

# APA California 2020 Legislative Update

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#### 2020 LEGISLATIVE UPDATE PANELISTS





Impacts of the Pandemic on Housing, Homeless and Tenants

# 2020 LEGISLATIVE

THEMES



Increased Density, Continued Streamlining and Development Incentives, and Adequate Sites



### 2020 LEGISLATIVE THEMES



## CEQA 2.0 Plus



Independent Contractors vs Employees

## 2020 SENATE BILLS

SB 55/950 CEQA Process Enhancements Watch	<b>SB 182</b> VHFHSZ Planning and WUI Development Standards Support	<b>SB 288</b> CEQA Exemption for Transit Support	<b>SB 899</b> Streamlined Housing on Parking Lots Watch
<b>SB 902</b> Permissive Upzoning of Infill Sites near transit or jobs Support		<b>SB 995</b> CEQA Environmental Leadership Extension Support	<b>SB 1085</b> Density Bonus Support
<b>SB 1120</b> Upzoning of Single Family Parcels Support	<b>SB 1138</b> Emergency Shelter Planning Support	<b>SB 1199</b> Home Hardening Commission Support	SB 1385 Streamlined Housing in C Zones Support

## 2020 ASSEMBLY BILLS

<b>AB 168</b> SB 35 Reform Watch	<b>AB 609</b> E-File CEQA Documents Support	<b>AB 725</b> RHNA Changes Neutral	<b>AB 83 I</b> SB 35 Reform Support	<b>AB 1561</b> Entitlement Extensions Support
<b>AB 1851</b> YIGBY Bill Watch	<b>AB 2257</b> AB 5 Reform Support	<b>AB 2323</b> CEQA Infill Exemptions Support	<b>AB 2345</b> Density Bonus Neutral	<b>AB 3040</b> Upzoning Incentives Support
AB 3088 Eviction Moratorium Support	<b>AB 3107</b> Streamlined Housing in C Zones Support	AB 3164 WUI Risk Modeling Support	<b>AB 3269</b> Homelessness Planning Neutral	<b>AB 3279</b> CEQA Lit. Streamlining Support





## 2020 SENATE BILLS (END OF SESSION)



## 2020 ASSEMBLY BILLS (END OF SESSION)



## **2020 LEGISLATIVE DEAL BREAKERS**

#### **POLICY ISSUES**

- Labor vs Cost of Affordable Housing and Labor Availability
- Perceived Loss of Single-Family Neighborhoods
- Loss of Exclusively Commercially-Zoned Properties
- CEQA Role and Place
- Lack of Adequate Funding

#### **COVID-19 IMPACTS**

- Statewide shutdown cut months out of the normal legislative schedule
- Legislators were asked to cut/prioritize bills
- Inter-house dynamics
- Time ran out at the end of session

## APA CALIFORNIA POLICY FOCUS FOR 2021-2022

- Housing and Homelessness
- Inclusion and Social Justices
- Hazards and Resiliency Planning
- Infrastructure, Services and Fees
- CEQA
- Neighborhood Vitality and Healthy Communities
- Coordinated Planning



## GET INVOLVED!

Legislative Review Team meets in the Spring

Content-specific working groups discuss bills throughout the session

Chapter e-blasts provide mid-session updates on hot topics and positions

https://www.apacalifornia.org/legislation/hot-bills-and-regulations/ FIND BILLS, ANALYSES, POSITIONS, AND LETTERS HERE Email Lauren Lauren De Valencia at Lauren@stefangeorge.com to volunteer

#### 2020 LEGISLATIVE TOPICS

Use the "Q+A" Feature to Enter Your Questions For Each Topic

- 2020-2021 Budget
- Density Bonus and Other Development Incentives
- RHNA Reform and Housing Elements
- Tenant Protections
- Streamlined Approvals and Project Review Procedures
- Wildfire Mitigation and Planning
- CEQA
- AB 5 Reform

## 2020-2021 BUDGET HOUSING FUNDING

## 2020-2021 BUDGET

EBUDGET.CA.GOV

- Emphasis on reducing homelessness.
- \$600 million: Project Roomkey Now permanent program, Project Homekey
- \$1.2 billion: State efforts to reduce homelessness.
- \$500 million: Continuation of 2019 expanded Low Income Housing Tax Credit Program.
- \$277 million: Affordable housing funding from SB 2, real estate transaction fee.
- \$452 million: Infill housing through Sustainable Communities Program and Transformative Climate Communities Program.
- \$550 million: to be backfilled if federal monies allocated, for mixed-income development and infill infrastructure grants.

