



Legislative Update (2021 Bills)

American Planning Association
Orange County Section

April 28, 2022

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Outline of Today's Update

- **Housing Bills**

- **Other Bills**

- Mitigation Fee Act Fees (AB 602)
- Wireless Facility Permit Processing (AB 537)
- Electric Vehicle Stations Parking / Permitting (AB 970)
- CEQA (AB 819, AB 140)
- Safety Element - Evacuation Routes (AB 1409)

- **Pending Legislation**

Housing Bills

- **SB 9** (Duplexes, Lot Splits)
- **SB 8** (Housing Crisis Act)
- **AB 215 / AB 1398 / AB 1304 / AB 1398** (Housing Elements)
- **SB 478** (FAR Limits)
- **SB 290 / AB 728 / AB 571 / AB 634** (Density Bonus)
- **AB 803** (Small Lot Development)
- **SB 10** (Mid-Sized Housing)
- **AB 345** (ADUs)
- **AB 1174** (SB 35)
- **AB 1029** (Prohousing Policies)
- **AB 787** (RHNA Production)
- **AB 491** (Equity in Mixed Income Developments)
- **AB 721** (Covenant Modifications to Allow Affordable Housing)
- **AB 838** (Tenant Complaints)

SB 9: Duplexes & Urban Lot Splits

Ministerial Approval Process

- City must ministerially approve:
 - Housing development of up to 2 units on parcels in single-family residential zones
 - Urban lot splits on parcels in single-family residential zones
- Together, this allows property owners to build up to four housing units on a single parcel in a single-family residential zone
- Local ordinance exempt from CEQA

SB 9 Project Approvals Prohibited

- **“SB 35” Location Exceptions**
- **Demolition / Alteration of:**
 - Deed-Restricted Affordable Housing
 - Housing Subject to Rent Control
 - Tenant-Occupied Housing (Last 3 Years)
- **Parcel was removed from rental market in last 15 yrs under Ellis Act**
- **Historic District / Site / Landmark**

Existing Unit Protection

- An SB 9 development project cannot result in the demolition of more than 25% of the existing exterior structural walls, unless the project meets one of the following applies:
 - A local ordinance allows it
 - The site has not been occupied by a tenant in the last 3 years

Objective Local Standards

- Local agency may impose objective zoning, subdivision, and design review standards BUT cannot impose:
 - Standards that would physically preclude construction of up to two units or prevent either unit from being at least 800 square feet
 - Side / rear setbacks of more than four feet
- Must require ban on short-term rentals

Parking Requirements

- For a duplex or adding one unit to create a duplex (not application for one single-family home), City may require off-street parking of one space per unit except if:
 - The parcel is located within one-half mile walking distance of either a high-quality transit corridor or a major transit stop
 - There is a car share vehicle located within one block of the parcel

SB 9 Urban Lot Splits

- The City must ministerially approve parcel maps for urban lot splits within single-family residential zones that meet the following:
 - No more than two parcels may be created
 - Parcels must be approximately equal in size, basically a 60 / 40 split
 - Each parcel created must be at least 1,200 square feet, unless city allows smaller parcels

SB 9 Urban Lot Splits Prohibited

- **“SB 35” Location Exceptions**
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Limits on SB 9 Urban Lot Splits

- Owner may not split a lot under SB 9 if SB 9 was used to create the lot
- Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using the SB 9 urban lot split process
 - No chain of SB 9 urban lot splits

Urban Lot Split Standards

- Lot split must conform to all applicable **objective** requirements of Subdivision Map Act
 - May **not** apply tentative map findings
- City **may** impose objective zoning standards, subdivision standards, and design standards **BUT** must allow:
 - Two units, 800 square feet each
 - Four-foot side / rear yard setbacks
- Nonconforming Zoning Conditions

Parking Requirements

- City may require off-street parking of up to one space per unit except if:
 - The parcel is located within one-half mile walking distance of either a high-quality transit corridor or a major transit stop
 - There is a car share vehicle located within one block of the parcel

SB 9 Lots & Public Improvements

- City cannot require:
 - Dedications of right-of-way
 - Offsite public improvements
- City may require:
 - Public utility easements
 - Right-of-way access (including that parcels must “adjoin public right of way”)

SB 9 Lots & Use Restrictions

- Residential uses only
- No short-term rentals
- Owner occupancy
 - Owner shall sign affidavit stating their intent to occupy one of the units as their principal residence for at least three years
 - Exceptions for community land trusts and qualified nonprofit corporations

