



ASSOCIATION OF BAY AREA GOVERNMENTS
METROPOLITAN TRANSPORTATION COMMISSION



Technical Assistance
for Local Planning

HOUSING



2024 New Housing Legislation Overview

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Presentation Overview

- Housing Accountability Act (HAA) and the Builder's Remedy
- Housing Elements and Annual Progress Reports
- Accessory Dwelling Units (ADUs)
- Streamlined and By-Right Approvals
- Density Bonus
- Fees
- Other Bills

Presentation Key

NOTE: All references to sections throughout this presentation are to the California Government Code as it will exist in 2025 unless otherwise indicated.

ACTION ITEM
Green Background

IMPACTS YOUR JOB
Yellow Background

GOOD TO KNOW
Blue Background

Housing Accountability Act & the Builder's Remedy

AB 1893: Applicable to All Jurisdictions

Greatly expands list of HAA violations:

- Holding more than 5 hearings on a housing development project;
- Finding an application incomplete but item is not on application form;
- Asking for new information in a subsequent incomplete letter;
- If still incomplete after two resubmittals, must demonstrate that not an “effective disapproval” of the application;
- Violating provisions applicable to builder’s remedy projects;
- Determining a preliminary application has expired for any reason other than under Section 65941.1(c); or
- Failing to cease a course of conduct taken for an improper purpose.

AB 1893: Applicable to All Jurisdictions

- **Reduces affordability** to be considered an affordable housing development under the HAA: 13% low, 10% very low, 7% extremely low, or 10 units and under
- Limits standards that can be applied to **housing on sites designated for lower or moderate income housing in Housing Element but not rezoned.**
- **If without an approved Housing Element,** may deny an affordable project if not a builder's remedy project.

AB 1893: Applicable to All Jurisdictions

Action Item

- Ensure all application forms include **all** info needed.
- Do **not** include consistency items in completeness letters except as advice.

Impacts Your Job

- More projects will be considered to be affordable projects under the HAA and will require Section 65589.5(d) findings to deny.

AB 1893: Definition of a Builder's Remedy Project

Base Density = Greatest of:

- 50% more than default density;
- 3 times maximum density; or
- Density in Housing Element.

PLUS 35 du/A if:

- Within ½ mile of major stop;
- Very low VMT area; or
- High or very high resource area.

Minimum Density =

- Minimum density or ½ default density, whichever is lower; or
- Minimum density if within ½ mile of rail station.

Qualifies as affordable project under the HAA.

Housing Element did not comply when “deemed complete.”

Does not abut a site where over 1/3 devoted to heavy industrial.

AB 1893: Builder's Remedy Projects

- **Only objective standards can be applied:** either in zone permitting density or chosen by developer.
- Cannot apply standards and conditions that make project infeasible.
- Two additional concessions; extremely low-income units get very low-income bonus + 3%.
- No general plan or zoning amendments can be required.
- Affordable units must have comparable bedroom/bath to market-rate units.

AB 1893: Builder's Remedy Projects

Good to Know

- Builder's remedy projects can use density bonus law to increase base density. May need more affordable units.
- If builder remedy project proposes lower density than in Housing Element, must make 'no net loss' findings.

Impacts Your Job

Projects "deemed complete" before 1/1/25 may utilize new provisions if they meet definition of "builder remedy project," even if square feet or number of units in project changed by more than 20%.

AB 1886: When Is a Housing Element in Compliance?

- Housing Element only in compliance when adopted **AND** HCD or court so declares.
- Compliance status of Housing Element is determined at time of submittal of preliminary application.
- Stated to be “declaratory of existing law.” Not known if courts will agree.

SB 1037: Potential Fines for Noncompliance⁶⁾

Allows additional penalties if Attorney General (AG) or HCD enforce Housing Element compliance or law requiring ministerial approval

- \$10,000 to \$50,000 per month + all AG costs + other costs.
- Must be \$50,000/month if local government didn't meet court-ordered deadline.

May be imposed if actions were “arbitrary, capricious, entirely lacking in evidentiary support, contrary to established public policy, unlawful, or procedurally unfair.”

Q & A

Housing Elements & Annual Progress Reports

SB 3093: Housing Elements

- Applies to 7th cycle Housing Elements
- RHNA will include acutely low and extremely low income.
- New analysis:
 - Historic preservation practices and policies as governmental constraint.
 - Acutely and extremely low-income households housing needs.
- AFFH assessment must be completed before first draft of a revised Housing Element is available for public comment.

