



City of Agoura Hills State Housing Laws Workshop

March 18, 2021

Presented by: Diana Varat, Richards, Watson & Gershon

Addressing the Housing Crisis

- To increase the **supply** and **affordability** of housing in California
- To strengthen **planning for**, and **production of**, housing for people at all income levels
- To **reduce barriers** to new housing development
- To strengthen **enforcement mechanisms** to ensure local agencies plan and approve housing to reduce the State's housing shortage



Many, Many Laws ...

- Housing Element Law
- Affirmatively Furthering Fair Housing
- No Net Loss
- Housing Crisis Act ("SB 330")
- The Housing Accountability Act ("HAA")
- Streamlined Housing Approvals ("SB 35")
- Inclusionary Housing
- Density Bonus Law
- Accessory Dwelling Units ("ADUs")
- Housing Element Annual Reports



Various Categories of Laws

1. Laws that require local agencies to **plan for housing production**
2. Laws that **restrict local authority** to approve or deny **specific project applications**
3. Laws that require **expedited or streamlined** approval processes



Planning for Housing

Context of the Housing Element

- **General Plan – Housing Element**
 - Each city must update the Housing Element every 8 years
 - Known as Housing Element “Cycles”
 - 6th Cycle for the SCAG region
 - June 30, 2021 – October 15, 2029

Housing Element – General Req'ts

- Analyze demographic trends, household characteristics, and housing need
- Identify governmental and nongovernmental constraints that prevent housing development
- Identify adequate sites to meet housing need
 - “Site Inventory”
- Identify zone for by-right emergency shelters
- Goals, policies, and quantified objectives



Regional Housing Needs Assessment

- HCD Identifies Statewide Housing Need for the 8-Year Housing Element Update “Cycle” and Allocates Need to Regions
- SCAG then Allocates Total Regional Need to Cities / Counties within Region



Regional Housing Needs Assessment (RHNA) Allocation to City of Agoura Hills

	Very Low	Low	Moderate	Above Moderate	Total
5 th Cycle (2014 – 2021)	31	19	20	45	115
6 th Cycle (2021 – 2029)	127	72	55	64	318



Housing Element – Site Inventory

- List of properties showing **number of units** that can be accommodated on each site
 - Must demonstrate that zoning standards (i.e., allowable density) for each identified site can accommodate the number of units needed **for various income levels**



Housing Element – Site Inventory

- List of properties showing **number of units** that can be accommodated on each site
 - **For lower income households**, must demonstrate how the site can accommodate specific need through:
 - Market demand, financial feasibility, & development project experience, or
 - **Use “default density” (20 DU / acre)**



Identifying “Adequate Capacity”

- **Strategic Decision-Making about Planning and Zoning for Housing**
 - Where in the City is new housing development (especially, multifamily housing) most appropriate?
 - Where are realistic sites for housing development in the coming 8 years?



Fair Housing – Analysis

- “Affirmatively Further Fair Housing”
- Analyze History and Patterns of Segregation and Unequal Access to Housing Opportunities
- Assess Enforcement & Outreach Capacity regarding Fair Housing Laws



Housing Element – No Net Loss

- Cities must maintain, at all times during the planning period, adequate sites to meet their unmet share of the City's RHNA allocation
- Cities may not take any action that would allow or cause the sites **identified in its Site Inventory** to be insufficient to meet its remaining unmet share of the City's RHNA **for lower and moderate-income households**
 - Gov. Code § 65863



No Net Loss “Triggers”

- **“Downzoning”**
 - Reducing the allowable density for any site included in the Site Inventory
- **Approving a project on a site that was included in the Site Inventory:**
 - With fewer units than indicated in the Site Inventory, or
 - With fewer units **at the income level** than were indicated in the Site Inventory



No Net Loss – “Upzone” Other Sites?

