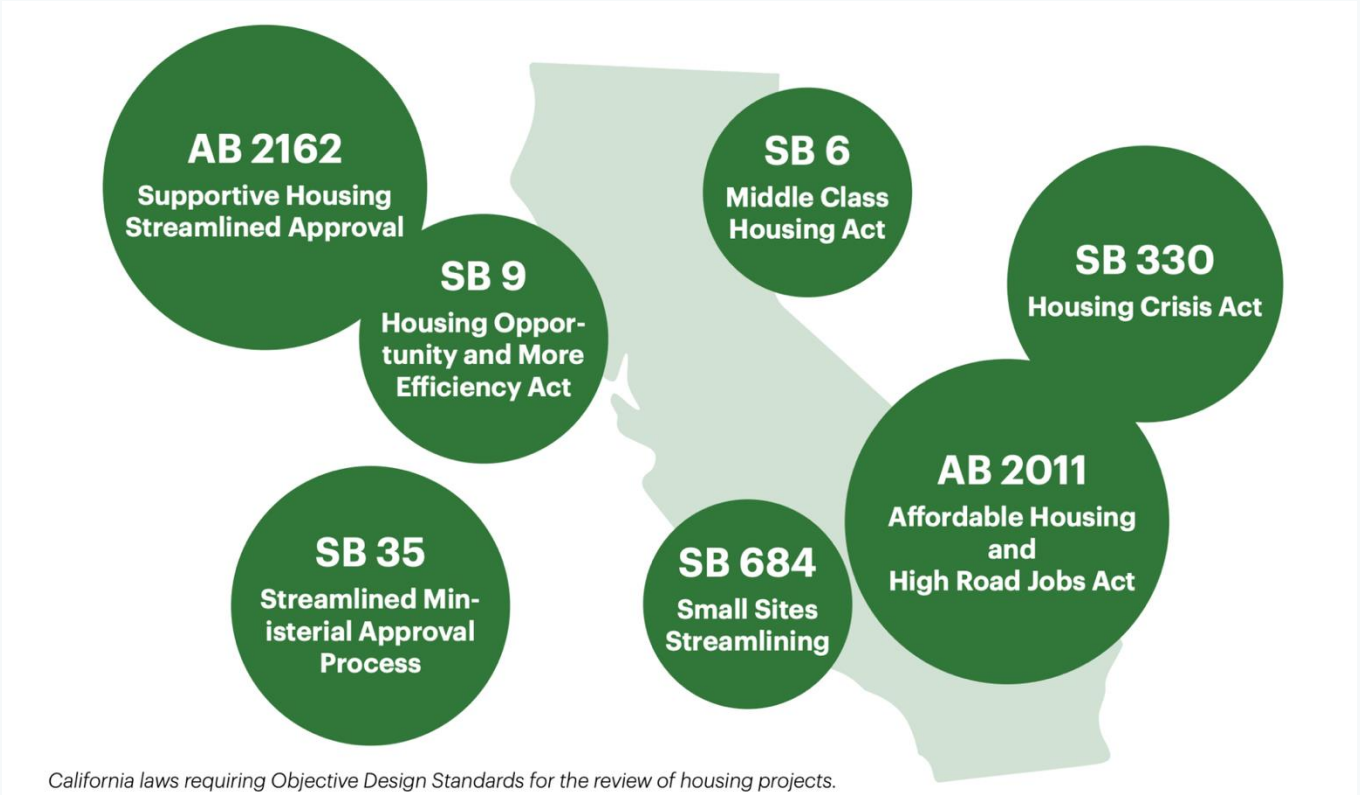
From Projects to Policy

The “ever-evolving armada of state laws really changed the Planning Commission from a body focused on project-specific approvals to one that gets to focus on the biggest projects and most importantly, policy. It’s entirely appropriate for the commissioners to focus on real questions about the planning of the city, rather than being forced to argue over someone’s proposal to build a new deck on their condo.”

Dan Sider, Chief of Staff, San Francisco Planning Department

State Housing Laws Require Objective Standards

- Starting with SB 35 in 2017, the state tied fast, ministerial approval to **one condition: the project meets standards that are objective.**
- The **Housing Accountability Act** carries the same rule forward. A housing development project that meets objective standards in effect when the application was deemed complete cannot be disapproved or approved with conditions that reduce density – unless specific findings are made.



