

## LAW ALERT

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### LEGISLATURE PASSES MAJOR OVERHAUL OF CALIFORNIA HOUSING LAWS

On September 15, the last day of the 2017 session, the California Legislature responded to the state's housing crisis by passing over one dozen bills in a landmark housing package developed together with Governor Jerry Brown's office. The package raises more money for affordable housing—much designated for local government—in exchange for requirements to 'streamline' housing development approvals. Although most press reports discussed only three of the bills, SB 2, SB 3, and SB 35, many significant changes are contained in more obscure bills that received little publicity. Together, the bills will require each city and county to change the way it processes housing applications.

Below is a brief description of the major bills. We will provide a more detailed description of each and their implications for public agencies and applicants once approved by the Governor.

#### PROCESSING HOUSING DEVELOPMENT APPLICATIONS

**SB 35: Streamlined Approval for Some Housing Projects.** SB 35 seeks to 'streamline' the approval process for some housing developments. A housing project proposed in a city or county that has not issued enough building permits to satisfy its regional housing need by income category would be eligible for ministerial approval, provided that it complies with 'objective' planning standards. To be eligible for streamlined approval, the project site must: be in an urban area; be zoned or have a general plan designation for residential use; not have contained housing occupied by tenants within 10 years; and meet other

physical specifications. Additionally, the project must provide a specified level of affordable housing and in most cases must commit to paying prevailing wages or use a "skilled and trained workforce."

**AB 678/SB 167 and AB 1515: Housing Accountability Act Changes.** Unlike SB 35, these bills affect *every* housing development application reviewed by local government. Currently, any project conforming with all 'objective' general plan and zoning standards may not be denied, or reduced in density, unless specific findings can be made. AB 678 and SB 167 (identical bills) require that local government provide developers with a list of any inconsistencies between a proposed project and all local plans, zoning, and standards within 30 to 60 days after the housing application is complete, or the project will be 'deemed consistent' with all local policies. AB 1515 gives much less deference to local government's findings of consistency with local plans, allowing courts to give just as much weight to an applicant's evidence of consistency.

**SB 166: Maintaining Sites to Meet Affordable Housing Needs.** The existing "no net loss" provision in state law does not allow cities and counties to downzone sites or approve projects at less *density* than shown in their housing elements, unless enough sites remain to meet the regional housing need assigned to the city. SB 166 requires that similar findings be made if sites are not developed for the *income* category shown in the housing element and extends the mandate to charter cities.

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**RETURN OF RENTAL  
INCLUSIONARY HOUSING**

**AB 1505: *The Palmer Fix.*** Since the Court of Appeal's 2009 decision in *Palmer/Sixth Street Properties LP v City of Los Angeles*, local agencies have not been able to require affordable housing in rental projects. AB 1505 provides specific authorization for these requirements, so long as an alternate means of compliance, such as in-lieu fees, is also provided. If local ordinances are adopted after September 15, 2017 and require more than 15 percent low-income housing, HCD under certain circumstances may review the ordinance and an economic feasibility study supporting the requirement.

**DISTRICTS AND ZONES TO  
STREAMLINE DEVELOPMENT**

**AB 73: *Housing Sustainability Districts.*** AB 73 permits local jurisdictions, with HCD's approval, to create housing sustainability districts meeting designated conditions, including a specified amount of low- and moderate-income housing and zoning to permit residences through a ministerial permit. The city or county must include an EIR for the proposed district development as part of the application to HCD, which will serve as the EIR for all housing projects developed in the district for the next 10 years. Grounds to deny a housing project are very specific and limited. Similar to SB 35, the bill requires payment of prevailing wages and use of a "skilled and trained workforce" for projects with more than 10 units. Local agencies adopting these districts are eligible for "zoning incentive payments" administered by HCD.

**SB 540: *Workforce Housing Opportunity Zones.*** SB 540 authorizes cities and counties to establish Workforce Housing Opportunity Zones by preparing an EIR and adopting a specific plan creating the zone, which must require a specific amount of low- and moderate-income housing. After the specific plan is adopted, a housing development that satisfies certain criteria must be approved, unless the local government makes specified and limited findings regarding the site. The local government must approve a housing development that is consistent with the plan and meets

certain criteria within 60 days after the application is deemed complete. The bill requires the payment of prevailing wages and related requirements under the Labor Code. No additional environmental review is required for housing within the zone if specified criteria are met and the EIR is updated every five years. HCD may provide grants or no-interest loans to cities and counties to develop the specific plan and related EIR.

**HOUSING ELEMENT ANNUAL  
REPORT REQUIREMENTS**

**SB 35/AB 879: *Enhanced Annual Reporting.*** SB 35 requires cities and counties to provide additional information in their annual reports regarding housing element compliance, including the number of entitlements, permits, and certificates of occupancy that are issued for housing projects. AB 879 includes additional technical requirements for the annual reports and directs HCD to evaluate the reasonableness of local government fees charged under the Mitigation Fee Act by June 30, 2019.