- If the remaining sites are **not** adequate, the City must identify “additional, adequate, and available sites” so there is no net loss in unit capacity
 - Rezoning must occur **simultaneously** if triggered by downzoning
 - Rezoning must occur **within 180 days** if triggered by a specific project approval



Project Review Procedures

Types of Project Review Processes

- **Discretionary Review**

- Maximizes local control when considering each application and is based on a review of the project against subjective standards

- **Ministerial Review**

- Reduces local control when considering each application and is based on a review of the project against objective standards

Objective Standards

- “Standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal.”
 - Gov. Code § 65913.4



19

What is Discretionary Review?

- A procedure by which a City official or reviewing body (e.g., the Planning Commission) decides whether to approve an individual application for a project based on a set of subjective standards...
 - So what are subjective standards?



20

Objective v. Subjective Standards

- Density requirements
 - Height limitations
 - Lot coverage
 - Setbacks
 - FAR requirements
 - Required list of materials
- Reflect the look and feel of the community
 - Site is not physically suitable for the proposed use
 - Must be compatible with adjacent uses



21

“SB 330” – Housing Crisis Act

SB 330: A Housing Emergency

- Declared a “statewide housing emergency”
 - Until January 1, 2025
- Encourage (affordable) housing development
 - By “expediting” housing approvals
 - By suspending local authority to impose certain restrictions on housing developments
- Amends the Permit Streamlining Act (PSA) and the Housing Accountability Act (HAA)



SB 330: Prohibited Local Actions

- City may not reduce allowable intensity in any land use designation / district or downzone any specific property to a “less intensive use” below what was allowed on January 1, 2018

– Exception for “no net loss” compliance



SB 330: Prohibited Local Actions

- **Impose a moratorium on housing**
- **Limit the number of approvals or construction permits for housing**
- **Cap the number of housing units**
- **Limit the City's population**
- **Adopt subjective design standards after January 1, 2020**



Reviewing Specific Applications

Emphasis on Less Local Discretion

- State has already mandated ministerial approvals for ADUs and some other projects...
- And even for discretionary review projects, the State limits that discretion in some instances... and requires expedited approval processes as well



SB 330: Limited Number of Hearings

- No more than five hearings for a “housing development project” that complies with applicable objective standards after project application is “deemed complete”
 - Includes “continued” public hearings
 - **Does not apply to legislative approvals!**



The Purpose of the HAA

- “...to significantly increase the approval and construction of new housing for all economic segments of California’s communities by ... curbing the capability of the local governments to deny, reduce the density of, or render infeasible housing development projects.”



HAA Applicability

- All “housing development projects”:
 - Residential units only
 - Mixed use developments w/ at least 2/3 of the square footage for residential use
 - Transitional housing or supportive housing
- Both affordable and market-rate projects
- Additional provisions for emergency shelters and affordable projects



Basic Standard under the HAA

- If a housing development project complies with “**objective**” general plan, zoning, and subdivision standards and criteria, including design review standards, ... the City can only **lower the density** or **deny the project** if there is “specific, adverse impact” to public health and safety that cannot be mitigated in any other way...
 - Gov. Code § 65589.5(j)



Objective v. Subjective Standards

- Density requirements
- Height limitations
- Lot coverage
- Setbacks
- FAR requirements
- Required list of materials
- Façade variation (sometimes)
- Reflect the **look and feel** of the community
- Site is not **physically suitable** for the proposed use
- Must produce **high quality** design
- Must be **compatible** with adjacent uses



HAA – “Specific, Adverse Impact”

- A significant, quantifiable, direct, and unavoidable impact, based on **objective, identified written** public health and safety standards, policies, or conditions as they existed on the date the application was deemed complete.