California laws requiring Objective Design Standards for the review of housing projects.

Ministerial vs. Discretionary Review

Ministerial Review

- Staff confirms the project meets applicable objective standards.
- No judgment call in reaching the decision.
- No CEQA review.

Discretionary Review

- Staff and commissioners weigh more than whether objective standards are met.
- Commissioners can shape the project — design changes, mitigation measures, conditions of approval.

What Are Objective Standards?

- An objective standard **involves no personal or subjective judgment** by staff or the commission.
- It must be **verifiable against an external, measurable benchmark** that both the applicant and the reviewer can check before an application is even submitted.
- If a standard depends on how someone interprets it, **it isn't objective,** and it can't be the basis for denying or conditioning a compliant housing project.
- A required setback of 15 feet is objective. A requirement that a building relate well to the neighborhood is not.

Objective or Not?

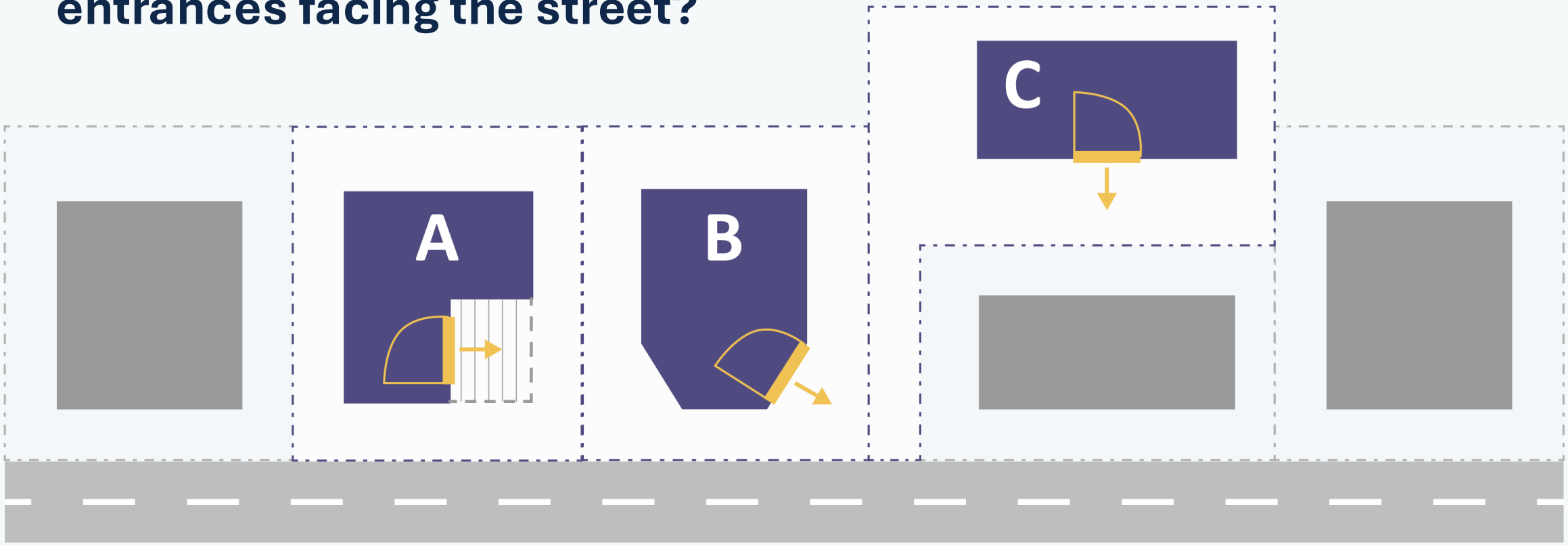
- The roof shall be red.
- The structure's height shall be no more than 10 feet higher than the neighboring building heights.
- The primary entrance shall face the street.

Not Objective!

- The roof shall be red. **Red can mean many things!**
- The structure's height shall be no more than 10 feet higher than the neighboring building heights. **What does "neighboring" mean? What if one neighboring building is 20 ft. and another is 40 ft.? What if one of the adjacent parcels is vacant?**

Also Not Objective!

