



American Planning Association  
**California Chapter**

*Making Great Communities Happier.*

## **APA CALIFORNIA LEGISLATIVE UPDATE**

**JULY 2017**

**By John Terell, AICP, Vice President Policy and Legislation**

**Sande George, APA California Lobbyist**

**Lauren De Valencia y Sanchez, APA California Lobbyist**

### **Many Important Planning-Related Bills Still in Play**

APA California remains very busy working on hundreds of planning-related bills that are moving through the Legislature. With the first major deadline to pass all bills out of their house of origin behind us, many problematic bills continue to move to the other house. While APA California has been successful in negotiating amendments to several important housing-related bills, others including those related to housing and to permitting of small cell wireless infrastructure, continue to move despite substantial opposition – APA California is working very hard to put the brakes on those bills.

### **2017-2018 Budget and Cap and Trade**

On June 15<sup>th</sup>, legislators and the Governor reached an agreement on the 2017-2018 budget. While there wasn't any reference to the Cap and Trade extension in the budget deal, the Governor did later reach an agreement with the legislature on July 17<sup>th</sup> by passing AB 617, AB 398 and ACA 1 – this legislative package establishes a comprehensive, statewide program to address air pollution in neighborhoods with poor air quality. The new program will require neighborhood air monitoring and targeted community action plans that require pollution reductions from mobile and stationary sources for greenhouse gases, and criteria and toxic pollutants. The legislation also mandates that large industrial facilities upgrade their old equipment with cleaner, more modern technology by December 2023 and increases penalties for violations of emission requirements.

The other main feature of the package is the extension of the state's cap-and-trade program to meet its SB 32 target to reduce greenhouse gas emissions 40 percent below 1990 levels by 2030.

### **Housing Package**

While the Governor didn't directly include any monies in the 2017-2018 budget for affordable housing, he did ask the Legislature by the end of the year to send him bills to streamline the processing of housing. Over 130 housing bills were introduced in January. The Governor recently engaged on all of the major housing bills, and has put together a list of bills he wants to see in a housing package. He intends to ask for a quick vote when the Legislature returns from its summer recess on August 21<sup>st</sup>. APA California will be working closely with other local government associations to help influence that package and continues to work with a broad housing coalition to ensure that any housing package includes a balance of funding for affordable housing, planning and infrastructure to support housing, as well as reasonable streamlining changes. PLEASE WATCH YOUR EMAILS FOR AN ALERT ON THE GOVERNOR'S HOUSING PACKAGE! The package of the Governor's preferred bills are listed below in this article.

### **How You Can Get Involved**

As bills are making their way through hearings, APA California has been sending letters to the authors in support or opposition of their measures. As always, we would appreciate letters from

members or their employers that are consistent with those positions. To review the letters, and for more information on all of the housing bills, please go to the legislative tab on APA's website at [www.apacalifornia.com](http://www.apacalifornia.com). All position letters will be posted on the APA California website "Legislation" page, which can be found here: <https://www.apacalifornia.org/legislation/legislative-review-teams/position-letters/>. Position letters will continue to be posted here as they are written and updated – please feel free to use these as templates for your own jurisdiction/company letters.

## **UPDATES ON MAJOR HOT BILLS**

### **AB 72 – Housing Law Enforcement and Finding of Noncompliance by HCD**

*Position: Support if Amended – Part of the Governor's Housing Package*

*Location: On Senate Floor*

This bill provides the Attorney General with the authority to enforce housing statutes, and allows HCD to find a jurisdiction in non-compliance with Housing Element Law after initially finding the housing element in compliance. APA supports increased enforcement of housing element laws and other targeted housing statutes, but suggested amendments now in the bill to limit the statutes that HCD can use to determine noncompliance to failure to adopt a housing element, failure to complete promised rezonings, failure to provide and maintain adequate sites, provision of SB 2 zoning for emergency shelters, transitional housing and supportive housing, adoption of a reasonable accommodation ordinance, and adoption of a density bonus ordinance. All of these are violations of clearly defined provisions of law. The bill was also amended at APA's request require that HCD notify cities and counties of its concerns/potential violations before referring or beginning any finding of noncompliance action and to provide a chance for the city or county to cure the violation to avoid the noncompliance finding. The bill however still needs amendments to allow more time to cure (from 30 days to up to 120 days depending on the actions required), and to apply similar due process and curing requirements to AG enforcement actions.

### **AB 686 – CA Affirmatively Further Fair Housing Law**

*Position: Support if Amended to Mirror Federal Regs - Part of the Governor's Housing Package*

*Location: Senate Transportation & Housing Committee*

This bill would require a public agency, including cities, counties and regional agencies, to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and to not take any action that is inconsistent with this obligation. Unfortunately, the requirements in the bill go way beyond federal regulations. APA submitted amendments to pare back the bill to include only the federal regulations in California law, but instead the bill was recently amended to state that in selecting meaningful actions to fulfill the obligation to affirmatively further fair housing, the bill does not require a public agency to select, or prohibit a public agency from selecting, any one particular action. The bill was a two-year bill, but may be resurrected as part of the Governor's Housing Package.

### **AB 678/SB 167 – New Housing Accountability Act Enforcement Provisions**

*Position: Neutral on HAA portions of bills/Oppose amendments inserted as part of the Governor's Housing Package*

*Location: On Senate Floor/Assembly Rules*

These bills make a number of changes to the Housing Accountability Act (HAA). Originally, both bills (which are now identical) included requirements that local governments would not have been able to meet and would have imposed automatic fines for HAA violations without the ability to cure those violations. As now amended, the bill is in better shape but still changes the HAA standard of review from substantial evidence to preponderance of the evidence – a change APA opposed but have agreed now agreed to to ensure many other provisions of the bill were corrected and reasonable. And, as of now, the majority of those other sections that APA strongly opposed have been fixed, including: removal of the ability for a judge to impose automatic fines on jurisdictions that cure a violation pursuant to a judge's order; removal of the ability of a court to approve a project that is the subject of a challenge; and elimination of a requirement that all conditions imposed "ensure that the project remains feasible" according to the applicant; and a provision that would have allowed a developer who had agreed to a condition or requirement to ignore that condition if

the developer believed it was taken under pressured from the local government. Due to all of the amendments taken by the authors, APA will be removing its opposition to the HAA portion of these bills. Unfortunately, as part of the Governor's Housing Package, new amendments have been inserted that APA opposes.