## DENSITY BONUS AND OTHER DEVELOPMENT INCENTIVES

AB 2345 – SENT TO THE GOVERNOR SB 1085 – FAILED AB 3182 AND AB 69 – SENT TO GOVERNOR

- Adds 50% Density Bonus for Projects
  - 24% of base density for low income households or 15% for very low income households
  - Increased from 35% density bonus for 20% LI / 11% VLI
- Reduces Lower Income Housing Requirement for Incentives
  - Two incentives for projects with 17% LI (down from 20%)
  - Three incentives for projects with 24% LI (down from 30%)
- Clarifies 100% Affordable projects may receive additional waivers at local agency's discretion
- Drops parking required for two to three bedrooms from two to one and one-half onsite parking spaces.
- Clarifies distance to major transit stop methodology
  - Any point on a proposed development is within one-half mile of any point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency
- Local ordinances adopted before 12/31/20 with larger density bonuses not required to update

#### **APA: NEUTRAL AS AMENDED**

#### AB 2345 (GONZALEZ) SENT TO GOVERNOR

- Also adds requirements to the annual housing report to HCD:
- Compliance with obligations to consult with California Native American tribes, and identify and protect, preserve, and mitigate impacts to places, features, and objects.
- The number of density bonus applications received by the city or county and applications approved.
- Data from a sample of projects, selected by the planning agency, approved to receive a density bonus, including the percentage of density bonus received, the percentage of affordable units in the project, the number of other incentives or concessions granted, and any waiver or reduction of parking standards for the project.
- The number of units in a student housing development for lower income students granted a density bonus.

### AB 2345 CONTINUED

- Requires common interest developments to allow owners to rent or lease out their units.
- Also makes several clean-up changes to the ADU statute:
  - Clarifies that if a local agency has not acted upon a completed application within 60 days, the application shall be deemed approved;
  - Provides for ministerial approval of one ADU **and** one JADU on a lot with an existing single-family dwelling, under specified conditions
  - Deletes "neighborhood" from the definitions section of the bill;
  - Specifies that a percolation test, may be required as part of the application for a permit to create an ADU connected to an onsite wastewater treatment system; and
  - Clarifies that this statute is a matter of statewide concern rather than a municipal affair and therefore apply to all cities, including charter cities.

#### **APA: WATCH**

#### Cal APA Webinar re ADUs available here: https://www.youtube.com/watch?v=714ZBOLaEMc

#### AB 3182 (TING) SENT TO THE GOVERNOR

- Creates the Help Homeowners Add New Housing Program for ADU/JADU financing
- Establishes a new program in the State Treasurer's Office to help homeowners finance additional housing units, including ADUs and JADUs.
- Authorizes the California Housing Finance Agency (CalHFA) to issue revenue bonds to fund the program.

### **APA: SUPPORT**

AB 69 (TING) SENT TO GOVERNOR

## HOUSING ELEMENTS/RHNA CHANGES/HOMELESSNESS

AB 725 – SENT TO THE GOVERNOR AB 3040/3269 SB 1138 – FAILED TO PASS



#### AB 725 – WICKS – RHNA FOR MOD- AND ABOVE MOD-INCOME HOUSING – SENT TO THE GOVERNOR

- Applies to metropolitan and suburban jurisdictions with housing elements due after January 1, 2022
- Requires more land to be zoned for medium-density housing projects in the Housing Element.
  - Requires at least 25% of the jurisdiction's share of the RHNA for moderateand 25% of above moderate-income housing to be allocated to sites with zoning that allows at least four units of housing.
  - Caps moderate income sites at a density of 100 units per acre.
- Issue: Will HCD require a history of 4-unit development on similar sites to be able to count the sites required under AB 725?
  - Author agreed to put in a clean up bill on this issue late next year if criteria for adequate sites is a problem that could impact the ability to meet requirements in this bill
  - APA will monitor 6th Cycle implementation to assess the need for a fix