- The primary entrance shall face the street. **Are the primary entrances facing the street?**

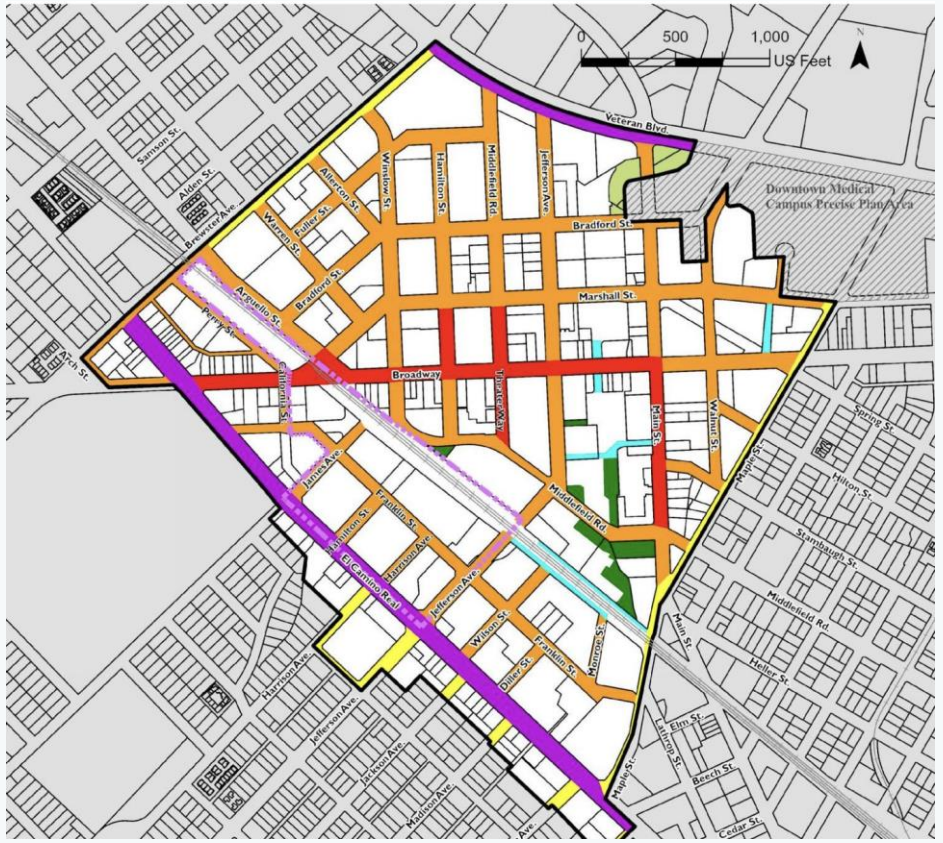


Benefits of Objective Standards

- Objective standards **define a community's priorities** before projects come in, not during review.
- Applicants know the requirements upfront. They **design to the target the first time** and submit fewer resubmittals.
- Projects that meet the standards can move through **staff review or a limited hearing,** cutting review time for everyone.
- Objective standards **protect local control** rather than remove it.

Redwood City's Downtown Precise Plan (DTPP)

- The DTPP **took effect in January 2011.**
- It covers **183 acres** of Redwood City's historic core, within a quarter mile of the Caltrain station, including two historic residential neighborhoods.
- The plan has driven significant office and residential development and helped revive downtown.



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DTPP: Why It Worked

- **Objective standards provided predictability.** Developers valued knowing the rules upfront.
- **CEQA clearance paired with those standards** reinforced that predictability — compliant projects moved straight to approval.
- The plan's 2011 adoption **coincided with a market upswing,** which amplified its effect.

DTPP: The Tradeoff and Key Takeaways

The Tradeoff

- Rigid, objective standards left little room for site-specific constraints.
- The standards did not always lead to well-designed buildings.

Key takeaways

- Redwood City is developing a new downtown plan. It may offer a **menu of options** for meeting objective standards, adding flexibility alongside predictability.
- Developers can waive out of requirements through State Density Bonus Law. Even so, **objective standards still matter:** they convey what the City expects and give staff a baseline to negotiate from even when waivers apply.