Denials under SB 9

- Local agency may deny urban lot split or SB 9 housing project IF:
 - The **building official** makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a “**specific, adverse impact**” upon the public health and safety or the physical environment and for which there is **no feasible method to satisfactorily mitigate or avoid** the specific, adverse impact

SB 9 and ADUs / JADUs

- “Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.”
 - **Maximum of four units!**

SB 9 and Coastal Act

- **Coastal Act remains intact BUT**
 - Local agency shall not be required to hold public hearings for coastal development permit applications for an SB 9 housing development or lot split

SB 8: Housing Crisis Act Updates

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- **Extends Original SB 330 Provisions until 2030**
- **Important Change to Definition of “Housing Development Project”**
- **Changes SB 330 “No Net Loss” Provision**
 - Timing Issue (“Concurrently”)
- **Changes SB 330 “Replacement Unit” and Tenant Protection Requirements**

“Housing Development Project”

HAA Definition

- Residential Units Only
- Mixed Use Projects with at least 2/3 Square Footage for Residential
- Transitional / Supportive Housing

Housing Crisis Act

- HAA Definition PLUS
 - Single Dwelling Unit
 - Projects involving Nondiscretionary Approvals or BOTH Discretionary and Nondiscretionary Approvals

Use of New Definition

- **New “Housing Development Project” definition applies to the following:**
 - Five-Hearing Limit (Gov. Code § 65905.5)
 - Historic Site Determination (Gov. Code § 65913.10)
 - Permit Streamlining Act (Gov. Code §§ 65940, 65943)
 - Preliminary Application (Gov. Code § 65941.1)
 - Time Periods for Project Approval after CEQA Determination (Gov. Code § 65950)
 - Housing Crisis Act (Gov. Code § 66300)

SB 8 – Additional Changes

- **Vesting under Preliminary Application Process**
 - Provides additional time for construction of affordable projects before City may impose new rules (3.5 years)
- **Clarifies “Hearings” for 5-Hearing Limit**
 - Includes appeal or meeting for density bonus application

SB 330 “No Net Loss” Provision

- Jurisdiction may not “reduce intensity of land use” in any land use designation / zoning district or downzone any specific property to a “less intensive use” below what was allowed on January 1, 2018
 - Unless jurisdiction “concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.”
 - Gov. Code 66300(b)(1)(A) and (i)

SB 8 – “No Net Loss” Changes

- Meaning of “reduce intensity of land use”
- Meaning of “concurrently”
 - At **SAME** meeting of the legislative body **unless**
 - The action resulting in loss of residential capacity is **requested by the applicant**, then “concurrently” means within 180 days
 - Example: Applicant requests zone change from residential to industrial / commercial or from multifamily to single-family

SB 8 – Replacement Unit Req'ts

- **General Requirements under SB 330**
 - Replace same number of units as will be demolished
 - Replace the “protected units” (affordability)
- **Nonconforming Housing Proposals**
 - Replace existing housing with same number of units, **even if nonconforming!**
- **Applicable to One-Unit Proposals**

SB 8 – Tenant Protections

- **Right to Stay**

- Tenants may occupy dwelling unit until 6 months before the start of construction activities

- **Right of Return**

- If occupant required to leave but unit is ultimately not demolished, must be allowed to return at prior rent

- **Relocation Benefits**

- **Only for lower income households**

SB 330 – Right of First Refusal

- Right of first refusal for a “comparable unit” in new development, affordable to the household at an affordable rent
 - Now, only applies to lower income households
 - “Comparable unit” when single-family home protected unit(s) replaced with multifamily units:
 - Home \leq 3 BDs, same number of BDs as existing
 - Home $>$ 3 BDs, then 3 BDs
 - Not req’d to have similar square footage

SB 8 – Right of First Refusal

- Right of first refusal does not apply to:
 - A single proposed unit located on a site where a single protected unit is demolished
 - Units in a 100 % lower income housing project
 - But applies if occupant of demolished unit qualifies for residence in the new development
 - Occupants of short term rentals
 - Unlawful occupants of protected units

Housing Elements

Housing Elements: New Issues

- **New Substantive Requirements for AFFH**
- **New Procedural Requirements**
- **New Enforcement Mechanisms and Penalties for Noncompliance**
 - SB 478, AB 215, AB 1304, AB 1398

“Affirmatively Further Fair Housing”

- **Expands Required AFFH Analysis**

- Must show relationship between Site Inventory sites and City’s duty to AFFH
- Identify and examine patterns, trends, areas, disparities, and needs, both within the city and comparing the city to the region, based on race and other characteristics
- Assess contributing factors, including local and regional historical origins and current policies and practices, for fair housing issues