#### **APA: NEUTRAL AS AMENDED.**

## **TENANT PROTECTIONS**

AB 3088 – SIGNED BY GOVERNOR AB 1436 AND SB 1410 – DROPPED IN FAVOR OF AB 3088

## AB 3088 (CHIU – LIMON – BRADFORD – CABALLERO) SIGNED BY GOVERNOR

- Establishes a moratorium on evictions for non-payment of rent due to COVID-19 financial hardship until January 31, 2021.
- Bans evictions for tenants who did not pay their rent between March I and Aug. 31 because of a financial hardship caused by the pandemic.
- Also bans evictions for those tenants through Jan. 31, but only if the tenants pay at least 25% of their rent during that time.
- Rent remains due as commercial debt, which landlord can collect in small claims court.
- Tenants are required to provide sworn statement of financial hardship with 15 days of demand from landlord; high income tenants must provide additional evidence of hardship

#### **APA: SUPPORT**

#### **Note: Already in Effect**

## STREAMLINING/PROJECT REVIEW

AB 168/831/1561/1851 – SENT TO GOVERNOR AB 3107/SB 281/899/902/1120/1385 – FAILED

#### AB 168 (AGUIAR-CURRY) ON THE GOVERNOR'S DESK

- Authorizes a local government to accept an SB 35 application only if one of the following applies:
  - A California Native American tribe that received formal notice did not accept the invitation to engage in a scoping consultation;
  - The parties to a scoping consultation find that no TCR will be affected by the proposed development; or
  - A scoping consultation between a California Native American tribe and the local government has occurred and resulted in an agreement.

#### APA: WATCH

#### Note: Urgency Legislation Would Take Effect Immediately if Signed

#### AB 831 (GRAYSON) SENT TO GOVERNOR

- Cleanup bill for SB 35 projects regarding a path to modify projects prior to final building permit and approval of public improvements.
- Allow a development proponent to request a modification if that request is submitted prior to the issuance of the final building permit. Modification must be reviewed with 60 days (or 90 days if design review is required).
  - Require a local government to approve the modification if it determines that the modification is consistent with the objective planning standards in SB 35:
    - If the modified project does not substantially differ from the approved development, the local government must use the same assumptions and methodology that was originally; or
    - If the modified project does substantially differ from the approved development, the local government may apply objective planning standards adopted after the development application was first submitted.
- Clarifies that a development subject to SB 35, and the site on which it is located, must be zoned for residential use or mixed-use development and at least two-thirds of the square footage of the development must be designated for residential use.
- Defines standards for review of public improvements related to SB 35 projects

#### **APA: SUPPORT AS AMENDED**

Note: Urgency Legislation Would Take Effect Immediately if Signed



- Extends entitlements for housing projects by 18 months plus tolling for legal challenge where both of the following apply:
  - Issued prior to and was in effect on March 4, 2020; and
  - Expires prior to December 31, 2021.
- Applies to state agency approvals, local approvals covered by the PSA, and local ministerial approvals for "housing development projects"
  - Residential/mixed use tentative map, vesting tentative map, or parcel map
  - Residential only projects
  - Mixed-use projects that are at least 2/3 residential
- Excludes development agreements, tentative maps extended for a minimum of 18 months on or after March 4, 2020, SB 330 preliminary applications, and SB 35 approvals

#### **APA: SUPPORT AS AMENDED**



- Allows a religious institution to develop an affordable housing project at a place of worship owned by the religious institution even if the development requires the religious institution to reduce the number of religious-use parking spaces available at the place of worship.
- Establishes that a parking space reduction authorized by this bill shall not allow the religious institution affiliated housing development to provide less than at least one space per residential unit, unless the development is located:
- a) Within one-half mile walking distance of a high-quality transit corridor, or a major transit stop; or,
- b) Within one block of a car share vehicle.



- Prohibits a local government from denying a religious institution affiliated housing development project solely on the basis that the project will reduce the total number of religious-use parking spaces.
- Subjects religious affiliated housing development projects to all other local discretionary approvals, and the total number of parking spaces that can be reduced is limited based on the religious institution's existing parking stock.
- Limits parking reductions to affordable housing projects that are eligible for a density bonus.
- Allows the remaining religious-use parking spaces to count toward the parking required for the housing development project.