Questions?

Tier 2: Conditional Discretion

- **This is the tier where commissioners get in trouble.** The process still looks discretionary. There is a hearing, public comment, a motion, a vote.
- What changed is that **the reasons for a "no" are now enumerated by statute.** A "no" for any other reason exposes the jurisdiction to risk.
- You do not have to like these laws to want to avoid being the vote that costs your jurisdiction a lawsuit, penalties, and attorney's fees.

The Housing Accountability Act (HAA)

- A housing development project that is consistent with objective standards **cannot be denied or have its density reduced** unless the jurisdiction makes specific written findings, supported by a preponderance of the evidence.
- A project is deemed consistent if substantial evidence would allow a reasonable person to conclude it's consistent.
- **The jurisdiction carries the burden** of showing its decision conformed to the HAA.
- **Only objective standards** apply to a project's review.

HAA: Housing Development Project

- **Residential-only** projects qualify outright.
- **Mixed-use** projects qualify if at least two-thirds of the square footage is designated for residential use.
- No portion of the project can be designated for **transient lodging.**
- A portion without transient lodging can still qualify as a housing development project and be approved separately.

HAA: Findings Required to Deny or Reduce Density

- If a project complies with objective standards, **the jurisdiction must approve it and cannot reduce its density,** unless specific findings are made:
  - The project would have a specific, adverse impact on public health or safety.
  - That impact must be quantifiable and based on an objective, written public health or safety standard.
  - The standard must have been in effect when the application was deemed complete.
  - No feasible mitigation exists other than denial or conditions that reduce the density.

HAA: Penalties for Noncompliance

- **Court orders:** Courts may compel approval if the jurisdiction acted in bad faith, and may order compliance within a specified timeframe.
- **Monetary penalties:** Minimum fines of $10,000 per unit, with increased penalties for bad faith violations.
- **Attorney's fees:** Mandatory award to the applicant.
- **Additional remedies:** Further sanctions for continued noncompliance, and potential loss of local control over the project.

State Density Bonus Law (SDBL)

- Requires cities and counties to **grant extra units, plus relief from development standards and other local rules (called waivers and concessions),** to projects that include a set share of affordable, senior, or other qualifying units, or land dedication.
- **What it does:** lets developers build more units than local zoning allows, in exchange for affordability
- Qualifying triggers the bonus automatically.
  - AB 2433 (effective 1/1/2027) requires jurisdictions to proactively apply SDBL to housing developments that meet the affordability requirements to qualify for SDBL.
- Waivers and concessions must be granted unless the record supports a narrow statutory reason to deny.

How a Project Qualifies for a Density Bonus

- **Income-based thresholds**
  - 5% of units for very low income residents
  - 10% of units for lower income residents
  - 10% of units for moderate income residents (for-sale projects only)
  - 100% of units for very low, lower, or moderate income (max 20% moderate)
- **Other pathways:** There are other qualifying paths, including (but not limited to) providing senior housing or housing for disabled veterans.
- **Bottom line:** Meet one trigger, and the jurisdiction must grant a density bonus plus waivers and concessions.

How the Bonus Scales

- The bonus adds units **on top of what local zoning normally allows** — the base density.
- More affordable units means a bigger bonus. The increase moves on a **sliding scale,** tied to income level and percentage of affordable units.
- At the minimum qualifying thresholds, the bonus starts at 5 to 20%, depending on the project.
  - 20% bonus for 5% very low or 10% lower income units
  - 5% bonus for 10% moderate-income for-sale units
- **Bottom line:** the more deeply affordable units a project includes, and the higher the percentage, the larger the density bonus, up to the statutory cap.

Concessions (also known as Incentives)

- A concession **reduces or modifies a development standard, zoning standard, or design requirement.**
- It applies when the reduction results in **identifiable and actual cost reductions** that support affordable housing costs or rents.
- A housing development project that meets density bonus eligibility requirements is entitled to **a finite number of concessions** based on the amount of affordable housing provided and other factors.
- **Grounds to deny a concession** (burden of proof is on the jurisdiction):
  - It would not result in identifiable and actual cost reductions for the provision of affordable housing.
  - It would have a specific, adverse impact on health or safety, or on a property listed in the California Register of Historical Resources, with no feasible way to mitigate it.
  - It would be contrary to state or federal law.

