



American Planning Association
California Chapter

Making Great Communities Happen

APA CALIFORNIA LEGISLATIVE UPDATE

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End of Session Nearing with Major Bills Still in Play

The 2017 Legislative Session will end on September 15th. APA California is continuing to actively lobby bills of concern that are still working their way towards the Governor, and supporting those that APA would like the Governor to sign. Once session ends, all bills that pass will be sent to the Governor – he must sign or veto those bills by October 15th. All other bills that don't pass will become two-year bills and can be brought up again next year. It's important to note that many bills that APA California opposed earlier in the year have already become two-year bills. We expect them to move again next year.

Because this article will be released before the end of session, please make sure to attend the annual Legislative Update Session at the APA California Conference for an update on what happened to important bills.

Housing Package Still Under Discussion

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 local approvals of housing. Over 130 housing bills were introduced in January. The Governor recently engaged on all of the major housing bills, and has been working with the Assembly and Senate Leadership and authors on a housing package of bills that will be heard on the floors and then sent quickly to the Governor any day now. APA California has weighed in on many of the big housing bills throughout the session and continue to do so. Additionally, along with our local government association partners, and a coalition of other organizations interested in housing, we have met with the Governor's office to express concerns with various bills thought to be part of that package. While we know that SB 2, SB 3 and SB 35 (details below) are all included, there has been no confirmation on the full list of bills that will be in the final housing package that has been blessed by the Governor.

As you will see (below), the housing package does include funding for housing and planning, but the majority of the bills require substantial new requirements on local governments when approving housing development – the "streamlining" portion of the package is once again all new city and county mandates. Many of the streamlining bills are substantially less onerous than introduced, a good number as a result of APA-suggested amendments inserted in these measures. But -- many of those bills have received last-minute amendments or continue to contain vague new requirements, new terms and processes that conflict with existing planning laws or make local housing approvals and housing element law more difficult to implement, and detailed new requirements that will not result in any new housing but will add substantially to local reporting mandates.

Last Minute SB 35 Amendments Upend General Plan and Zoning Law

SB 35, which would provide a new developer-option for ministerial approval of housing based on RHNA “compliance”, is an example of both unbalanced and last-minute amendments that have found their way into these housing measures. Authored by Senator Wiener from San Francisco, APA has a support if amended position on the bill. It is currently in the Assembly Rules Committee, and is expected to be a key bill in the Governor’s streamlining portion of the housing package. It requires cities and counties to offer to developers a new ministerial approval process for developments that meet certain conditions, including inclusionary units and prevailing wage, if a local agency does not “meet” its RHNA by income level. The bill also adds new requirements to the annual report, including the number of units entitled. Although APA is supportive of streamlined housing approvals, the bill must be amended to allow for a fair and reasonable process. ***Please contact Senator Wiener’s office and your Senator and Assembly Member in support of APA’s suggested amendments below:***

TRIGGER FOR MINISTERIAL REVIEW BASED ON ACTIONS BEYOND CITY OR COUNTY CONTROL:

SB 35 unfortunately imposes consequences on a city or county based on actions beyond their control and that can only be completed by the developer. **The trigger for the ministerial approval process should be based on the number of entitled and approved applications, a process that local agencies control, rather than building permits, which developers will not pull until they are ready to construct a project entitled by a local government.** A local government can’t turn down a building permit except under extremely limited circumstances. This puts the consequences on the local agency even though they can’t control the reason for those consequences.

NEW AMENDMENTS OVERTURN ZONING LAW: New language added to the bill, although designed to re-state existing law, instead completely changes existing zoning law by allowing either the General Plan or zoning to apply to sites, mixing in design standards, and using terms and concepts that are vague and inconsistent with existing Housing Element and Density Bonus law, and the Housing Accountability Act. It’s one thing if the zoning is inconsistent because (for instance) it has not been updated to reflect the General Plan, in which case the General Plan does and should control – that is existing law. But if the standards have been updated and are actively designed to implement the General Plan, this bill should not require local agencies to ignore zoning just because someone deems those zoning standards are somehow “inconsistent” or not “compliant” – a new term - with the plan. “Inconsistent” as meant in existing law does not mean “the same”. The bill must be amended to fix these sections so they are not in conflict with existing law governing zoning, density bonuses, and Housing Element site requirements, while still keeping the goals of the new language. Those amendments are below:

Amend S. 65913.4 (5)(A) to be consistent with the definition of “maximum allowable residential density” in S. 65915 (o)(2) in the Density Bonus Law.

~~(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted. *does not exceed the maximum allowable residential density. "Maximum allowable residential density" means the density allowed under the zoning ordinance, or, if the density allowed under the zoning ordinance is inconsistent with the general plan, the general plan density applicable to the project. For the purpose of this subsection, the “general plan density applicable to the project” means the greater of the density allowed in the land use element or specified in the housing element of the general plan.*~~

Amend S. 65913.4 (5)(B) to be consistent with the Housing Accountability Act S. 65589.5 (d)(5)(A) and Housing Element law.