### **APA: WATCH**

## AB 2421 – QUIRK – BACKUP GENERATORS FOR WIRELESS CELL TOWERS

- Requires, until January 1, 2024, a local agency to administratively review an application to install an emergency standby generator at an existing macro cell tower site.
- Requires the local agency, if it determines the application is incomplete, to notify the applicant in writing within 10 days of receipt and indicate what parts of the application are incomplete and the specific information required to complete the application.
- Prevents local agencies from requiring new information that was not identified as missing in the initial comments to the applicant.
- Prohibits a local agency from requiring the applicant to demonstrate that the property owner has consented to the installation of the generator as part of the application, but an applicant cannot install the generator until the property owner's consent has been documented.
- Allows a local agency to revoke a permit or approval status for a generator that is found to violate an applicable state or local law and can enforce state and local laws regarding the generator.

#### **APA: NEUTRAL AS AMENDED**

## WILDFIRE MITIGATION AND PLANNING

AB 3074/3164/SB 182 – SENT TO GOVERNOR SB 1199 – FAILED TO PASS

### AB 3074 AND AB 3164 – FRIEDMAN – WILDFIRE RISK REDUCTIONS AND MODELING – SENT TO GOVERNOR

#### AB 3074

- Establishes an ember-resistant zone within five feet of a structure as part of the defensible space requirements for structures located in specified high fire hazard areas.
- Requires removal of material from the ember-resistant zone based on the probability that vegetation and fuel will lead to ignition of the structure by ember.

#### **APA: SUPPORT**

#### AB 3164

- Requires, on or before July I, 2022, the Department of Forestry and Fire Protection (CAL FIRE), in consultation with the State Fire Marshal and the Insurance Commissioner, to develop a wildland-urban interface wildfire risk model to determine the risk for a community or parcel in specified wildfire hazard zones.
- \*\* Implementation of the provisions of both bills are contingent upon appropriation.

#### **APA: SUPPORT**

### SB 182 – JACKSON – WILDFIRE RISK REDUCTIONS AND PLANNING IN VERY HIGH FIRE RISK AREAS – SENT TO GOVERNOR

- Two-year bill from 2019
- Requires additional fire hazard planning responsibilities and specified findings before taking certain development actions in very high fire risk areas (VHFRAs)

#### Major provisions:

- Requires, by January 1, 2023, the State Fire Marshal to adopt wildfire risk reduction standards and standards for third-party inspection and certification of defensible space.
- Requires, by January 1, 2024, the State Fire Marshal to update maps of very high fire hazard severity zones (VHFHSZs) and identify areas where new residential development poses exceptional risk to future occupants of the development.
- Requires the Office of Planning and Research (OPR), by January 1, 2023, to identify local ordinances, policies and best practices relating to land use planning in VHFRAs, wildfire risk reduction, and wildfire preparedness.

## SB 182 CONTINUED

- Requires cities and counties, upon the next revision of the housing element or the hazard mitigation plan, after June 1, 2022, whichever occurs first, to review and update the safety element of the general plans to include a comprehensive retrofit strategy for existing structures.
- Requires, upon each revision of the housing element on or after June 1, 2022, each jurisdiction that contains a VHFRA to amend the land use element to include specified goals, objectives, information, policies, and implementation measures related to fire hazard planning. Jurisdictions must adopt corresponding zoning changes and are subject to specified restrictions on development actions in VHFRAs unless they make findings that the project and all structures in it are protected from wildfire risk.
- Requires cities and counties to make findings regarding their progress in implementing wildfire risk reduction standards and designating lands as VHFHSZs and submit those findings to the Board of Forestry and Fire Protection (Board) and local agencies that provide fire protection in the area, as specified. The Board must review these findings and recommend changes, as specified. The Board must notify the county or city, and may notify the Attorney General (AG), that the county or city is violating state law if the Board determines that the county's or city's findings do not substantially comply with the requirements of this bill, as specified.