Waivers

- A waiver applies when complying with a development standard would **physically preclude construction** at the densities, and with the concessions that SDBL permits.
- A housing development project that meets density bonus eligibility requirements may seek **unlimited waivers**
- **Grounds to deny a waiver:**
  - It would have a specific, adverse impact on health or safety, with no feasible way to mitigate it.
  - It would have an adverse impact on a property listed in the California Register of Historical Resources.
  - It would be contrary to state or federal law.

Bankers Hill 150 v. City of San Diego

- City approved a 20-story mixed use building that qualified as an SDBL project, granting several waivers of certain height and setback requirements.
- Development opponents sued the City, arguing that the project would not need these waivers if the project was altered to eliminate its proposed courtyard.
- The court rejected this argument, concluding that **the city could not demand that the project be redesigned** or stripped of amenities in order to meet local standards.

Exercise Setup

- Six-story, 135-unit housing development project next to a single-family neighborhood.
- Base zoning allows 100 units.
- Twenty units (20% of the base) are deed-restricted for low-income households. **That qualifies the project for a 35-unit density bonus and two concessions under SDBL.**
- The developer requests:
  - A **zero-foot upper-story step-back** instead of the required 15 feet,
  - **Relief from the fire code's 26-foot street width requirement,** and
  - **Relief from the city's ground-floor retail requirement.**
- Fifty neighbors attend the hearing. Too dense. Too close to our backyards. Not compatible with the neighborhood.

Q1: Step-Back Waiver

- **Question:** Can you deny the upper-story step-back waiver because of what you're hearing at the podium? On what grounds could you deny the step-back waiver?

A1: Step-Back Waiver

- **Question:** Can you deny the upper-story step-back waiver because of what you're hearing at the podium? On what grounds could you deny the step-back waiver?

Answer: No. Public opposition is not evidence. Once a project qualifies under SDBL, the city must grant requested waivers unless it makes written findings that a waiver would cause a specific, unmitigable adverse impact to health or safety or to a property registered on the California Register of Historical Resources, or is contrary to state or federal law.

Q2: Rooftop Courtyard

- **Scenario:** The developer's design includes a landscaped rooftop courtyard on part of the sixth floor. A neighborhood association argues the upper-story step-back waiver isn't necessary, because a smaller building without the courtyard wouldn't need it.
- **Question:** Is this a valid basis to deny the upper-story step-back waiver?

A2: Rooftop Courtyard

- **Scenario:** The developer's design includes a landscaped rooftop courtyard on part of the sixth floor. A neighborhood association argues the upper-story step-back waiver isn't necessary, because a smaller building without the courtyard wouldn't need it.
- **Question:** Is this a valid basis to deny the upper-story step-back waiver?

Answer: No. Per the *Bankers Hill 150* decision, the city cannot require a redesign or the removal of amenities to avoid a waiver. The city evaluates the project as submitted, not a hypothetical alternate version.

Q3: Design Guidelines

- **Scenario:** The design guidelines call for facade materials to be in the craftsman style and use earth tones. Staff recommends conditioning approval on revised facade materials being in the craftsman style and using earth tones.
- **Question:** Can you impose that condition?

A3: Design Guidelines

- **Scenario:** The design guidelines call for facade materials to be in the craftsman style and use earth tones. Staff recommends conditioning approval on revised facade materials being in the craftsman style and using earth tones.
- **Question:** Can you impose that condition?

Answer: No. The design guidelines require a subjective judgment call with no external, pre-adopted benchmark, which fails the HAA's objective standard test.

Q4: Ground Floor Retail Concession

- **Scenario:** Local code requires ground floor retail on 75% of the street frontage, 60 feet deep. The applicant requests a concession from this requirement, arguing that the retail space would sit vacant, cost more to build than it will earn, and require the applicant to provide fewer affordable units.
- **Question:** Can the commission deny this request for a concession?

A4: Ground Floor Retail Concession

- **Scenario:** Local code requires ground floor retail on 75% of the street frontage, 60 feet deep. The applicant requests a concession from this requirement, arguing that the retail space would sit vacant, cost more to build than it will earn, and require the applicant to provide fewer affordable units.
- **Question:** Can the commission deny this request for a concession?

