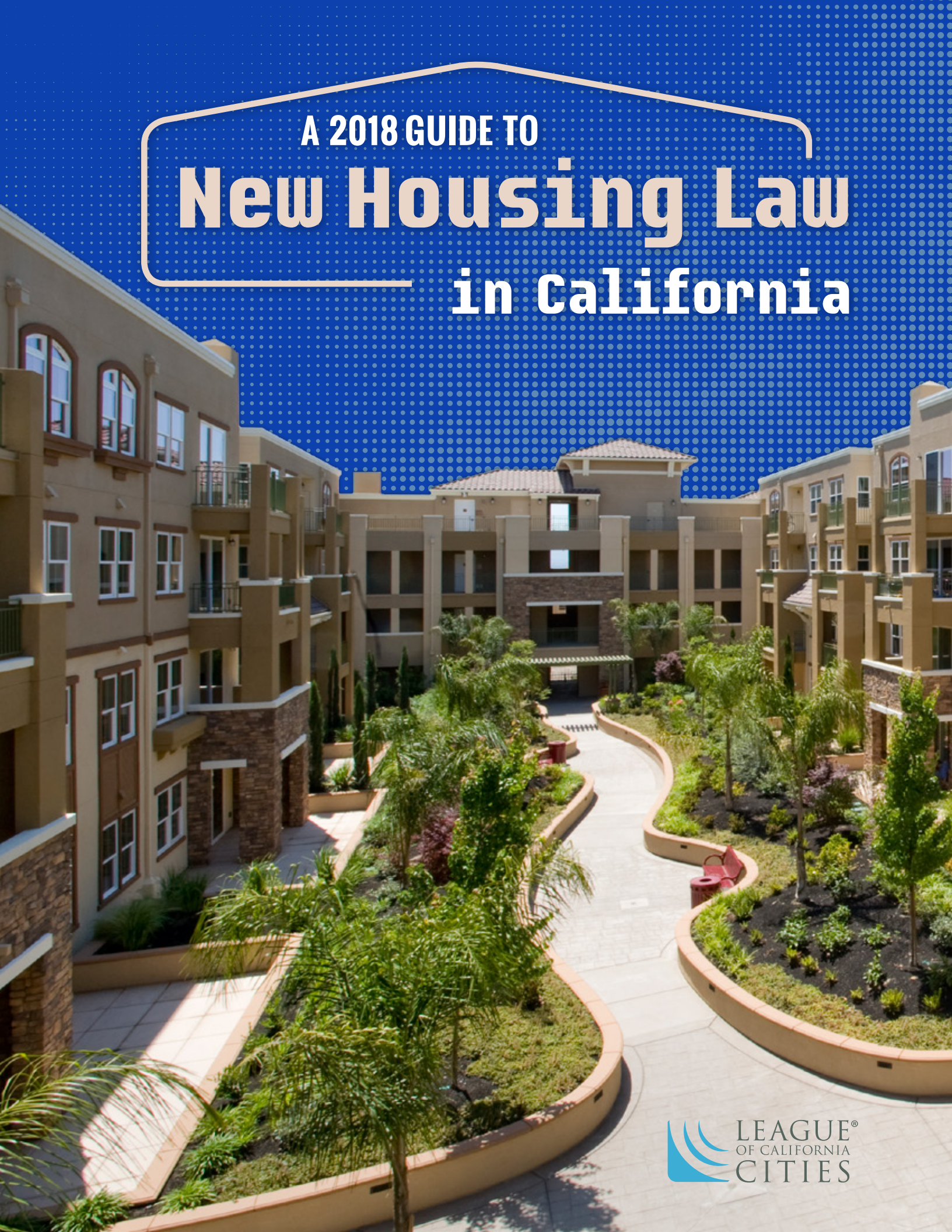
A 2018 GUIDE TO

New Housing Law in California



LEAGUE® OF CALIFORNIA CITIES

INTRODUCTION

Housing affordability is an urgent issue in California, where a majority of renters (over 3 million households) pay more than 30 percent of their income toward rent and nearly one-third (over 1.5 million households) spend more than 50 percent of their income on rent. In addition, California's homeownership rates are at the lowest point since the 1940s. This has led many experts in the field to declare the current state of housing supply and affordability a crisis.

In his January 2017 budget proposal, Governor Brown set the tone and parameters for substantive action to address housing supply and affordability issues. He indicated that new and increased funding for housing must be instituted along with regulatory reform that streamlines local project approval processes and imposes more stringent measures of local accountability. These parameters guided legislative action throughout 2017, resulting in a package of bills signed into law.

Gov. Brown and state legislators made significant changes to local land-use processes and approved new sources of revenue for housing construction. Throughout the 2017 legislative session, the League advocated for proposals that preserved local authority while advancing much-needed housing development approvals.

This reference guide covers recent actions taken by the state Legislature to address the housing crisis and provides in-depth analysis and guidance on changes made to state and local land-use law that will affect city processes and functions related to housing development.