## SB 182 CONTINUED

- Requires RHNA plans to further the objective of promoting resilient communities and specifies that furthering this objective shall include reducing development pressure within VHFRAs. If a region has a scheduled revision during the sixth housing element revision cycle on or before June 1, 2022, this requirement shall apply only to the RHNA plan for the seventh and subsequent revisions of the housing element.
- Requires the factors used to develop the RHNA methodology to include the amount of land in each jurisdiction that includes a VHFRA, and whether suitable alternative sites exist outside the jurisdiction, but within the region, to accommodate the remaining regional housing need.
- Creates a grant program administered by the CAL FIRE to distribute grant funds to small jurisdictions to fund local planning activities necessary to meet the requirements of this bill.

#### **APA: SUPPORT**

SB 288 – SENT TO GOVERNOR AB 609/2323/3279 AND SB 55/995 – WILL NOT MOVE FORWARD THIS YEAR



### SB 288 – WIENER– CEQA EXEMPTIONS FOR VARIOUS TRANSPORTATION PROJECTS

• Creates CEQA exemption for various transit-related projects such as pedestrian and bicycle facilities projects, transit prioritization projects, and projects for the institution or increase of new bus rapid transit, bus, or light rail service on existing public rights-of-way or existing highway rights-of-way. Sunsets in 2023

#### Projects must:

Be carried out by a public agency and the public agency is the lead agency.

Be located in an urbanized area.

Be located on or within an existing public right-of-way (ROW)

Not add infrastructure that increases new automobile capacity on existing ROW

Not require demolition of affordable housing units.

Provide for a skilled and trained workforce

#### SB 288 CONTINUED

#### Requires a project exceeding \$100,000,000 to also:

be incorporated in a Regional Transportation plan, Sustainable Communities Strategy, General Plan, or other plan that has undergone a programmatic-level environmental review within 10 years of the project.

Fully Mitigate Construction impacts

Requires the lead agency to complete and consider results of a project business case and a racial equity analysis.

Requires the lead agency to hold noticed public hearings

#### **APA: SUPPORT**

## INDEPENDENT CONTRATORS VS EMPLOYEES – IMPACTS ON PLANNERS

AB 2257 – SIGNED BY GOVERNOR - URGENCY

### AB 2257 – GONZALEZ – CLEAN UP TO AB 5 INDEPENDENT CONTRACTOR VS EMPLOYEE – SIGNED BY THE GOVERNOR

- AB 5 (Gonzalez, 2019) Codifies the decision of the California Supreme Court in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) that presumes a worker is an employee unless a hiring entity satisfies a three-factor test:
  - I. if his or her job forms part of a company's core business;
  - 2. if the bosses direct the way the work is done;
  - 3. or if the worker has not established an independent trade or business.
- Amended substantially in 2019 to exempt from the test dozens of occupations and others that wanted to retain their independent contractor status.
- Was not clear if public entities are considered employers.

## AB 2257 – CONTINUED

- AB 2257 clarifies that public agencies are considered "contracting businesses" for purposes of contracting with independent planning consultants and clarifies that the business-to-business exemption would apply for consultants that contract with other firms and/or individuals.
- The business-to-business exemption could apply to single practitioner planning consultants if the business service provider meets the requirements of the business- to business exemption, which has been further clarified since AB 5 passed.
- If an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation ("business service provider") contracts to provide services to another such business or to a public agency or quasi-public corporation ("contracting business"), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:

## AB 2257 – CONTINUED

#### BUSINESS-TO-BUSINESS EXEMPTION:

(1) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(2) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. This subparagraph does not apply if the business service provider's employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.

(3) The contract with the business service provider is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.

(4) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

(5) The business service provider maintains a business location, which may include the business service provider's residence, that is separate from the business or work location of the contracting business.

(6) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

## AB 2257 – CONTINUED

(7) The business service provider can contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring entity.

(8) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.

(9) Consistent with the nature of the work, the business service provider provides its own tools, vehicles, and equipment to perform the services, not including any proprietary materials that may be necessary to perform the services under the contract.

(10) The business service provider can negotiate its own rates.

(11) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

(12) The business service provider is not performing the type of work for which a license from the Contractors' State License Board is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

• Gives the state and cities the right to file suit against companies.

• Without the bill and its exemptions, the court decision would have affected a far broader share of the economy.

#### **APA: SUPPORT AS AMENDED – SIGNED BY THE GOVERNOR**

## QUESTIONS?



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