Answer: Probably not. The city must grant a requested concession unless it makes specific written findings, backed by substantial evidence, that a concession won't produce identifiable and actual cost reductions; would cause a specific, unmitigable adverse impact to health or safety or to a property registered on the California Register of Historical Resources; or is contrary to state or federal law.

Note: HCD's position is that ground floor retail relief requires a concession, not a waiver.

Q5: Fire Access Waiver

- **Scenario:** The site fronts a 22-foot-wide street. The jurisdiction's local fire code, in effect when the application was deemed complete, requires 26 feet of unobstructed width for fire department access to buildings three stories or taller. The project is six stories. The applicant requests a waiver of this standard. The Fire Marshal confirms in writing that no engine can safely deploy an aerial ladder on this street for a building this height.
- **Question:** Can the commission deny this request for a waiver?

A5: Fire Access Waiver

- **Scenario:** The site fronts a 22-foot-wide street. The jurisdiction's local fire code, in effect when the application was deemed complete, requires 26 feet of unobstructed width for fire department access to buildings three stories or taller. The project is six stories. The applicant requests a waiver of this standard. The Fire Marshal confirms in writing that no engine can safely deploy an aerial ladder on this street for a building this height.
- **Question:** Can the commission deny this request for a waiver?

Answer: Maybe. The denial must rest on the adopted fire access standard in the code, which would qualify as a health and safety standard that may be a valid ground to deny the requested waiver. The city must also show that no feasible mitigation exists.

Questions / Reflections

Tier 3: Some Things Stopped Being Votes

- **Some projects never reach you.** State law made certain project types ministerial. Staff approves them administratively, with no hearing and no vote.
- For projects that still come to you, state law now limits **how long you can take, how many hearings you can hold, and which version of your code applies.**

Ministerial Laws at a Glance

- Several State housing laws require **ministerial (non-discretionary) approvals.** These projects typically do not go before the Planning Commission.
- **Common ministerial housing types:**
  - ADUs
  - SB 9 (urban lot splits and duplexes)
  - AB 2011 (multifamily housing on commercially zoned land)
  - SB 4 (Yes in God's Backyard)
  - SB 684 / 1123 (small lot subdivisions)
  - SB 35 / 423 (streamlined multifamily housing)
  - SB 79 paired with SB 35 / 423 (fully ministerial for transit oriented residential development when both apply)
  - AB 1751 (Missing Middle Townhome Ownership Act, effective 1/1/2027)
- **Opportunities for Planning Commissioners to exercise discretion:** ADU condoization ordinance, SB 4-related outreach to religious organizations, adoption of objective design standards.

Case Study: Marina Safeway

- Developer proposed replacing the Marina Safeway with **approximately 848 units across two towers** in San Francisco.
- In August 2026, Planning confirmed the project met AB 2011's eligibility requirements.
- Eligibility triggered a state-mandated shot clock.
- The department must now **approve or deny within 90 days,** ministerially, with no discretionary hearing.

The Permit Streamlining Act (PSA)

- The PSA doesn't limit what the Commission can decide. **It limits how long you have to decide.**
- Applies to discretionary and ministerial housing projects.
- **30 days** to determine if an application is complete, once submitted.
  - Miss that window, and the application is automatically deemed complete, even if information is missing.
  - Once deemed complete, staff can't add new requirements in a later round.
- Missing the deadline to approve or deny the project itself has more significant consequences – the project is deemed approved by operation of law.
- **Takeaway:** Many projects will be reviewed and approved administratively rather than requiring a public meeting or hearing.

Five Hearing Limit

- The Housing Crisis Act prohibits jurisdictions from holding **more than five hearings** on a compliant housing project after the application is deemed complete.
- **Hearings that count against the 5-hearing limit:** All Planning Commission and City Council hearings following completeness; project appeals.
  - Staff frequently reserves a hearing for an appeal in case there is one.
- **Hearings that don't count against the 5-hearing limit:** Developer-initiated or sponsored community meetings; CEQA-related hearings (e.g., scoping meetings)
- **Takeaway:** You cannot continue an item indefinitely. Continuances spend a limited resource.