~~(B) *In the event that objective zoning, general plan, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.*~~

~~(B) *In the event that zoning for a proposed development site is not consistent with the general plan, a development shall be deemed consistent with the objective zoning standards related to housing density pursuant to this subdivision if the density of the proposed development is consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation.*~~

Delete the addition to S. 65913.4 (C) that would allow zoning OR the General Plan designation and make language consistent with above:

(C) A site that is zoned for residential use or residential mixed-use development ~~development, or designated for residential use or residential mixed-use development in the housing element, 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.

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 an alert on APA's position on all of the remaining major housing bills, please go to the legislative tab on APA's website at 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 – APA encourages you 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 – **May Be 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, and many of APA's amendments were inserted into the bill. But, **the bill still needs amendments to allow more time to cure (from the short 30 days in the bill to up to 120 days depending on the actions required), and to apply due process and curing requirements to AG enforcement actions similar to those added for HCD at APA's request.**

AB 686 – CA Affirmatively Further Fair Housing Law

*Position: Support if Amended to Mirror Federal Regs – **Two-Year Bill***

Location: Senate Transportation & Housing Committee

This bill would have required 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 went way beyond federal regulations though that was the goal of the bill in case federal law in this area is eliminated. **APA submitted amendments to pare back the bill to include only the federal regulations in California law.** The bill is now a two-year bill, and will most likely move again in January.

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/On Assembly Floor

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. Due to all of the amendments taken by the authors, APA was ready to remove our 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 and need amendment:

- The new definition of "lower density" "includes conditions that have the same effect or impact on the ability of the project to provide housing." This requirement isn't clear. Instead, it should read: "lower density" includes conditions that have the effect of lowering density.
- The ability of a judge to increase fines if a city or county fails to make "progress in meeting its target RHNA" should be changed to instead allow increased fees based on an accounting

of applications received and applications approved/entitled. There is no requirement for a city or county to build housing to meet the RHNA.

AB 879 – New Housing Element Mandates

Position: Oppose Unless Amended – May Be Part of the Governor’s Housing Package

Location: On Senate Floor

Recent amendments to AB 879 have moved our position from support to oppose. **They should be removed:**

- **Requires mitigation fees to be substantially reduced through a new HCD report without providing other funding for services and infrastructure to serve new development, and undermines a US Supreme Court Decision.** California’s existing Mitigation Fee Act implements the US Supreme Court’s requirement that local infrastructure fees must be based on the impact of a project and only cover the cost of the infrastructure necessary to serve the project. This bill will undermine that US Supreme Court decision. Additionally, a blanket statement for HCD to complete a report to “substantially” reduce fees – a conclusion before the report is even begun - will not fund infrastructure and services needed to serve new housing.
- **Adds substantial analysis to the housing element by requiring the analysis of governmental constraints in the housing element to include any ordinances that directly impact the cost and supply of residential development.** All ordinances could be determined to impact the cost of housing including critical ordinances like utility infrastructure such as sewer and water connection fees not under the control of local governments; drought requirements; building and fire code requirements like fire sprinklers; lighting; fencing; and, road and other infrastructure improvements. If there is something of specific concern, that should be addressed directly rather than requiring a review of every single local ordinance.
- **Imposes an unfunded mandate to be paid by fees imposed on new housing projects.**

AB 1397 – Restrictions on Adequate Sites in Housing Element

Position: Oppose Unless Amended – May Be 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, many remain and would make finding adequate sites extremely difficult in future planning periods. APA is requesting the following amendments:

- **Ensure that built-out cities are able to identify adequate sites, as the bill places severe restrictions on the designation of sites to be redeveloped.**
- **Clarify that utility requirements can be determined based upon the information provided to the city and county by the utility provider.**
- **Eliminate a new amendment requiring cities and counties to demonstrate local efforts to remove “non-governmental constraints” over which they have no control, including the cost of land or rental rates.**

AB 1505/SB 277 – Restoration of Inclusionary Housing Authority for Rental Units

Position: Support – May Be Part of the Governor’s Housing Package

Location: On Senate Floor/On Assembly Floor

These bills clarify the Legislature’s intent to supersede the holding in the *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* decision, to the extent that the decision conflicts with a local jurisdiction’s authority to impose inclusionary housing ordinances on rental projects. As inclusionary requirements are one of the few options cities and counties have to increase affordable rental housing, this is an important clarification. Unfortunately, the Governor has expressed concerns that this bill could increase the cost of housing and has not yet decided if they should be included in his final housing package.