PART I. THE CALIFORNIA HOUSING CRISIS

Principal Causes of the Affordable Housing Shortage

Local governments are just one piece of the complex scenario that comprises the housing development process. Cities don't build homes — the private sector does. California's local governments must zone enough land in their General Plans to meet the state's projected housing need; however, cities don't control local market realities or the availability of state and federal funding needed to support the development of affordable housing. This is true not just in California but nationwide.

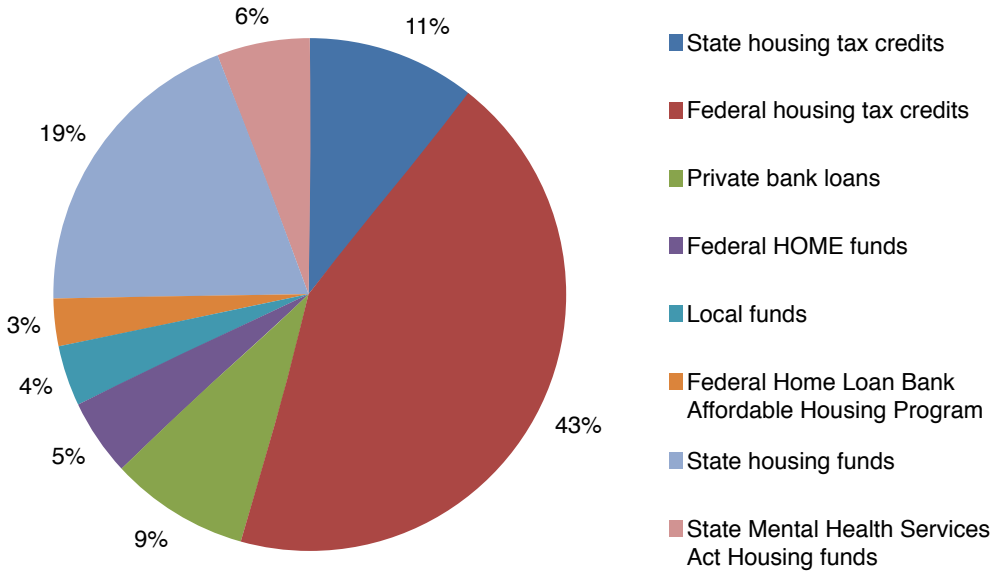
Significant barriers and disincentives constrain the production of affordable housing. These include:

- Lack of funding and subsidies needed to support housing that low- and moderate-income families can afford;
- Local and national economic and job market conditions; and
- Challenges for developers.

Lack of Funding and Subsidies for Affordable Housing

In addition to private sector financing, funding and subsidies to support the development of affordable housing come from two primary sources: federal and state government housing programs.

Sample Funding Mixes for Affordable Multifamily Developments



Source: California Department of Housing and Community Development, California's Housing Future: Challenges and Opportunities

It's extremely rare for a single affordable housing program to provide enough funding to finance an entire development, due to the costs of development and funding constraints and criteria that encourage developers to leverage other funds. The developer will typically apply for funding from multiple programs and private sector lenders that have overlapping policy goals and requirements. Private-sector lenders may also have additional criteria. The process of applying for and securing funding from multiple sources can add significantly to the lead time needed to start construction.

One multifamily development can easily need five to 10 funding sources to finance its construction. Developers generally layer financing from state and federal tax credits, state housing programs, local land donation and other local grants, federal housing programs and private loans from financial institutions. The chart "Sample Funding Mixes for Affordable Multifamily Developments" (below, left) offers an example of funding mixes for affordable multifamily developments.

Federal funding for affordable housing comprises a significant portion of California's resources to support affordable housing. However, due to pressures to cut federal spending and reduce the deficit, federal funding for housing has declined in recent years despite the increase in the number of severely cost-burdened, low-income renter households (which rose from 1.2 million in 2007 to 1.7 million in 2014). Between 2003 and 2015, Community Development Block Grant (CDBG) and HOME funds allocated to California by the U.S. Department of Housing and Urban Development (HUD) to produce affordable housing units have declined by 51 percent and 66 percent respectively (see "HUD Program Allocations to California 2003–2015" below).

Furthermore, few sources of affordable housing funding are stable or growing from year to year despite an increasing population and demand for housing. This funding uncertainty deters both efforts to address housing challenges in a sustained manner and developers' ability to build affordable housing.

The elimination of redevelopment agencies in California and the subsequent loss of over $5 billion in funding since 2011 compounded the state's affordable housing challenges. The state has never had a significant permanent source of affordable housing funding, and proceeds from the 2006 housing bond that helped create and preserve affordable apartments, urban infill infrastructure and single-family homes have been expended.

Local and National Economic and Job Market Conditions

Numerous factors contribute to local and national market conditions that affect the availability of affordable housing. The economic recovery from the Great Recession, when many middle-income families lost their homes to foreclosures, has occurred at different rates in communities throughout California. Areas with high-tech industry and some coastal areas recovered more rapidly than other regions.