**HOUSING ELEMENT REQUIREMENTS**

**AB 1397/AB 879/AB 72: *Increasing and Enforcing Housing Element Requirements.*** AB 1397 creates numerous additional technical requirements for housing elements prepared by cities and counties, with a primary focus on enhanced analysis of sites identified for affordable housing development, especially sites that would be redeveloped for housing. Current law requires jurisdictions to approve multi-family housing projects 'by right' on sites rezoned to achieve housing element compliance; AB 1397 requires that projects restrict at least 20 percent of the units to lower income households to qualify for by-right approval. AB 879 requires substantial additional analysis of local constraints on housing development. AB 72 authorizes HCD to review city and county actions for compliance with a certified housing element and issue a notice of noncompliance. If a jurisdiction fails to take corrective action, HCD may revoke its finding that the housing element complies with state law and notify the Attorney General that the jurisdiction is in violation of state law.

**FUNDING FOR HOUSING**

***SB 2: Permanent Source for Housing—Recording Fee.*** After the loss of over \$1 billion each year for affordable housing with the demise of redevelopment, SB 2 provides a "permanent source" of funding for affordable housing by imposing a \$75 fee on each recorded document up to a maximum of \$225 per transaction per parcel, estimated to raise \$200 million per year. Documents exempted from the fee include documents transferring a residential dwelling to an owner-occupant and documents recorded in connection with transfers that are subject to the transfer tax, such as grant deeds not involving related parties. The funds to be generated by the fees will be provided to local government and HCD to provide affordable housing as specified in the bill, with the majority of the funding designated for local government use. This is an urgency bill that will take effect immediately when signed by the Governor.

***SB 3: Veterans and Affordable Housing Bonds.*** SB 3 places on the November 6, 2018 ballot a bond measure to raise \$3 billion for existing state affordable housing programs and \$1 billion for the veterans' home purchase program. This bill is also an urgency measure.

***AB 1568: Neighborhood and Infill Finance and Transit Improvements Act.*** After the dissolution of redevelopment agencies, several economic development tools were adopted by the State using more restrictive tax increment funding mechanisms than the one utilized under redevelopment. One of these tools is an "enhanced infrastructure financing district" ("EIFD"). AB 1568 allows a local jurisdiction to direct a portion of its local sales and use taxes and transaction and use taxes to an EIFD if the area is an infill site and specific affordable housing requirements are met.

***AB 571: Farmworker Housing.*** AB 571 makes several changes to the farmworker state low-income housing tax credit program to make the program more flexible. Only 50 percent (rather than 100 percent) of the units funded under the program must be occupied by farmworker households. In addition, the bill also makes several changes to the law regarding migrant farm labor centers to allow for advance payments of

up to 20 percent of annual operating costs and measure.

**EXPIRING AFFORDABILITY RESTRICTIONS**

***SB 1521: Expiring Affordability Restrictions.*** For assisted housing developments, SB 1521 (1) requires the owner to provide notice of use restrictions that are expiring after January 1, 2021 to all prospective tenants and existing tenants within 3 years of the scheduled expiration of rental restrictions; (2) expands potential remedies for failure to provide notice to include the reimposition of prior restrictions, restitution of improper rent increases, and award of attorney's fees and costs to a prevailing plaintiff; (3) requires HCD to certify persons or entities that are eligible to purchase the development and to receive notice of the expiring restrictions based on their experience with affordable housing; (4) revises the procedure regarding the owner's ability to accept an offer to purchase; and (5) requires HCD to monitor compliance and provide an annual report to the legislature starting March 31, 2019.

**ACCESSORY DWELLING UNIT  
'CLEANUP' LEGISLATION**

***AB 494/SB 229: Easing Restrictions on ADU Construction.*** AB 494 and SB 229 make a number of clarifying edits to Government Code section 65852.2, which was significantly overhauled last year to reduce regulatory restrictions on the construction of second units, or accessory dwelling units ("ADUs"). AB 494 reduces the maximum parking that may be required to one space per unit, regardless of the number of bedrooms, and eliminates a jurisdiction's ability to prohibit tandem parking or parking in setback areas. SB 229 requires certain ADUs to be permitted on all lots zoned for single-family or multi-family uses that include an existing or proposed single-family dwelling. Most significantly, SB 229 restricts the ability of special districts and water corporations to impose utility connection fees and capacity charges on new ADUs.

If you want more information about any of these bills, please feel free to contact Barbara Kautz, Lynn Hutchins, Eric Phillips, or any other attorney at Goldfarb & Lipman LLP for more information.