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

Position: Oppose – May Be 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. APA has no problem with the “reasonable person” portion of this new standard. **However, the “deemed consistent” automatic approval should be deleted** - it goes too far and upends the accountability for local land use decision-making. AB 1515 will allow the applicant, rather than the local agency or a judge, to determine consistency of a development with the General Plan and zoning by allowing the applicant to provide contrary reasons why the project is consistent. As a result, the issue will be whether a “reasonable person” could conclude that the project is consistent – not whether the city or county had substantial evidence to back up its conclusion.

SB 2 – Permanent Source of Affordable Housing Funding and Funding for Planning through Document Fee on Non-Housing Real Estate

*Position: Support – **Part of the Funding Portion of the Governor’s Housing Package***

Location: On Assembly Floor

This bill would provide a permanent source of funding of about \$225 million per year for affordable housing, a portion of which will be available to use for local planning to accelerate housing production.

SB 3 – Housing Bond for Affordable Housing

*Position: Support – **Part of the Funding Portion of the Governor’s Housing Package***

Location: On Assembly Floor

This measure would authorize a \$4 billion general obligation bond for housing, which would go to voters for approval in 2018.

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

*Position: Support if Amended – **May Be Part of the Governor’s Housing Package***

Location: On Assembly Floor

This bill would mandate that cities and counties implement a rolling adequate sites and rezoning requirement by income level, rather than total units. 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 housing element planning period, the remedy of continuous rezonings is an extremely onerous requirement for cities and counties -- there aren’t enough subsidies to build on 100% of sites designated for affordable housing and the HAA prevents jurisdictions from denying a market-rate housing project proposed on a site that is designated for affordable housing – a Catch 22. We have asked for two amendments:

- **Provide the option of less onerous alternatives to the continuous rezonings** by allowing cities and counties to rezone sites designated as suitable for affordable housing just once in the planning period, in year 4, if the number of sites that can accommodate affordable housing goes below 50% of the RHNA, or require market rate multi-family housing approved on affordable sites to include an inclusionary requirement similar to that in former RDA law.
- **For rezonings that are subject to CEQA, the 180-day rezoning time limit should be extended** by the number of days, if any, required by CEQA. The 180-day time period to complete the rezoning is too short to accommodate any necessary review of CEQA.

SB 649 – Small Cell Wireless Infrastructure Permitting and Mandatory Leasing

Position: Oppose

Location: On Assembly Floor

This bill effectively eliminates public input and full local environmental and design review of small cells, 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 is only allowed in the coastal zone and in historic districts. All other areas must process these permits through either a building or

- encroachment permit.
- There is 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 is required. 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 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 addressed issues raised by the opposition and many have been so ambiguous and vague they have raised additional concerns. This bill should be made a two-year bill to allow more time for a meaningful discussion on the issues and a fair local process.

Some Cities have put forward proposed amendments to the bill, all of which have been refused by the sponsors of the bill. The coalition of local government opposition continues to grow, the Teamsters and the Labor Federation are now also opposed, and the list of individual cities and counties registering opposition has increased substantially in recent months. The Department of Finance recently took an oppose position on the bill and meetings have been held with the Governor and his staff to discuss the bill's detrimental impacts. The bill has also been heavily covered by the press, with nearly every major editorial board coming out in opposition to the bill. With this substantial opposition, we are continuing to actively lobby against the bill and will be asking the Governor to veto SB 649 should it reach his desk.

Other Important Hot Bills:

AB 73 – New Housing Sustainability Districts

Position: Support

Location: Senate Floor

AB 352 – Efficiency unit requirements

Position: Support

Location: Assembly Floor

AB 494 – Assessory dwelling unit clean up

Position: Watching for substantive amendments

Location: Senate Floor

AB 565 – Alternative building standards for artists

Position: Watch

Location: Two-Year Bill

AB 865 – Amnesty for non-compliant live/work buildings

Position: Oppose

Location: Two-Year Bill

AB 1250 – County Personal Services Contracts Restrictions

Position: Oppose

Location: Senate Rules Committee

AB 1404 – CEQA infill exemption

Position: Support

Location: Two-Year Bill

AB 1414 - Solar energy system permitting

Position: Oppose

Location: Senate Floor

AB 1521- Notice of Loss of Assisted Housing Developments

Position: Support

Location: Senate Floor

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

Position: Support

Location: Senate Floor

SB 80 – CEQA Notices

Position: Watch

Location: Assembly Floor

SB 229 – Assessor dwelling unit clean up

Position: Watching for substantive amendments

Location: Assembly Floor

SB 431 – Assessor dwelling code compliance for permitting

Position: Concerns

Location: Two-Year Bill

SB 540 – Workforce Housing Opportunity Zones

Position: Support

Location: Assembly Floor

SB 697 – Development impact fee reporting and restrictions

Position: Opposed

Location: Two-Year Bill

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.