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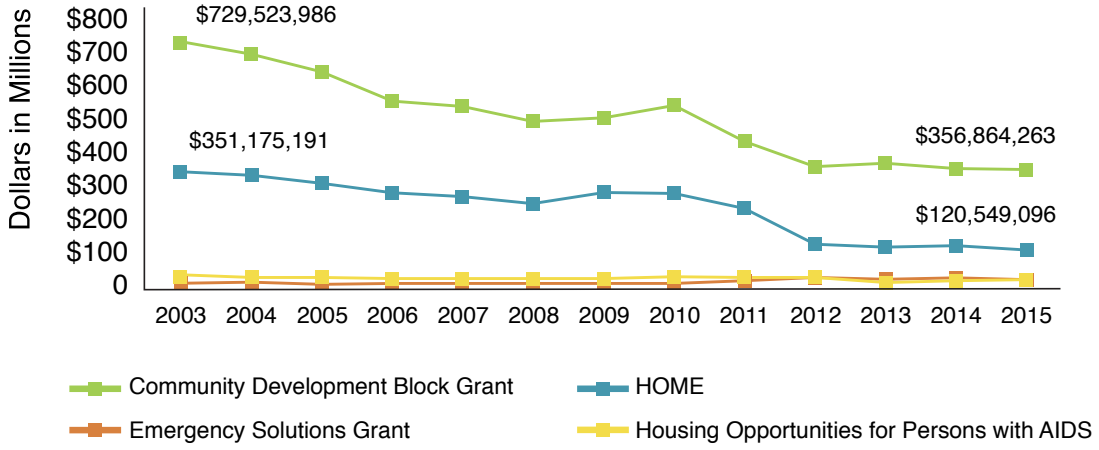
HUD Program Allocations to California 2003–2015
(Adjusted for Inflation)



Source: HUD Formula Program Allocations by State: 2003–2015 and *California Department of Housing and Community Development,* California's Housing Future: Challenges and Opportunities

Overall, the recovery has been uneven. Jobs in manufacturing and blue-collar industries have not fully rebounded, and jobs in the expanding service sector pay lower wages. Many households are still struggling to recover from the recession and home foreclosure crisis, and many recent college graduates are carrying significant debt — reducing their ability to purchase a home or pay rent.

Mortgage underwriting standards became more stringent in the aftermath of the foreclosure crisis, which can make it more difficult for potential homebuyers to qualify for the needed financing.

Some of the state's major homebuilders went out of business during the recession, leaving fewer companies to meet the demand for housing. Production of housing fell dramatically during the recession, which contributed significantly to a shortage of homes across the affordability spectrum. As the chart "Annual Production of Housing Units 2000–2015" (below) shows, housing "starts" statewide are at about half of pre-recession levels and fall far short of the state's projected need for 180,000 new homes per year.

Housing values also reflect the uneven recovery happening throughout the state. *The Wall Street Journal* recently compared home prices today to those of 2004. In San Jose, which is part of Silicon Valley where tech jobs pay top wages, prices are 54 percent higher than 2004 levels, but this is not so in areas hindered by a slower recovery from the recession. In Central Valley cities such as Stockton and Merced, housing prices are 21 and 16 percent lower respectively.

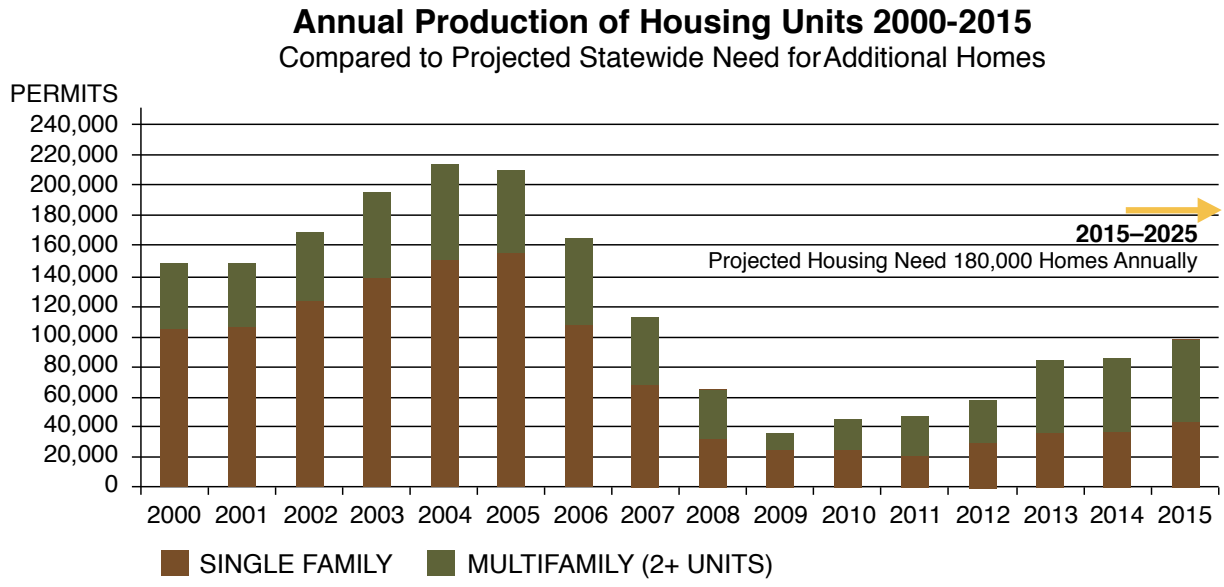
Challenges for Developers

In addition to funding challenges to develop affordable housing, other challenges further exacerbate the obstacles to development, including:

- Identifying an adequate supply of water;
- Complying with state regulations and energy standards, greenhouse gas reduction requirements and other environmental conditions;
- Competing with other developers to build high-end, more expensive housing;
- Infrastructure deficits;
- Market conditions, such as those described earlier; and
- The cost of land and construction.

Other Factors

In addition — but to a far lesser degree — factors at the local level can also impact the development of affordable housing. In some cities, new development requires voter approval. Community concerns about growth, density and preserving the character of an area may affect local development. Public hearings and other processing requirements add time to the approval timeline. Project opponents can use the environmental permitting process and litigation to limit or stop a project. However, the process of complying with the California Environmental Quality Act (CEQA) also serves to protect communities by ensuring that important environmental issues are identified and addressed.



Source: California Department of Housing and Community Development, California's Housing Future: Challenges and Opportunities

PART II. LEGISLATIVE RESPONSE: UNDERSTANDING THE CHANGES TO HOUSING AND LAND-USE LAWS

In an attempt to address some of the barriers to housing construction at the state and local level, lawmakers introduced more than 130 bills during the 2017 legislative session; many focused on constraining local land-use authority or eliminating local discretion. After months of negotiations and public hearings, 15 bills made it into the "housing package" and were signed by Gov. Brown. These bills fall into three main categories: funding, streamlining and local accountability. This section describes the most notable changes made to the state housing laws and identifies items or actions a city may want to consider in moving forward.

Funding Measures

The Legislature passed and Gov. Brown signed into law two key funding measures. The first, SB 2 (Atkins), imposes a new real estate recording fee to fund important affordable housing-related activities on a permanent, ongoing basis, effective Sept. 29, 2017. The second, SB 3 (Beall), places a $4 billion general obligation bond to fund housing on the November 2018 ballot and requires voter approval; if approved, funds likely will not be available until 2019.

SB 2 (Atkins, Chapter 364, Statutes of 2017) Building Homes and Jobs Act is projected to generate hundreds of millions of dollars annually for affordable housing, supportive housing, emergency shelters, transitional housing and other housing needs via a $75 to $225 recording fee on specified real estate documents.

In 2018, 50 percent of the funds collected are earmarked for local governments to update or create General Plans, Community Plans, Specific Plans, sustainable communities strategies and local coastal programs. Funds may also be used to conduct new environmental analyses that improve or expedite local permitting processes. The remaining 50 percent of the funds are allocated to the California Department of Housing and Community Development (HCD) to assist individuals experiencing or in danger of experiencing homelessness.

Beginning in 2019 and for subsequent years, 70 percent of the proceeds are allocated to local governments through the federal CDBG formula, so that the funds may be used to address housing needs at the local level. HCD will allocate the remaining 30 percent as follows: 5 percent for state incentive programs; 10 percent for farmworker housing; and 15 percent for the California Housing Finance Agency to create mixed-income multifamily residential housing for lower- to moderate-income households.

In consultation with stakeholders, HCD will adopt guidelines to implement SB 2 and determine methodologies to distribute funding allocations.

SB 3 (Beall, Chapter 365, Statutes of 2017) Veterans and Affordable Housing Bond Act of 2018 places a $4 billion general obligation bond on the November 2018 ballot to fund affordable housing programs and the veterans homeownership program (CalVet). If approved by voters, SB 3 would fund the following existing programs:

- Multifamily Housing Program — $1.5 billion, administered by HCD, to assist the new construction, rehabilitation and preservation of permanent and transitional rental housing for lower-income households through loans to local public entities and nonprofit and for-profit developers;
- Transit-Oriented Development Implementation Program — $150 million, administered by HCD, to provide low-interest loans for higher-density rental housing developments close to transit stations that include affordable units and as mortgage assistance for homeownership. Grants are also available to cities, counties and transit agencies for infrastructure improvements necessary for the development;
- Infill Incentive Grant Program — $300 million, administered by HCD, to promote infill housing developments by providing financial assistance for infill infrastructure that serves new construction and rehabilitates existing infrastructure to support greater housing density;
- Joe Serna, Jr. Farmworker Housing Grant Fund — $300 million, administered by HCD, to help finance the new construction, rehabilitation and acquisition of owner-occupied and rental housing units for agricultural workers;
- Local Housing Trust Fund Matching Grant Program — $300 million, administered by HCD, to help finance affordable housing by providing matching grants, dollar for dollar, to local housing trusts;
- CalHome Program — $300 million, administered by HCD, to help low- and very low- income households become or remain homeowners by providing grants to local public agencies and nonprofit developers to assist individual first-time homebuyers. It also provides direct loan forgiveness for development projects that include multiple ownership units and provides loans for property acquisition for mutual housing and cooperative developments;
- Self-Help Housing Fund — $150 million, administered by HCD. This program assists low- and moderate-income families with grants to build their homes with their own labor; and
- CalVet Home Loan Program — $1 billion, administered by the California Department of Veterans Affairs, provides loans to eligible veterans at below-market interest rates with few or no down payment requirements.