Housing Elements: Public Comment and HCD Review

- **Establishes a minimum 30-day public review period for initial draft housing element**
 - Then 10 days to incorporate public comments
 - HCD has 90 days to review draft HE and provide comments on the first draft
 - Before submitting subsequent draft to HCD, City must post it on website for 7 days
 - HCD has 60 days to review and comment on each subsequent draft (including adopted HE)

Penalties for Noncompliance

- Compliance = **timely** and **HCD-approved**
- **Removes** 4-Year Update Schedule as a Potential Penalty
- **Adds** One-Year Rezoning Requirement
 - Instead of three years, rezoning must occur within one year from statutory deadline
 - Rezoning includes adoption of minimum density and development standards
- **HCD Enforcement Actions**

HCD Authority / Enforcement

- **Expands Topics of HCD Enforcement**
 - Obligation to AFFH
 - SB 35 approvals
 - Zoning changes or housing approvals in violation of SB 330
 - Imposition of FAR Limits under SB 478
- **Allows HCD to Use Outside Counsel**

SB 478: FAR, Lot Coverage Limits

SB 478 (Gov. Code § 65913.11)

- **Limits Floor Area Ratio (FAR) for Housing Development Projects of 3 – 10 Units**
 - Must be ≥ 1.0 for Projects with 3-7 Units
 - Must be ≥ 1.25 for Projects with 8-10 Units
 - “Units” does **not** include ADUs / JADUs
- **Multi-Family or Mixed Use Zones**
 - Not Single-Family (No Overlap with SB 9)
 - Not Historic / Landmark
- **Prohibits CC&Rs that “effectively prohibit” or “unreasonably restrict” projects under § 65913.11**

SB 478 (Gov. Code § 65913.11)

May NOT Impose

- **Minimum Lot Size** if it would mean Denial of Project that meets the FAR Limits
- **Lot Coverage** if it would Physically Preclude Project that meets the FAR Limits

May Impose

- Height
- Setbacks
- Other Objective Standards

Density Bonus Law

Density Bonus Law (SB 290 / SB 728)

- **Student Housing Projects**
- **For-Sale Housing Developments**
 - Removes “common interest development”
 - Qualified Nonprofit Housing Corporations may purchase affordable units
- **Reduced Parking Ratios for Some Transit-Accessible Moderate Income Projects**
 - 0.5 spaces per BD

Additional Statutory Changes

- **AB 571** prohibits imposition of affordable housing impact fees on the affordable units in density bonus projects
 - Development impact fees
- **AB 634** allows enforcement of affordability requirements of longer than 55 years for inclusionary housing units

Density Bonus Law – “Waivers”

- May not impose development standards that have the effect of “physically precluding” construction of a development “at the densities or with the concessions or incentives permitted by this section.”
 - Gov. Code § 65915(e)(1)

Case Law

- *Schreiber v. City of Los Angeles*
- *Bankers Hill 150 v. City of San Diego*

AB 803 – Small Lot Subdivisions

AB 803 – Small Lot Subdivisions

- Encourages development of single-family housing units on (small) fee simple ownership lots
 - Adds Gov. Code § 66499.40
- Requires a substantially compliant housing element
- Site requirements include:
 - Initial Lot Size \leq 5 acres
 - Zoned for Multifamily
 - Substantially surrounded by qualified urban uses
 - Properties within 500' must be zoned for $<$ 30 du/acre
 - Not identified in Housing Element for low-income or very low income households

AB 803 – Add'l Requirements

- Average floorspace for proposed units \leq 1,750 net habitable square feet
- Site complies with external existing site setbacks
- Proposed units comply with existing height limits
- Required number of units depends on housing element (projected) and maximum allowable density
- Complies with applicable Subdivision Map Act provisions and non-conflicting general plan, zoning, subdivision, and design standards

AB 803 – Starter Home Revitalization Act of 2021

- Protection of Existing Units
- Local agency may **not** impose any of the following requirements:
 - Setback between the units, except as required in the California Building Code
 - Minimum size of the individual small home lots created
 - Enclosed or covered parking
 - Formation of a homeowners' association

AB 803 – Starter Home Revitalization Act of 2021

- **Local agency may:**
 - Condition approval and recordation of a small lot development upon issuance of a certificate of occupancy or final inspection for all units created
 - Apply inclusionary housing ordinance
 - Apply general plan, zoning, subdivision, and design standards and impose conditions not in conflict w/ statute
- **Findings for denial limited by statute**
- **Implementing ordinance authorized; not required**