SB 3093: Housing Elements

Rezoning:

- Must be completed one year from statutory deadline (Section 65588).
- Except rezoning may be completed 3 years from statutory deadline if comply with all the following:
 - Local government submits a draft Element/amendment to HCD for review at least 90 days before statutory deadline;
 - Local government receives HCD findings that the draft Element/amendment substantially complies with Housing Element law on/before statutory deadline;
 - Local government adopts a draft Housing Element that HCD found to be substantially compliant no later than 120 days after statutory deadline.

SB 3093: Housing Elements

Good To Know

There will be additional requirements, greater affordability to accommodate, and additional analysis in the 7th and subsequent Housing Elements, and assessment will need to be completed before posting first draft for public comment.

Impacts Your Job

Net effect is that Housing Elements will take longer to prepare so cities and counties should begin Housing Element process well before statutory deadline.

AB 2667: Annual Progress Reports

- AB 2667 adds annual progress report (APR) requirements for opportunity areas:
 - Number of units approved or disapproved within each opportunity area both total and by income category.
- Opportunity areas are highest, high, moderate, or low resource area according to the most recent Opportunity Map published by California Tax Credit Allocation Commission and HCD.

AB 3093 and AB 2580: Annual Progress Reports

- AB 3093 requires reporting on progress in meeting RHNA in all sixth and earlier Housing Element cycles.
- AB 2580 requires reporting on historic designations and on any housing development projects proposed on such sites:
 - List all historic designations in federal, state or local register within past year.
 - Report whether the housing development project has been entitled.
 - Report whether a building permit has been issued for the project.
 - Provide the number of units in the project.

AB 2667 & AB 2580

Action Items

In the APR, include:

- Number of approved or disapproved units in each opportunity area (both total and by income category).
- Information about historic designations and housing developments proposed on such sites.
- Progress on meeting RHNA from sixth and prior Housing Element cycles.
- The RHTA Program will host a webinar with HCD in January to provide more detail on changes to the APR.

Accessory Dwelling Units (ADUs)

SB 1211: Eight Detached ADUs

- Requires local government to allow up to eight detached accessory dwelling units on a property with an existing multifamily dwelling.
- Adds a definition of "livable space."
- Prohibits local government from requiring an "uncovered parking space" be replaced as a condition of permitting an accessory dwelling.

SB 1211: Eight Detached ADUs

Action Items

Local governments should update their ordinances to:

- Address the increase in the number of detached accessory dwelling units allowed on a property with an existing multifamily dwelling.
- Incorporate the definition of “livable space.”
- Include destroyed “uncovered parking” in the type of parking that the local agency cannot require to be replaced as a condition of permitting an accessory dwelling unit.

AB 2533: Permitting Unpermitted ADUs and JADUs

- Owners can now legalize unpermitted JADUs in addition to unpermitted ADUs.
- Existing unpermitted ADUs or JADUs constructed before January 1, 2020 can be permitted. Reasons for denial are limited.
- After an application is submitted to legalize a unit, the local agency cannot penalize the applicant for having the unpermitted ADU or JADU.

AB 2533: Permitting Unpermitted ADUs and JADUs

Action Items

- Provide permit checklists that incorporate information necessary to understand if a building would be considered substandard.
- Inform homeowners that they can obtain a confidential third-party inspection from a licensed contractor prior to submitting an application for a permit.

Impacts Your Job

- Agencies can only deny a permit for an unpermitted ADU or JADU constructed before January 1, 2020 if correcting the violation is necessary to comply with Health and Safety Code section 17920.3.
- Agencies cannot penalize applicants seeking permits for unpermitted ADU or JADU.

Q & A

Streamlined and By-Right Approvals

SB 450: Amendments to SB 9

- Removes prohibition on demolition of more than 25 % of existing exterior structural walls.
- Prohibits application of objective standards to SB 9 project that do not apply uniformly to development within underlying zone unless standard is more permissive.
- Allows application of objective standards to urban lot splits only for design or improvements of parcel.

SB 450: Amendments to SB 9

Impacts Your Job

- Imposes new deadlines for ministerial consideration and approval or denial of SB 9 projects:
 - Requires consideration and approval or denial within 60 days of receipt of complete application.
 - If denied, must provide written comments with complete list of defective or deficient items and how to remedy application.
 - Provides that application will be deemed approved if local agency fails to approve or deny within 60 days.
- Review new SB 9 guidance issued by HCD in September 2024.

AB 3122: Amendments to SB 35

Good To Know

Local agency may apply new objective standards to project that increases square footage by 15% or decreases residential units by 15% OR to project that increases or decreases the same by 5% and new standard necessary to avoid “specific adverse impact”

Impacts Your Job

Requires local agency to inform applicant in writing of any continuing conflicts with applicable standards within 30 days of resubmittal of housing development application.

AB 2243: Amendments to SB 6 and AB 2011

Changes definition of “principally permitted use”

- Parking uses are considered “principally permitted” regardless of whether they require conditional use permit or not.