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Streamlining Measures

Gov. Brown made it very clear in the FY 2017–18 annual budget that he would not sign any housing funding bills without also expediting and streamlining the local housing permitting process. Lawmakers were eager to introduce measures to meet his demand. SB 35 (Wiener), SB 540 (Roth) and AB 73 (Chiu) take three different approaches to streamlining the housing approval process.

SB 35 (Wiener, Chapter 366, Statutes of 2017) streamlines multifamily housing project approvals, at the request of a developer, in a city that fails to issue building permits for its share of the regional housing need by income category. In a SB 35 city, approval of a qualifying housing development on qualifying site is a ministerial act, without CEQA review or public hearings.

Which Cities Must Streamline Housing Approvals Under SB 35?

Cities that meet the following criteria must approve qualifying multifamily housing projects that are consistent with objective planning and design review standards:

- The city fails to submit an annual housing element report for two consecutive years prior to the date when a development application is submitted; or
- HCD determines that the city issued fewer building permits than the locality's share of the Regional Housing Needs Allocation (RHNA) in each of the four income categories for that reporting period (the first four years or last four years of the eight-year housing element cycle).

Once eligibility has been determined, the development must be located on a site that:

- Is within a city that includes some portion of either an urbanized area (population 50,000 or more) or urban cluster (population at least 2,500 and less than 50,000);
- Has at least 75 percent of the perimeter adjoining parcels that are developed with urban uses; and
- Is zoned for residential use or residential mixed-use development or has a General Plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

As set forth in the measure, "objective standards" 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 or proponent and the public official."

After determining that the locality is subject to streamlining, development sites are excluded if they are located in any of the following areas:

- Coastal zone;
- Prime farmland or farmland of statewide importance;
- Wetlands;
- Very high or high fire hazard severity zone;
- Delineated earthquake fault zone, unless the development complies with applicable seismic protection building code standards;
- Hazardous waste site, unless the state Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses;
- Floodplain or floodway, unless the development has been issued a floodplain development permit or received a no-rise certification; and
- Lands under conservation easement.

In addition, development sites are excluded if they would demolish:

- A historic structure;
- Any housing occupied by tenants in the past 10 years; or
- Housing that is subject to rent or price control.

To be eligible for streamlining, the housing development must:

- Be on a qualifying site;
- Abide by certain inclusionary requirements (10 percent must be affordable to households earning 80 percent or less of area median income or 50 percent must be affordable to households earning 80 percent or less of area median income, depending upon the city's past approval of above-moderate income and lower-income housing, respectively); and
- Pay prevailing wages and use a "skilled and trained workforce."

Ministerial Approval

If a city determines that development is in conflict with "objective planning standards," then it must provide written documentation within 60 days of submittal if the development contains 150 or fewer housing units and within 90 days of submittal if the development contains more than 150 housing units.

Approvals must be completed within 90 to 180 days (depending on the number of units in housing development), must be ministerial and not subject to CEQA.

No parking requirements can be imposed on an SB 35 housing development project if it is located:

- Within a half-mile of public transit;
- 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; or
- Where there is a car-share vehicle located within one block of the development.

One parking space per unit can be required of all other SB 35 projects.

How Long Does the Approval Last?

The approval does not expire if the project includes public investment in housing affordability beyond tax credits where 50 percent of units are affordable to households earning less than 80 percent of area median income (AMI).

If the project does not include 50 percent of units affordable to households earning less than 80 percent of AMI, approval automatically expires in three years except for a one-year extension if significant progress has been made in preparing the development for construction (such as filing a building permit application).

All approvals remain valid for three years and as long as vertical construction has begun and is in progress.

Opportunities and Considerations

Even though SB 35 makes significant changes to existing law, it is important to consider the following:

- All proposed projects seeking streamlining must be consistent with a jurisdiction's objective zoning standards and objective design review standards. If these standards are outdated or in need of revisions, there is opportunity to do so;
- If a jurisdiction does not have "objective zoning standards and objective design review standards," it may want to create them given that discretionary review is prohibited; and
- Funding assistance will be available in mid- to late 2019 under SB 2 (Atkins, Chapter 364, Statutes of 2017) for updating planning documents, including General Plans, Community Plans, Specific Plans, sustainable communities strategies and local coastal programs. HCD is currently establishing funding guidelines.