**AB 1397 – Restrictions on Adequate Sites in Housing Element**

*Position: Oppose Unless Amended - **Part of the Governor's Housing Package***

*Location: On Senate Floor*

This bill would place restrictions on the ability of cities and counties to designate non-vacant sites as suitable for housing development and would require all designated sites to have water, sewer, and utilities available and accessible to support housing development during the planning period. Many of the most onerous requirements for these sites in the original versions of the bill have already been removed. However, APA continues to work with the author and sponsors on additional amendments to ensure that built-out cities can identify adequate sites, and clarify the utility requirement provisions. Unfortunately, as part of the Governor's Housing Package, new amendments have been inserted that APA opposes unrelated to the adequate sites provisions.

**AB 1515 – Deemed Consistent Standard for General Plan and Zoning Determinations in HAA**

*Position: Oppose - **Part of the Governor's Housing Package***

*Location: On Senate Floor*

This bill specifies that a housing development project or emergency shelter is deemed 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 or emergency shelter is consistent, compliant, or in conformity, pursuant to the HAA. This "deemed consistent" standard will allow the developer to determine consistency of a development with the General Plan and zoning – APA continues to oppose this change.

**SB 35 – New Ministerial (By Right) Approval Process for Housing**

*Position: Support if Amended - **Part of the Governor's Housing Package***

*Location: Assembly Rules*

This bill establishes a ministerial approval process for developments that meet certain conditions. If a development meets those conditions, including inclusionary housing requirements and payment of prevailing wage, then the project will be subject only to the specified ministerial approval and design review process and cannot be subject to a conditional use permit. The bill also adds new requirements to the annual report, including the number of units entitled. Although APA supports by-right housing approvals, this bill has been loaded down with requirements, costs and restrictions on eligible sites that will make the by-right provisions unlikely to be requested by developers for many parts of the state. APA is working with the housing coalition on amendments to make sure that the trigger for the by-right process is based on entitlements that a local agency controls rather than building permits pulled by the developer..

**SB 166 – Expansion of No-Net Loss to Loss of Affordability**

*Position: Support if Amended - **Part of the Governor's Housing Package***

*Location: Assembly Rules*

This bill would mandate a number of new requirements on localities to implement a rolling adequate sites and rezoning requirement by income level, making the previous no-net loss provision a production requirement by income level. Although APA agrees that no jurisdiction should be left with only a few or no sites that can accommodate affordable housing by the end of the planning period, the continuous requirement to rezone sites so that 100% of the sites are always available will be very expensive and difficult to implement by cities and counties, alert those in the area that don't want affordable housing, and may actually lead to fewer units, particularly multifamily units, being produced. APA has been working with the authors and sponsors of the bill to find a more reasonable alternative to continuous rezonings that will most likely require CEQA compliance, but has had no success to date.

## **SB 649 – Small Cell Wireless Infrastructure Permitting and Mandatory Leasing**

*Position: Oppose*

*Location: Assembly Appropriations Committee*

This bill is a reincarnation of AB 2788 from 2016. The bill effectively eliminates public input and full local environmental and design review, mandates the leasing of publicly owned infrastructure for small cells infrastructure, and eliminates the ability for local governments to negotiate leases or any public benefit for the installation of “small cell” equipment on taxpayer funded property. Specifics of the bill are as follows:

- ) Discretionary approval of small cell permits are only allowed in the coastal zone and in historic districts. All other areas must process these permits through either a building or encroachment permit.
- ) Limited ability to apply design standards for property in the right of way, and those provisions are conflicting and difficult to interpret.
- ) Small cell dimensions defined in the bill are still very large and don't include all associated equipment needed to support the small cells.
- ) Mandatory leasing of public property at prescribed fees – Fees for leasing of public property would be set by using a formula for attachments to PUC poles, plus an additional \$250 for the time to set up the fee structure. After applying the formula, those fees would likely barely cover maintenance costs.

APA California also believes SB 649 will set a dangerous precedent for other private industries to seek similar treatment. APA California, along with other local government associations and many cities/counties continue to remain opposed. While many amendments have been made to the bill since its introduction, they have not been in direct consolation from opposition and many have only caused further concerns with ambiguous language, requiring more amendments in subsequent committees to fix the original amendments. At the very least, APA California believes this bill should be made a two-year bill to allow more time for a meaningful discussion on the issue and a fair process.

## **HOUSING BILLS SUPPORTED BY APA**

**SB 2 – Permanent source of affordable housing funding and funding for planning through document fee - *Part of the Governor's Housing Package***

**SB 3 – Housing bond - *Part of the Governor's Housing Package***

**AB 1505/SB 277 – Palmer Fix to allow inclusionary zoning for rental housing**

**AB 1521 – Notice of proposed changes to assisted housing developments - *Part of the Governor's Housing Package***

**AB 1568 – New sales tax option and streamlining for Enhanced Infrastructure Financing Districts**

## **All Hot Bills**

To view the full list of hot planning bills, copies of the measures, up-to-the minute status and APA California letters and positions, please continue to visit the legislative page on APA California's website at [www.apacalifornia.org](http://www.apacalifornia.org).