Regional Mall

- For SB 6 projects and AB 2011 mixed-income housing projects, provides that project site may exceed 20 acres (up to 100 acres) if site is “regional mall.”
- Imposes specific development standards related to average block size, open space, and commercial corridor frontage for AB 2011 projects on regional mall site.

AB 2243: Amendments to AB 2011

Changes several definitions in AB 2011 including:

- Commercial corridor
- Freeway
- Side street removed, replaced with street
- Industrial use
- Dedicated to industrial use
- Neighborhood plan.

AB 2243: Amendments to AB 2011

Changes for mixed-income housing development projects:

- Requires affordable housing as a percentage of “base units” rather than total units.
- Establishes minimum “allowable” residential densities and minimum densities at which project must be developed.
- Prohibits imposition of objective standards that preclude development at AB 2011 density or require reduction of unit size.

Changes for affordable & mixed-income housing development projects:

- Prohibits projects on sites requiring demolition of historic structure.
- Allows housing within 500 feet of freeway if certain requirements are met.
- Prohibits requirement of additional common open space if project will convert existing nonresidential use to residential use.
- Makes several changes related to AB 2011 projects in coastal zone(s).

AB 2243: Amendments to AB 2011

Impacts Your Job

Imposes new deadlines for ministerial consideration and approval or denial of AB 2011 projects.

- Must determine whether development is consistent with objective development standards within:
 - For 150 units or fewer, 60 days.
 - For more than 150 units, 90 days.
- If inconsistent, must provide written, exhaustive list within timeframes above.
- Must determine whether consistent within 30 days of resubmittal and cannot request new information not in initial.
- If consistent, must approve within 60 or 90 days, as applicable.

SB 1123: Subdivisions with 10 or fewer units (Amends SB 684)

Zoning: Can be in single family zone in addition to multifamily.

- Existing lot size:
 - Multifamily = not more than 5 acres;
 - Single family lot = not more than 1.5 acres
- New lot size:
 - Multifamily = 600 sq ft or bigger.
 - Single family = 1,200 sq ft or bigger.

If parcel is not a Housing Element site, then development must result in at least:

- 66% of the applicable residential density in the local zoning code, or
- 66% of the Housing Element default density.
- Defines "net habitable square footage."

SB 1123: Subdivisions with 10 or fewer units (Amends SB 684)

- If ADU/JADU permitted, the ADU/JADU does not count as residential units for purposes of the requirement to have 10 or fewer units.
- May impose height limit of no less than the height allowed under existing zoning applicable to the lot.
- Effective date: July 1, 2025.

SB 1123: Subdivisions with 10 or fewer units (Amends SB 684)

Action Item

If adopted an implementing ordinance last year, will need to update it.

Impacts Your Job

This law now applies in single family residential zones.

Density Bonus

AB 2694 & AB 3116: Density Bonus

Residential Care Facilities

Adds to definition: residential care facilities for the elderly (H&S Code §1569.2).

Student Housing

New definition: A development that contains bedrooms containing two or more bedspaces that have a shared or private bathroom, access to a shared or private living room and laundry facilities, and access to a shared or private kitchen.

AB 3116: Density Bonus - Student Housing

- All units must be used exclusively for undergraduate, graduate, or professional students enrolled currently or within the past six months in a least six units.
- Cannot tie any rental bed reserved for lower income student to a specific bedroom; lower income student can share a room with non-lower income student.
- Can receive up to a 50% density bonus by providing 24% of the units to lower income students.

AB 2694 & AB 3116: Density Bonus

Action Item

May need to update density bonus ordinance to reflect changes.

Impacts Your Job

More specificity in what qualifies as senior housing and student housing for density bonus.

Fees

SB 937: Timing of Impact Fee Collection

- Requires most impact fees for most housing projects to be collected at occupancy, not with building permit.
 - All projects eligible for a density bonus and with 10 or fewer units.
- **No interest can be charged**; may require contract recorded before building permit; model contract must be posted on website.
- May collect connection fees at permit; also certain fees if account established and funds appropriated.
 - Cannot require if 49% or more units are lower income.

SB 937: Timing of Impact Fee Collection

Action Items

- Review fees paid at building permit to determine which must be collected at occupancy; consider establishing accounts and appropriating funds.
- Develop and post model contract on website.

Impacts Your Job

Must establish procedures to collect funds at occupancy.

Good To Know

Park dedication fees, affordable housing fees, and processing fees may be excluded from the definition of “fees” and not affected by SB 937; consult counsel.