SB 540 (Roth, Chapter 369, Statutes of 2017) streamlines the housing approval process by allowing jurisdictions to establish Workforce Housing Opportunity Zones (WHOZs), which focus on workforce and affordable housing in areas close to jobs and transit and conform to California's greenhouse gas reduction laws. SB 540's objective is to set the stage for approval of housing developments by conducting all of the necessary planning, environmental review and public input on the front end through the adoption of a detailed Specific Plan. SB 540 provides the development community with certainty that for a five-year period, development consistent with the plan will be approved without further CEQA review or discretionary decision-making.

How Does the Streamlining Process Work?

Jurisdictions that opt in outline an area of contiguous or noncontiguous parcels that were identified in the locality's housing element site inventory. All development that occurs within the WHOZ must be consistent with the Specific Plan for the zone and the adopted sustainable communities strategy (SCS) or an alternative planning strategy (APS). See "About the Sustainable Communities Strategy and Alternative Planning Strategy" below for more information.

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About the Sustainable Communities Strategy and Alternative Planning Strategy

Under the Sustainable Communities Act, the California Air Resources Board (ARB) sets regional targets for greenhouse gas emissions reductions from passenger vehicle use. In 2010, ARB established these targets for 2020 and 2035 for each region covered by one of the state's metropolitan planning organizations (MPOs).

Each MPO must prepare a sustainable communities strategy (SCS) as an integral part of its regional transportation plan (RTP). The SCS contains land use, housing and transportation strategies that, if implemented, would allow the region to meet its greenhouse gas emission reduction targets. If the combination of measures in the SCS would not meet the regional targets, the MPO must prepare a separate alternative planning strategy (APS) to meet the targets.

The process for establishing a WHOZ is:

- Prepare and adopt a detailed Specific Plan and environmental impact report (EIR);
- Identify in the Specific Plan uniformly applied mitigation measures for traffic, water quality, natural resource protection, etc.;
- Identify in the Specific Plan uniformly applied development policies such as parking ordinances, grading ordinances, habitat protection, public access and reduction of greenhouse gas emissions;
- Clearly identify design review standards in the Specific Plan; and
- Identify a source of funding for infrastructure and services.

Not more than 50 percent of a jurisdiction's RHNA may be included in a WHOZ that accommodates 100 to 1,500 units.

The Specific Plan and EIR are valid for five years. After five years, the jurisdiction must review the plan and EIR, including conducting the CEQA analysis required in Public Resources Code section 21166, in order to extend the WHOZ for five additional years.

For a development project to receive streamlining within the WHOZ, the project must:

- Be consistent with the SCS;
- Comply with the development standards in the Specific Plan for the WHOZ;
- Comply with the mitigation measures in the Specific Plan for the WHOZ:
- Be consistent with the zonewide affordability requirements — at least 30 percent of the units affordable to moderate or middle-income households, 15 percent of the units affordable to lower-income households and 5 percent of the units affordable for very low-income households. No more than 50 percent of the units may be available to above-moderate-income households;
- Within developments affordable to households of above-moderate income, include 10 percent of units for lower-income households unless local inclusionary ordinance requires a higher percentage; and
- Pay prevailing wages.

If a developer proposes a project that complies with all of the required elements, a jurisdiction must approve the project without further discretionary or CEQA review unless it identifies a physical condition that would have a specific adverse impact on public health or safety.

AB 73 (Chiu, Chapter 371, Statutes of 2017) streamlines the housing approval process by allowing jurisdictions to create a housing sustainability district to complete upfront zoning and environmental review in order to receive incentive payments for development projects that are consistent with the ordinance. AB 73 is similar to SB 540 in concept; however, there are several key differences; for example, in AB 73:

- The housing sustainability district is a type of housing overlay zone, which allows for the ministerial approval of housing that includes 20 percent of units affordable to very low-, low- and moderate-income households;
- The ordinance establishing the housing sustainability district requires HCD approval and must remain in effect for 10 years;
- A Zoning Incentive Payment (unfunded) is available if HCD determines that approval of housing is consistent with the ordinance; and
- Developers must pay prevailing wages and ensure the use of a skilled and trained workforce.

Accountability Measures

The third aspect of the Legislature and the governor's housing package pertains to bills that seek to hold jurisdictions accountable for the lack of housing construction in their communities. While this view fails to acknowledge the many factors that affect housing construction and are beyond the

To make continued progress on housing in 2018, legislators should also consider creating more tools for local governments to fund infrastructure and affordable housing.

control of local government, the following measures significantly change existing law.

SB 167 (Skinner, Chapter 368, Statutes of 2017), AB 678 (Bocanegra, Chapter 373, Statutes of 2017), and AB 1515 (Daly, Chapter 378, Statutes of 2017) are three measures that were amended late in the 2017 legislative session to incorporate nearly all of the same changes to the Housing Accountability Act (HAA). The HAA significantly limits the ability of a jurisdiction to deny an affordable or market-rate housing project that is consistent with existing planning and zoning requirements (see "About the Housing Accountability Act" below). These measures amend the HAA as follows:

- Modifies the definition of mixed-use development to apply where at least two-thirds of the square footage is designated for residential use;
- Modifies the findings requirement to deny a housing development project to be supported by a preponderance of the evidence, rather than by substantial evidence in the record;
- Defines "lower density" to mean "any conditions that have the same effect or impact on the ability of the project to provide housing;"
- Requires an applicant to be notified if the jurisdiction considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement or other similar provision. The jurisdiction must provide such notice within 30 days of the application being determined complete for a project with 150 or fewer housing units, and within 60 days for project with more than 150 units. If the jurisdiction fails to provide the required notice, the project is deemed consistent, compliant and in conformity with the applicable plan, program, policy ordinance, standard, requirement or other similar provision: and
- Deems a housing development project "consistent, compliant and in conformity with an applicable plan, program, policy, ordinance, standard, requirement or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent, compliant or in conformity."

