



Housing Recap: California 2019/20 Legislative Session

Despite spirited anticipation that legislators would focus on addressing the state's housing shortage in 2020 (more than 100 housing-related bills were introduced at the start of the session), it was a mostly unproductive year for laws to expand housing production and streamline CEQA in California. Few bills of consequence were enacted and chaptered by the governor when the September 30 deadline passed. COVID-19 response and associated shelter-in-place and distancing orders upended the normal legislative session, most likely contributing to the resulting housing-light legislative output.

In signing a number of housing bills on September 30, the governor acknowledged that “more work remains to be done next year,” stating he is “committed to continuing to push the envelope on housing affordability and neighborhood inclusivity.” At the beginning of his administration the governor made housing a top priority, proposing that California strive to build 3.5 million homes by 2025, an average of 500,000 units per year. Only twice since 1954 have developers constructed more than 300,000 units in a single year. A 2016 report from McKinsey Global Institute found that, on a national level, California ranked 49th out of all 50 states in terms of per capita housing construction.

Many of the more ambitious pieces of legislation from this session, including five of the bills in the State Senate's Housing Production Package, fell short of the governor's desk for consideration. Of note was AB 2584, which would have established a task force to evaluate impediments to home ownership in California and submit a report to the legislature in 2021. Some notable proposals that *did not pass include*:

- **SB 902** would have permitted local government to pass an ordinance to zone any parcel up to 10 units of residential density per parcel, if the parcel is located in a transit rich area, a job rich area, or deemed an urban infill area.
- **SB 1120** promoted small-scale neighborhood residential development by streamlining the process for a homeowner to create a duplex or subdivide an existing lot in all residential areas. The bill would have required ministerial approval of duplexes.
- **SB 1385** would have enacted the “Neighborhood Homes Act” which would have established housing as an allowable use on any parcel zoned for office or retail use. The bill's goal was to facilitate the conversion of aging retail centers into housing centers.

- **AB 1279** would have established “high resource areas” throughout the proximity to well-paying jobs and a clean and safe environment. The bill would have targeted high opportunity and low residential density areas for future housing developments. The bill intended to alleviate the housing crisis and reduce exclusionary practices by establishing that housing development must be a “use by right” in an established high resource area.
- **AB 2534** would have established a Task Force to consider and evaluate current impediments to increasing the rate of home ownership for Californians and, no later than March 31, 2021, to develop a final report that includes specified information and recommendations and submit that report to the Legislature.
- **AB 3107** would have made housing development an “authorized use” on a site designated in an element of the general plan for commercial uses. The bill also would have required that a minimum of 20% of the units in a commercial conversion development project be deed-restricted as affordable units to lower income households.

An examination of a number of housing specific categories listed below shows that few bills were chaptered:

- Converting buildings to housing; two bills proposed, none enacted
- Density bonuses: two bills proposed, one enacted (AB 2345)
- Faster approvals: five bills proposed, none enacted
- Zoning improvements: five bills proposed, one enacted (AB 1851)
- Reducing permit fees; five bills proposed, none enacted
- ADUs: five bills proposed, one enacted (SB592)

Some advances were made in the areas of entitlement processing, density bonuses and tenant protections. Following is a partial listing of bills that passed:

COVID-19 responses

- **AB 1561** implements a uniform statewide extension on certain housing entitlements by 18 months to address the “pandemic induced recession.” Extends by 18 months the period for the expiration, effectuation or utilization of a housing entitlement that was issued before, and was in effect on, March 4, 2020, and that will expire before Dec. 31, 2021. (Housing entitlements are defined to include more than just tentative maps; it includes discretionary and ministerial approvals from a state or local agency, among other entitlements and building permit related requirements.)
- **AB 3088** establishes eviction and foreclosure protections on a temporary basis for tenants and property owners facing financial hardships as a result of the COVID-19 crisis, and reformulates the rules governing the residential eviction process.

Density

- **AB 2345** allows cities and counties the authority to grant additional concession/incentives above what is currently provided under state Density Bonus Law if a project exceeds maximum density limits. Changes also include a uniform method to measure distance between a major transit stop and a project location in order to maximize the number of eligible properties within a half-mile radius of a major transit stop. AB

2345 also reduces maximum parking requirement for eligible projects and eliminates parking requirements for 100% affordable projects and senior projects that meet specified criteria.

Housing Production / Streamlining

- **SB 940** allows the city of San Jose to proactively increase housing capacity in the urban core and simultaneously protect open space outside of the infill area. This legislation will boost high capacity housing production and mitigate future wildfire risk by reducing urban sprawl and protecting open space. This bill would authorize the City of San Jose to proactively change a zoning ordinance to a more intensive use and use the added capacity to subsequently change a zoning ordinance applicable to an eligible parcel, as defined, to a less intensive use as long as there is no net loss in residential capacity. The bill would require that the change to a zoning ordinance to a less intensive use pursuant to these provisions occur within one year of the change to the zoning ordinance to a more intensive use — both seen as key steps in addressing our climate and housing crises.
- **AB 168** would require cities and counties to conduct a scoping consultation with Native American tribes before processing a SB 35 application to determine if a proposal could impact a potential tribal cultural resource. If the Native American Tribe believes that there could be an impact, the proposal would not be eligible for permit streamlining under SB 35.
- **AB 725** imposes new requirements for city housing element updates that are required to be prepared under the already underway sixth cycle of the Regional Housing Needs Assessment (RHNA) process. Existing RHNA requirements mandate designation of adequate overall housing sites to accommodate RHNA housing growth, as well as designation of adequate housing sites for low income and other specified subcategories of housing. AB 725 requires that cities designate sites to meet at least 25 percent of a jurisdiction's share of the regional housing need for moderate-income housing, and at least 25 percent of a jurisdiction's share of the regional housing need for above moderate-income housing. For these sites, zoning that allows at least four units of housing, but not more than 100 units per acre of housing, is required.
- **AB 831** clarifies elements of SB 35 including the requirement that developments subject to a streamlined approval process must be on-site zoned for residential or mixed-use and at least two-thirds of the project's square footage must be designated for residential use. This bill also requires the local government to apply "objective planning standards" when reviewing proposed modifications to a project seeking approval per the requirements of SB 35. SB 35, chaptered in 2017, allows qualifying housing and housing-rich, mixed-use projects to qualify for a streamlined, ministerial CEQA-exempt approval process if the project meets the local government's objective zoning, subdivision and design review standards, provides a specific minimum number of affordable housing units, agrees to pay prevailing wages and use skilled and trained construction workers, and meets other qualifying criteria.
- **AB 1851** prohibits a city or county from denying a housing development project proposed by a religious institution, or a developer working with a religious institution, solely on the basis that the project will reduce parking spaces at the place of worship, so long as the reduction is not more than 50% of existing parking. The bill authorizes the requirement of up to one parking space per unit for a religious institution affiliated housing project.
- **AB 3182** would limit the ability of a Common Interest Development (CID), such as a condominium or planned unit development, to prohibit individual homeowners from renting or leasing their homes. Advo-

cates hope that this could create new housing opportunities by creating more home rentals that are currently prohibited from being leased under homeowners association (HOA) rules.

- **AB 3308** would permit school districts to restrict occupancy on land owned by school districts to teachers and school district employees of the school district that owns the land, including permitting school districts and developers in receipt of tax credits designated for affordable rental housing to retain the right to prioritize and restrict occupancy on land owned by school districts to teachers and school district employees. ■