- **Difficult standard to meet!**



Accessory Dwelling Units

Overview of ADU Requirements

- **Two-pronged approval process:**
 - **“Building Permit Only” Process**
 - State standards only
 - Gov. Code § 65852.2(e)
 - **Local Ordinance Process**
 - Local ADU Standards
 - But must comply with standards in Gov. Code § 65852.2(a)



State Oversight of ADUs

- Send ordinance to California Department of Housing & Community Development (HCD) for review within 60 days after adoption
- City can use ADUs toward production of units for HCD reporting of RHNA compliance



“Building Permit Only” Process

■ One ADU and one JADU per lot

- Within proposed single-family dwelling
- Within existing space of single-family dwelling
- Within existing space of accessory structure (including expansion of up to 150 square feet for ingress/egress)
 - Exterior access required
 - Side and rear setbacks for fire and safety
 - JADU must comply with 65852.22



“Building Permit Only” Process

■ What is a JADU?

- An ADU contained entirely within the walls of a single-family residence
- No larger than 500 square feet
- Must have a cooking facility with food preparation area and appliances
- May have its own bathroom or share a bathroom with the main residence
- Owner occupancy



“Building Permit Only” Process

- **One detached, new ADU**
 - For a lot with a proposed or existing single-family dwelling
 - Maximum size of 800 square feet
 - Maximum height of 16 feet
 - Four-foot side and rear yard setbacks
- **One detached, new ADU plus one JADU**



“Building Permit Only” Process

- **ADUs on Multifamily Property**
 - Must allow conversion of non-“livable space” of an **existing** multifamily property
 - For example, storage rooms, boiler rooms, passageways, attics, basements, or garages
 - Must comply with state building standards
 - Allow at least one ADU, and up to 25 percent of the existing number of multifamily dwelling units in the building



“Building Permit Only” Process

■ ADUs on Multifamily Property

- Up to two detached ADUs on a lot with an existing multifamily building
- Subject to 16-foot height limit
- Subject to four-foot rear / side-yard setbacks



Density Bonus Law

Qualifying Projects

- 10 percent Lower Income HHs (or Students)
- 5 percent Very Low Income HHs
- “Senior Citizen Housing Development”
- 10 percent Moderate Income (Condos)
- 10 percent Transitional Foster Youth, Disabled Veterans, or Homeless Persons
- 100 Percent “Affordable” Projects

43



Benefits for the Applicant

- **Qualifying projects entitled to receive:**
 - A density bonus;
 - Specific number of “incentives & concessions” (depends on affordability);
 - Waivers / reductions of development standards (where standards would “physically preclude” the development); and
 - Reductions in minimum parking requirements

44



Reductions in Parking Requirements

- If receiving density bonus, applicant can request the following parking ratios:
 - 0-1 Bedroom: 1 onsite parking space
 - 2-3 Bedrooms: 1.5 onsite parking spaces
 - 4+ Bedrooms: 2.5 parking spaces



Inclusionary Housing

- Cities **may** adopt an inclusionary housing ordinance (IHO) **requiring** that new residential developments include a certain percentage of affordable units
 - Agoura Hills already has an inclusionary housing ordinance (AHMC § 9133)
 - Applicant may use required IHO units to qualify for eligibility under Density Bonus



Increased HCD Enforcement

- HCD review city's actions or failures to act that are inconsistent with adopted Housing Element or Housing Element Law
- HCD shall notify a city if it finds that:
 - The City has taken an action in violation of the HAA, No Net Loss, Density Bonus Law, or housing discrimination laws



Consequences of HCD Review



- HCD may revoke a finding that the City's housing element "substantially complies" with State law
 - Potential loss of State funding for parks / planning
 - Potential loss of authority over project approvals
- HCD may notify the Office of the Attorney General that the City has violated State law



Summary of State Housing Laws

- Plan for housing production – and maintain opportunities for new housing development
 - Consider developing more streamlined, ministerial processes for housing development
 - Consider establishing objective standards
- Limits on authority re: project applications
 - Restrictions on denials / reductions in density
 - Expedited approval processes
 - Mandatory ministerial approval processes



Thank you!