About the Housing Accountability Act

The Housing Accountability Act states, "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 of or render infeasible housing development projects. This intent has not been fulfilled."

SB 167, AB 678 and AB 1515 also provide new remedies for a court to compel a jurisdiction to comply with the HAA:

- If a court finds that a jurisdiction's findings are not supported by a preponderance of the evidence, the court must issue an order compelling compliance within 60 days. The court may issue an order directing the jurisdiction to approve the housing development project if the court finds that the jurisdiction acted in bad faith when it disapproved or conditionally approved the housing development project;
- If a jurisdiction fails to comply with the court order within 60 days, the court must impose fines on the jurisdiction at a minimum of $10,000 per unit in the housing development project on the date the application was deemed complete;
- If a jurisdiction fails to carry out a court order within 60 days, the court may issue further orders including an order to vacate the decision of the jurisdiction and to approve the housing development project as proposed by the applicant at the time the jurisdiction took the action determined to violate the HAA along with any standard conditions; and
- If the court finds that a jurisdiction acted in bad faith when it disapproved or conditionally approved a housing project and failed to carry out the court's order or judgment within 60 days, the court must multiply the $10,000 per-unit fine by a factor of five. "Bad faith includes but is not limited to an action that is frivolous or otherwise entirely without merit."

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Other Measures of Importance

In addition to the notable bills described here, Gov. Brown signed several other measures that provide new inclusionary powers to local governments, require additional General Plan reporting, increase housing element requirements and expand HCD's ability to review actions taken at the local level.

AB 1505 (Bloom, Chapter 376, Statutes of 2017) allows a jurisdiction to adopt an ordinance that requires a housing development to include a certain percentage of residential rental units affordable to and occupied by households with incomes that do not exceed limits for households with extremely low, very low, low or moderate income (see "AB 1505 Offers Solution to Palmer Decision" below). Such an ordinance must provide alternative means of compliance such as in-lieu fees, off-site construction, etc.

HCD may review any inclusionary rental housing ordinance adopted after Sept. 15, 2017, as follows:

- If the ordinance requires more than 15 percent to be occupied by households earning 80 percent or less of area median income and the jurisdiction failed to either meet at least 75 percent of its share of its above-moderate income RHNA (prorated based on the length of time within the planning period) or submit a General Plan annual report;
- HCD may request an economic feasibility study with evidence that such an ordinance does not unduly constrain the production of housing; and
- Within 90 days of submission of the economic feasibility study, HCD must decide whether the study meets the section's requirements. If not, the city must limit the ordinance to 15 percent low-income.

AB 1505 Offers Solution to Palmer Decision

The court in *Palmer/Sixth Street Properties L.P. v. City of Los Angeles,* (2009) 175 Cal. App. 4th 1396, invalidated a Los Angeles inclusionary housing requirement contained in a Specific Plan for an area of the city as applied to rental units on the basis that its pricing controls violated the Costa-Hawkins Act, which outlawed traditional rent control in new buildings in California. The court reasoned that the Costa-Hawkins Act pre-empted the application of inclusionary housing ordinances to rental housing. As a result of the decision, many cities with inclusionary housing ordinances suspended or amended their ordinances as applied to rental units; some adopted affordable housing rental impact fees. AB 1505 offers a solution and response to the *Palmer* decision.

AB 879 (Grayson, Chapter 374, Statutes of 2017) expands upon existing law that requires, by April 1 of each year, general law cities to send an annual report to their respective city councils, the state Office of Planning and Research (OPR) and HCD that includes information related to the implementation of the General Plan, including:

- The city's progress in meeting its share of RHNA;
- The city's progress in removing governmental constraints to the maintenance, improvement and development of housing; and
- Actions taken by the city toward completion of the programs identified in its housing element and the status of the city's compliance with the deadlines in its housing element.

Under AB 879, all cities including charter cities must submit an annual report containing the above information. In addition, cities must also provide the following new information in the annual report:

- The number of housing development applications received in the prior year;
- The number of units included in all development applications in the prior year;
- The number of units approved and disapproved in the prior year;
- A listing of sites rezoned to accommodate that portion of the city's RHNA for each income level that could not be accommodated in its housing element inventory and any additional sites identified under the "no net loss" provisions;
- The net number of new units of housing that have been issued a "completed entitlement," building permit or certificate of occupancy thus far in the housing element cycle (identified by the Assessor's Parcel Number) and the income category that each unit of housing satisfied (distinguishing between rental and for-sale units);
- The number of applications submitted under the new processing provided for by Section 65913.4 (enacted by SB 35), the location and number of developments approved pursuant to this new process, the total number of building permits issued pursuant to this new process and total number of units constructed pursuant to this new process; and
- The number of units approved within a Workforce Housing Opportunity Zone.

