Agenda Item C.1
DISCUSSION/ACTION ITEM
Meeting Date: October 21, 2025

TO: Mayor and Councilmembers

SUBMITTED BY: Isaac Rosen, City Attorney

PREPARED BY: Isaac Rosen, City Attorney
Ryan Stager, Deputy City Attorney

SUBJECT: California Housing Laws Presentation

RECOMMENDATION:

Receive a presentation from the City Attorney's Office on the landscape and recent changes to California housing laws.

BACKGROUND:

The Legislature has declared that California is experiencing a "housing supply and affordability crisis of historic proportions." (Gov. Code, § 65589.5(a)(2)(A).) Against the backdrop, the Legislature has enacted — and continues to enact — numerous statutes "intended to significantly increase the approval, development, and affordability of housing for all income levels." (*Id*., at (a)(2)(J).)

DISCUSSION:

The presentation will highlight key legislation and recent changes to this evolving legal landscape. Topics addressed will include, but are not limited to: (1) laws requiring streamlined ministerial approval; (2) the Housing Accountability Act; (3) State Density Bonus Law; (4) no net loss of residential development capacity; and (5) recent amendments to the Permit Streamlining Act. The presentation slides are enclosed as Attachment 1.

LEGAL REVIEW BY: Isaac Rosen, City Attorney

APPROVED BY: Robert Nisbet, City Manager

ATTACHMENTS:

1. Presentation Slides

Attachment 1

Presentation Slides

BBK
BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

California Housing Laws: An Evolving Legal Landscape

By: Ryan Stager, Deputy City Attorney

Introduction

- California has a “statewide housing crisis, represented by a shortage of nearly 3,500,000 homes”
- The Legislature has attributed this crisis, in part, to “restrictive zoning, land use, and burdensome permitting policies at the local level . . .”
- Housing costs more in California due to “increased costs, heavy regulatory hurdles, and mandatory features and fees that add tens of thousands of dollars to the cost of each unit”

(SB 1123 (2024), § 1 [Legislative Findings])

Introduction

- Legislative response: Numerous bills in recent years that restrict cities' ability to review, delay, or deny housing projects
- Common themes include:
  - Erosion of local control over review and approval of housing projects
  - Increased opportunities for applicants to deviate from local development standards
  - More and more laws requiring streamlined ministerial approval of projects that comply with objective development standards

Streamlined Ministerial Approval

- Process for reviewing and making a determination on an application that involves no personal judgment
- Nearly always a staff-level decision without a hearing
- Staff confirms that the project meets applicable objective standards but uses no special discretion or judgment in reaching the decision
- City is generally required to approve or deny projects subject to ministerial review within 60 days of receiving a complete application (Gov. Code, § 65950(a)(6))*

(*Except as otherwise specified, all "§" citations are to the California Government Code)

Streamlined Ministerial Approval

- Each law is unique; many include technical and detailed requirements and exceptions (and exceptions to exceptions)
- Staff and the CAO routinely coordinate to confirm a law's applicability and ensure that statutory requirements are met
- Examples include, but are not limited to, the following:
  - ADUs and JADUs (§ 66310 et seq.)
  - SB 9/450: urban lot splits and two-unit projects (§§ 66411.7[lot splits], 65852.21[two-unit projects])

Streamlined Ministerial Approval

- SB 35/423: qualifying affordable multifamily housing projects (§ 65913.4)
- AB 2011/2243: affordable housing projects in commercial zones (§§ 65912.110 et seq. [100% affordable], 65912.120 [mixed-income])
- SB 648/1123: subdivisions and housing projects with 10 or fewer lots/units (§§ 65852.28 [housing projects], 66499.41 [subdivisions])
- AB 2162: 100% affordable supportive housing projects (§ 65650 et seq.)
- SB 4: 100% affordable projects on land owned by higher education or religious institutions (§ 65913.16)

Housing Accountability Act

- Goal: “effectively curb[] the capability of local governments to deny, reduce the density for, or render infeasible housing development projects” (§ 65589.5(a)(1)(K))
- Interpreted and implemented: “in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing” (§ 65589.5(a)(1)(L))
- The HAA is lengthy (15+ pages to print) and complex
- The following is a high-level overview of several key HAA requirements but is not exhaustive