SB 330 Vesting

- SB 330's preliminary application process allows an applicant to submit early project information.
- Filing a complete preliminary application **vests the project under the rules in effect that day.**
- Ordinance changes after the preliminary application date do not apply.
- **Takeaway:** The applicable rules may be older than what's currently on the books. Ask staff which version of the code governs.

Housing Element and RHNA

- **Housing Element compliance determines whether Builder's Remedy applies,** enabling projects to sidestep local zoning.
- Every 8 years, the state assigns cities and counties a RHNA — a fixed number of units to zone for, by income level. Jurisdictions meet this obligation through their Housing Element.
- The current cycle runs 2023–2031. Most Bay Area jurisdictions adopted compliant Housing Elements after the January 31, 2023 deadline.

Housing Element Compliance

- **Adoption isn’t the finish line.** Certified jurisdictions must complete any committed rezoning by statutorily specified deadlines.
- **HCD can revoke compliance anytime.** HCD has standing authority to review any action or inaction inconsistent with an adopted Housing Element — including a missed rezoning — and revoke its compliance finding.
- A revoked finding **reopens Builder’s Remedy exposure.**

Builder's Remedy: When it Applies

- If the jurisdiction falls out of Housing Element compliance, qualifying projects can **sidestep local zoning** via the Builder's Remedy.
- **Qualifying is easier since 2025.** AB 1893 lowered the affordability threshold for a project to qualify for Builder's Remedy: 7% extremely low-, 10% very low-, 13% lower-income, or 100% moderate-income units.
- **Density minimums and maximums.** AB 1893 also requires Builder's Remedy projects to meet minimum and maximum density requirements.

Builder's Remedy: Maximum Density

- **Greatest of**:
  - 50% greater than the default density (= 30 or 45 du/ac);
  - 3x the density allowed by the General Plan, zoning ordinance, or State law, whichever is greater; and
  - The density that's specified in the Housing Element.
- **Higher densities may be available** (e.g., if the project is within ½-mile of a major transit stop). Density bonus may be layered on.

Builder's Remedy: Minimum Density

- Within ½-mile of a commuter rail or heavy rail station: The project must meet the site's minimum density requirement, if any
- For other sites, not within ½-mile of a commuter rail or heavy rail station: If there is a minimum density for the site, the project must meet the lesser of:
  - The local agency's minimum density for the site; and
  - Half of the jurisdiction's default density per Housing Element Law (= 10 or 15 du/ac)

Builder’s Remedy: What Local Rules Survive

- Local objective design standards still apply, drawn from the zoning classification that permits the project’s density and unit type.
  - Importantly, **your locally adopted standards keep working** even in the worst-case scenario.
- **Limits on that authority:** Standards can’t render the project infeasible or block its entitled density. The jurisdiction bears the burden of proof.

Coastal Zone: What's different

- **SDBL:** Coastal Act applies. Any bonus, concessions, waivers must be consistent with the Coastal Act.
- **Builder's remedy:** Compliance with Coastal Act may require denial of a CDP for project (e.g., LCP prohibits residential uses on the site)
- **SB 9:** Coastal Zone land use regulations continue to apply. No public hearings are required for CDPs for SB 9 projects.
- **SB 35 / 423:** Coastal-specific exclusions (e.g., parcels not subject to an LCP or certified land use plan, not zoned for multi-family housing, vulnerable to 5 ft of sea level rise).
- **AB 2011:** Projects prohibited unless SB 35 / 423 coastal zone requirements are met (except the requirement that the parcel be zoned for multi-family housing).

Review & Closing

- **Three tiers of discretion:**
  - Full discretion
  - Statutorily limited discretion
  - Little to no discretion
- **Your discretion moved upstream.** Use it well where you still have it.
- **Objective standards** are how your community's priorities show up in projects.

Resources

ABAG

- New State Housing Laws Webinar registration
- SB 79 Resources
- SDBL Resources
- Replacement housing resources (SDBL and SB 330)
- Ground Floor Retail Requirements: Waivers and Concessions

HCD

- Housing Law Fact Sheets

Other resources

- SPUR's California Housing Laws Guide and Database
- 21 Elements Annual Progress Reports Tracker