AB 2430: Density Bonus Monitoring Fee

Cannot charge a monitoring fee to ensure the continued affordability of a housing development project meeting specified requirements:

- Housing development project that is 100% affordable for lower income households under Section 65915(b)(1)(G) and the applicant received a density bonus;
- Housing development project is subject to a recorded regulatory agreement with CTCAC, FHA, or HCD and has provided a fully executed Tax Credit Reservation Letter
- Applicant agrees to provide compliance monitoring documents required by CTCAC, FHA, or HCD
- Certain exceptions where City can charge a monitoring fee

AB 2430: Density Bonus Monitoring Fee

Action Item

- Review existing monitoring fees.
- Review existing density bonus agreements to see if need to stop collecting monitoring fee.

Impacts Your Job

May not be able to recover staff costs associated with monitoring affordable projects for continued affordability.

AB 2663: Inclusionary Housing In Lieu Fees

- Agencies need to begin complying starting January 1, 2026
- Agencies with an in-lieu fee alternative for inclusionary housing programs must track and annually publish on their website the amount of inclusionary in-lieu fees collected in the previous year and whether the fees are intended to be used for a project.
- Additionally, starting January 1, 2026 and every five years after that, the local agency collecting such fees must post the amount of inclusionary in-lieu fees collected in the past five years and the projects that the fees were spent on.

AB 2663: Inclusionary Housing In Lieu Fees

Action Items

On January 1, 2026, agencies that collect in-lieu fees for inclusionary housing programs need to post on their website:

- The amount of inclusionary in-lieu fees collected in the last 5 years and the last year.
- What projects the fees were spent on.
- Whether the fees are intended to be used for any project.

Impacts Your Job

Adds a reporting requirement for in lieu fees collected as part of the inclusionary housing program.

Good to Know

The agency's first report must satisfy the annual and five-year reporting requirements.

AB 1820: Fee Estimates

- A city, county, or city and county to provide, upon request, preliminary fee and exaction estimates within 30 business days of submission of a preliminary application.
- Within 30 business days of a housing development project receiving all necessary approvals to be eligible to apply for and obtain a building permit, AB 1820 requires a city, county, or city and county to provide the project proponent an itemized list and good faith estimate of the fees and exactions.

AB 1820: Fee Estimates

Impacts Your Job

A local government needs to provide:

- A preliminary fee and exaction estimate within 30 business days of the submission of a preliminary application if requested by the project proponent.
- An itemized list and good faith estimate of the fees and exactions within 30 business days of the housing development project receiving final approvals.

Good to Know

- These estimates are not binding.
- While agencies are required to request from project proponents the total amount of fees and exactions that were imposed against the project, the development proponent is not required to provide this information.

AB 2553: Mitigation Fee Act

- Amends definition of “major transit stop” in Public Resources Code Section 21064.3.
 - Decreased frequency of bus service intervals from 15 to 20 minutes.
- Requires local agency, when imposing traffic mitigation fees, to consider lower rate of automobile trip generation for housing development located within transit priority area.

AB 3177: Mitigation Fee Act

- Prohibits land dedication requirement to widen roadway if requirement is for purpose of:
 - Mitigating vehicular traffic impacts.
 - Achieving adopted traffic level of service related to vehicular traffic.
 - Achieving a desired roadway width.
- Allows land dedication requirement if:
 - Housing development not located in transit priority area; AND
 - Housing development has linear street frontage \geq 500 feet.

AB 3177: Mitigation Fee Act

- Permits discretionarily imposed land dedication requirement if local agency makes finding that it is necessary to preserve health, safety, and welfare of public (e.g., pedestrians, cyclists, children).
 - Must be specific to housing development project.
 - Must be supported by substantial evidence.
- Authorizes imposition of land dedication requirement to construct public improvements (e.g., sidewalk, sewer).

AB 3177 & AB 2553: Mitigation Fee Act

Impacts Your Job

- Before imposing traffic mitigation fee, must consider lower rate of automobile trip generation for housing development located within transit priority area (even with planned, not existing major transit stop).
- Cannot require land dedication to widen roadway if to mitigate vehicular traffic impacts, achieve adopted traffic level of service, or achieve desired roadway width.
- May require land dedication to construct other public improvements.

Q & A (1 of 2)



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Other Bills

AB 2904: Extended Notice Period for Zoning Amendments

The Planning Commission hearing on any zoning amendment affecting the permitted uses of real property must be noticed at least 20 days before the hearing.

- Does not appear to affect notice of Council or Board hearing, but staff should confirm noticing requirements with legal counsel.

SB 1395 & AB 2199: CEQA

- Exempts from CEQA certain actions related to homeless shelters and low barrier navigation centers.
- Adds to list of conditions that removes a residential or mixed-use housing project from CEQA exemption if the project may cause a substantial adverse impact to tribal cultural resources.
- Sunsets January 1, 2032.

Q & A (2 of 2)



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