SB 10: Local Ordinances to Encourage Mid-Size Housing

SB 10 – Upzoning in transit-rich areas or urban infill sites

- **City may adopt ordinance allowing up to 10 units / parcel in “transit-rich area” or on “urban infill site”**
 - Adds Gov. Code § 65913.5
 - Ordinance must include details required by statute including height and finding regarding consistency with AFFH
- **SB 10 ordinance exempt from CEQA**

SB 10 – Upzoning in transit-rich areas or urban infill sites

- To supersede zoning restriction imposed by local initiative, requires 2/3 vote – **subject of litigation!**
- SB 10 zoning not available for parcel designated as open-space or for park & recreational purposes by voter adopted initiative

SB 10 – Upzoning in transit-rich areas or urban infill sites

- Subsequent reduction of density prohibited
- Development of project of 10+ units on parcel(s) zoned per SB 10 ordinance cannot be approved ministerially or by right and not exempt from CEQA
- Subsequent additional upzoning subject to CEQA
- Authorization to adopt ordinance sunsets in 2029

Additional Housing Bills

AB 345 – Conveyance of ADUs

- Cities **must** allow ADUs to be sold or conveyed separately from the primary residence **if**:
 - ADU or primary home was developed by a “qualified nonprofit corporation”
 - Occupied by persons or families of low or moderate income (“qualified buyer”)
 - Tenancy in Common Agreement
 - Must be recorded and comply with provisions in Government Code § 65852.26

AB 1174 – Changes to “SB 35”

- Changes to details of Gov. Code § 65913.4
- Clarifies expiration of approvals and project modification provisions
- New objective building standards applicable to modified projects
- “Subsequent permits” and original standards
- Revised definition of “Affordable Rent”

AB 1029 – Housing Elements: Prohousing Local Policies

- Gov. Code § 65589.9(j)
- Adds as a “prohousing policy” the preservation of affordable housing units through the extension of existing project-based rental assistance covenants to avoid the displacement of affected tenants and a reduction in available affordable housing units

AB 787 – Conversion of Market Rate into Affordable Housing

- **Adds Gov. Code § 65400.2**
- **For annual reports, local agencies can count market rate conversions toward RHNA production targets**
 - Capped at 25% of agency's moderate-income RHNA
- **Qualifying conditions include:**
 - Units must not have been previously affordable to very low, low or moderate income households
 - Limits initial post-conversion rent & subsequent increases
 - Units subject to a 55-year recorded regulatory agreement that restricts affordability to moderate-income households
- **HCD forms should be updated in 2023**

AB 491 – Equity in Mixed-Income Multi-Family Structures

- Adds Health and Safety Code § 17929
- No “poor doors”
- Mixed-income multifamily structure:
 - Must provide occupants of the affordable units and occupants of the market rate units with equal access to common entrances, areas and amenities
 - May not isolate the affordable units within the structure to a specific floor or an area on a specific floor
- Declaratory of existing law

AB 721 – Covenant Modifications to Allow for Affordable Housing

- Adds Civil Code § 714.6
- Establishes process for owner of “affordable housing development” to modify or remove existing restrictive covenant language that:
 - (i) restricts the number, size, or location of the residences that may be built on the property, or
 - (ii) that restricts the number of persons or families that may reside on the property
- “Affordable housing development” means 100% affordable, for term of at least 55 years
- Exceptions (e.g., relate to purely aesthetic objective design standards or certain conservation easements)

AB 838 – Tenant Complaints

- **Adds Health & Safety Code § 17970.5**
- **Mandates local response to and process for addressing tenant complaints regarding:**
 - Substandard buildings
 - Lead hazards

Other (Non-Housing) Bills

AB 602 – Development Impact Fees

- **Adds Gov. Code § 66016.5 to specify standards and practices for local agencies to adopt an impact fee nexus study**
 - Note additional requirements for adopting development impact fees for housing development projects
 - Must calculate a fee imposed on a housing development project proportionately to the square footage of the proposed units of the development unless certain findings are made
 - Legal presumption of validity if use square footage metric

AB 602 – Development Impact Fees

- Requires a public hearing, with at least 30 days' notice, prior to adopting nexus study
- HCD to create nexus study template with method of calculating feasibility of housing at given fee level by Jan. 1, 2024
- Must update impact fee nexus studies at least every 8 years

AB 602 – Development Impact Fees

- Online posting requirements – review Gov. § Code 65940.1
- Adds requirement to post project-specific fees and exactions, update twice a year