HAA – Preliminary Applications

- Established by SB 330 (effective 1/1/20) and allows an applicant to "freeze" the development standards that apply to a project. An applicant must:
    1. Submit a preliminary application with the materials specified in Gov. Code section 65941.1; and
    2. Submit a full development application within 180 days from submittal of the preliminary application (§ 65941.1(e)(1))
- Subject to limited exceptions, following (1) and (2), the housing project is subject "only to those ordinances, polices, and standards adopted and in effect" when the preliminary application was submitted (§ 65589.5(o)(1))

HAA – Limits for Projects that are Consistent with Objective Standards

- In general, the HAA requires approval of a housing project that complies with applicable "**objective** general plan, zoning, or subdivision standards and criteria" (§ 65589.5(j)(1))
- If consistent with objective standards, City cannot deny or condition approval at a lower density unless it finds that: (1) the project would have a "specific, adverse impact" upon the public health or safety; and (2) there is no feasible method to mitigate or avoid the specific, adverse impact other than to deny the project or condition approval at a lower density (§ 65589.5(j)(1)(A)-(B))
  - "Specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" (§ 65589.5(j)(1)(A))

HAA – Builder's Remedy

- HAA includes additional protections for qualifying affordable housing projects (*See* § 65589.5(d))
- Most notable is the "Builder's Remedy," which applies when a local agency does not have a certified housing element
- Before 1/1/25, the BR generally prohibited a local agency from denying a qualifying affordable housing project due to inconsistencies with the zoning code or general plan (§ 65589.5(d)(5)[pre-AB 1893])
  - Project had to include at least 20% of units for lower income households (80% AMI or less) or 100% of units for moderate income households (120% AMI or less)(§ 65589.5(h)(3)[as it read pre-AB 1893])
  - Few clear rules and numerous statutory ambiguities; disagreements occurred throughout CA between applicants and local agencies on BR eligibility, processing, and what development standards (if any) applied
  - Some disagreements went to court. To date, trial court judges have generally resolved disputes in favor of applicants proposing housing

HAA – Builder's Remedy Cont.

- AB 1893 (effective 1/1/25) made numerous changes to the BR, including, but not limited to:
  - Reduced affordability: only 7% extremely low income units (30% AMI or less), 10% very low income units (50% AMI or less), or 13% lower income units needed to qualify (§ 65589.5(h)(3)(C)(i))
  - BR projects can use Density Bonus Law and qualify for a density bonus, (extra) incentives/concessions, parking reductions, and waivers or reductions of development standards (§ 65589.5(f)(6)(B)-(C))
  - Subject to certain limits, local agencies can apply objective standards, but application cannot render a project infeasible or physically preclude a proposed project, inclusive of any density bonus, incentive/concessions, waivers or reductions of development standards (§ 65589.5(f)(6)(B)(i)(I)-(II))
  - Cannot require rezoning, GPA, specific plan amendment, or any other legislative approval (§ 65589.5(f)(6)(D))
  - If a preliminary application was submitted before 1/1/25, applicant can choose whether to be subject to "any or all" of the HAA provisions in effect when the preliminary application was submitted (i.e., pre-AB 1893) or the HAA provisions in effect as of 1/1/25 (§ 65589.5(f)(7)(A))

DBL - Density Bonus

- Allows an increase to the maximum allowed residential density
- Statutory sliding scales to calculate the amount of density bonus. Example: 5% very low income units qualifies for a 20% density bonus; 15% very low income qualifies a 50% density bonus (*See* § 65915(f)(2))
- The size of density bonus typically depends on the income categories and percentage of affordable units. General rule: the more affordable units, the bigger the density bonus
- Affordable units are deed restricted (typically 45-55 years)

DBL - Incentives/Concessions

- Most common are reductions in development standards or modification of zoning code requirements (e.g. lot coverage, setbacks, height, etc.) that result in identifiable and actual costs reductions (§ 65915(k)(1))
- Intended to lower a project's cost by allowing applicant to avoid development standards
- Quantity is based on a project's percentage of affordable units. For example: 5% very low income units = 1 concession/incentive; 10% very low income = 2; and 15% very low income = 3 (§ 65915(d)(1)-(3))