AB 879 also requires cities to include additional information when they submit their housing element to HCD, including:

- An analysis of governmental constraints that must include local ordinances that "directly impact the cost and supply of residential development"; and
- An analysis of nongovernmental constraints that must include requests to develop housing at densities below those anticipated in site inventory and the length of time between receiving approval for housing development and submittal of an application for building permit. The analysis must also include policies to remove nongovernmental constraints.

AB 1397 (Low, Chapter 375, Statutes of 2017) makes numerous changes to how a jurisdiction establishes its housing element site inventory. These changes include the following:

- Sites must be "available" for residential development and have "realistic and demonstrated" potential for redevelopment;
- Parcels must have sufficient water, sewer and dry utilities or part of a mandatory program to provide such utilities;
- Places restrictions on using nonvacant sites as part of the housing element inventory;
- Places limitations on continuing identification of nonvacant sites and certain vacant sites that have not been approved for housing development; and
- Stipulates that lower-income sites must be between one-half acre and 10 acres in size unless evidence is provided that a smaller or larger site is adequate.

AB 72 (Santiago, Chapter 370, Statutes of 2017) provides HCD new broad authority to find a jurisdiction's housing element out of substantial compliance if it determines that the jurisdiction fails to act in compliance with its housing element and allows HCD to refer violations of law to the attorney general. Specifically, AB 72:

- Requires HCD to review any action or failure to act by a jurisdiction that it determines is "inconsistent" with an adopted housing element or Section 65583, including any failure to implement any program actions included in the housing element;
- Requires HCD to issue written findings to the city as to whether the jurisdiction's action or failure to act complies with the jurisdiction's housing element or Section 65583 and provides no more than 30 days for the jurisdiction to respond to such findings. If HCD finds that the jurisdiction does not comply, then HCD can revoke its findings of compliance until the jurisdiction comes into compliance; and
- Provides that HCD may notify the attorney general that the jurisdiction is in violation of the Housing Accountability Act, Sections 65863, 65915 and 65008.

continued

Related Resources

For additional information and links to related resources, visit www.cacities.org/housing.

The "housing package" bills fall into three main categories: funding, streamlining and local accountability.

Looking Ahead

While it may appear that Gov. Brown and the Legislature made great progress in addressing the housing supply and affordability crisis gripping many regions of the state, the reality is somewhat more mixed. The passage of the 2017 housing package does not signal the end of the policy discussion. Aside from various incentive and funding measures, a portion of the housing package responded to a theme, championed by several advocacy groups and academics, that the local planning and approval process is the major cause of the state currently producing 100,000 units fewer annually than pre-recession levels. From a local government perspective, that assertion is incomplete and inaccurate. Going forward, it is time to dig deeper.

The legislative focus in 2017 lacked an exploration of other economic factors affecting the housing market. The foreclosure crisis resulted in displaced homeowners with damaged credit, widespread investor conversions of foreclosed single-family units into rentals and increasingly stringent lending criteria. Demographic factors may also affect demand as baby boomers with limited retirement savings and increased health-care costs approach retirement age. Younger residents, saddled with student debt, face challenges saving for down payments. Manufacturing and other higher-wage jobs are stagnating and being replaced via automation and conversion to a lower-wage service economy. Fewer skilled construction workers are available after many switched occupations during the recession.

Also missing in 2017 was a deeper examination of how other state policies intended to address legitimate issues affect land availability and the cost of housing. These include laws and policies aimed at limiting sprawl and protecting agricultural, coastal and open-space land from development; and building codes, energy standards, disabled access, wage requirements and other issues.

The funding for affordable housing approved during the 2017 session was certainly welcome — yet given the demand, it falls far short of the resources needed. It is unlikely, however, that cities can expect additional state funding for housing — other than the housing bond on the November ballot — from the Legislature in 2018.

Although many changes were made to the planning and approval process in 2017, local governments are still waiting for the market to fully recover and developers to step forward and propose housing projects at the levels observed prior to the recession. In 2018, a fuller examination by the Legislature is needed to explore the reasons why developers are not proposing projects at the pre-recession levels. Local governments cannot approve housing that is not proposed.

To make continued progress on housing in 2018, legislators should also consider creating more tools for local governments to fund infrastructure and affordable housing. Some legislators have begun discussing the need to restore a more robust redevelopment and affordable housing tool for local agencies, and that is encouraging. Reducing the local vote thresholds for infrastructure and affordable housing investments would also be helpful.

For more information, visit www.cacities.org/housing or contact Jason Rhine, legislative representative; phone: (916) 658-8264; email: jrhine@cacities.org. ■

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