AB 537 – Wireless Facilities

- Amends Gov. Code § 65964.1
- Updates California's rules for the time period an agency has to review an application for collocation or siting of wireless telecommunications facilities; aligned with the FCC rules
- If an agency requires a traffic control plan, or other submission or permit related to either obstruction or safety in the public right-of-way, the applicant may not begin construction before complying with this requirement

AB 970 – Electric Vehicle Charging Stations (EVCS)

- Gov. Code § 65850.71
- Imposes time restrictions to accept applications for EVCS as complete (5 or 10 business days) and then to approve the applications (20 or 40 business days) or they may be *deemed complete* or *deemed approved*
- Requires agencies to reduce the number of parking spaces for any existing uses by the amount necessary to accommodate EVCS and any associated equipment
- Parking requirements and permitting schedule apply beginning on January 1, 2023, for agencies with a population of < 200,000 residents

AB 819 – CEQA Electronic Filing and Posting Requirements

- **Modernizes CEQA to promote online access to environmental documents and notices and to provide for electronic transmittal**
 - Authorizes distribution of NOPs by email
 - Requires lead agencies to post DEIRs, EIRs, NDs, MNDs and notices [NOPs, notices of scoping meetings, NOAs, notices of completion, and NODs] on the agency's website
 - Provides electronic filing requirements for NOCs, NODs, and NOEs
 - Provides online posting requirements for county clerks
 - Requires state agencies to file NODs and NOEs with OPR electronically, and requires OPR to make these notices available online for at least 12 months
 - Requires electronic submittal of all DEIR, proposed ND, and MND to the State Clearinghouse

AB 819 – CEQA Electronic Filing and Posting Requirements

- To reflect changed submission requirements, public review periods are now determined by whether project meets certain criteria rather than whether the document was submitted to the State Clearinghouse:
 - State agency is the lead agency, a responsible agency, or a trust agency
 - State agency otherwise has jurisdiction over the project
 - Project is of “sufficient statewide, regional, or areawide significance”

AB 140 – Homekey Program Round 2 – CEQA Exemption

- **Part of Housing and Homeless Budget Trailer Bill**
- **Adds Health and Safety Code § 50675.1.4 to create a CEQA exemption for Homekey Program Round 2 projects**
 - Exemption in effect only until July 1, 2024
- **Several requirements, including but not limited to:**
 - Project does not result in an increase in the existing onsite development footprint of structure, structures, or improvements by more than 10 percent

AB 140 – Homekey Program Round 2 – Project Streamlining

- AB 140 also provides land-use streamlining for projects utilizing Homekey Round 2 funds
 - Health and Safety Code § 50675.1.3(i)
- Round 2 projects “deemed consistent and in conformity with any applicable local plan, standard, or requirement, and any applicable coastal plan, local or otherwise, and allowed as a permitted use, within the zone in which the structure is located, and shall not be subject to a conditional use permit, discretionary permit, or any other discretionary reviews or approvals.”
- No sunset clause

AB 1409 – Evacuation Locations in Safety Element

- Identify “evacuation locations” in Safety Element
- Amends Gov. Code § 65302.15 (added pursuant to AB 747 in 2019)
- Requires local agencies to review and update their safety elements as necessary to identify “evacuation locations” in addition to identifying “evacuation routes and their capacity, safety, and viability under a range of emergency scenarios” as required by AB 747

What's Next?

Housing Laws – Preparing for More

- **AB 2011** (“Affordable Housing and High Road Jobs Act of 2022”)
- **AB 2097 / SB 1067** (Prohibits Parking Minimums near Transit)
- **SB 897 / AB 916 / AB 2221** (ADUs / JADUs)
- **AB 2334 / AB 682** (Density Bonus Law)
- **AB 1910** (Housing from Golf Courses)

Housing Laws – Preparing for More

- **AB 2295** (Housing on Educational Agency Property)
- **AB 2053** (Social Housing Act)
- **SCA 2** (Repeal Article 34 of Cal. Const.)
- **SB 12 / AB 2705** (Housing in VHFHSZs)
- **AB 2234** (Requirements for “Post-Entitlement Permits”)



Thank you! Questions?

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OCTOBER 1-4, 2022 ★ ANAHEIM MARRIOTT

THIS LEGISLATIVE UPDATE QUALIFIES FOR 1.5 AICP CM CREDITS
THE ID# IS 9245808 OR YOU CAN SEARCH "2022 LEGISLATIVE UPDATE".