DBL - Waivers or Reductions in Development Standards

- City may not apply any “development standard” that would have the effect of “physically precluding” the qualifying project at the density or with the incentives/concessions permitted under DBL (§ 65915(e)(1))
- Waivers or reductions are intended to ensure that the project can be constructed with the approved density and incentives/concessions. Common requests: setback, building height, and open space requirements
- No limit on the quantity of waivers or reductions a project can receive. Waivers do not impact the number of concessions/incentives a project qualifies for (§ 65915(e)(2))
- City prohibited from requiring the applicant to strip the project of amenities (e.g., remove an interior courtyard) or conditioning approval on a redesign eliminating the need for a waiver (*Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329)

DBL – Denying Concessions/Incentives and Waivers

- State law limits City's ability to deny a requested incentive/concession, waiver or reduction in development standards
- City must find, based on substantial evidence, one of the following:
  - (Incentive/Concession Only): the requested incentive/concession does not result in actual cost reductions;
  - Granting the incentive/concession or waiver would have an unmitigable specific adverse impact on public health and safety or property listed on the CA Register of Historic Resources; or
  - Granting the incentive/concession or wavier would violate state or federal law (§ 65915(d)(1), (e)(1))
- If the applicant challenges the local agency's denial and wins, local agency pays the applicant's attorney's fees and costs (§ 65915(d)(3), (e)(1))

DBL - Reduced Parking Requirements

- If requested by an applicant, City may not impose a parking requirement (inclusive of disabled and guest spaces) that exceeds the following ratios:
  - 0-1 bedroom: 1 parking space per unit
  - 2-3 bedrooms: 1.5 parking spaces per unit
  - 4+ bedrooms: 2.5 parking spaces per unit
  - If within ½ mile of a major transit stop and at least 20% low income, 11% very low income, or 40% moderate income: 0.5 spaces per unit (*See* § 65915(p)(1)-(2))
- Reduced parking requirements are optional; applicant can choose to provide more parking
- If applicant does not request parking reduction, standard local parking requirements apply

Misc. – No Downzoning

- Following SB 330 (effective 1/1/20), state law prohibits the City from reducing general plan and zoning densities below January 2018 numbers
  - Includes reduction in height, density, FAR, more open space or lot size requirements, setbacks, frontage, lot coverage etc. that lessen intensity of housing (§ 66300(b)(1)(A))
- Exception: if the City "concurrently" changes the development standards on other parcels to ensure "no net loss in residential capacity"
  - "Concurrently" means at the same meeting, unless requested by an applicant for a housing project, in which case it means within 180 days (§ 66300(h)(1)-(2))

Misc. – By Right Approval on Housing Element Inventory Sites

- Every Housing Element must identify sufficient sites to accommodate the jurisdiction's Regional Housing Needs Assessment (RHNA)(widely referred to as the "sites inventory")
- In the City's current Housing Element (2023-2031), the sites inventory is provided in Section V (Residential Land Inventory) of the Technical Appendix
- Under state law, a project qualifies for "by-right" approval if it satisfies applicable objective standards, includes at least 20% of units for lower income households, and is located on an inventory site that is either:
  - A vacant site that was used to accommodate lower income RHNA in the previous two housing element cycles;
  - A nonvacant site that was used to accommodate lower income RHNA in the previous housing element cycle; or
  - A site that was rezoned to accommodate lower income RHNA in the current housing element cycle (§ 65583.2(c), (h); Goleta Municipal Code, § 17.44.010(B)(2)(a)-(c); *See* also Housing Element Implementation Programs 2.1(a)-(b))
- "By-right" approval means the City "may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a 'project' for purposes of [CEQA]." (§ 65583.2(i))
  - Qualifying projects are not subject to discretionary local review but must comply with all applicable objective General Plan and GMC policies, development, and design standards (GMC, § 17.44.010(C))

Misc. - No Net Loss of Inventory Site Capacity

- City must maintain an adequate sites inventory to accommodate RHNA throughout the Housing Element planning period (§ 65863)
- If the City reduces the density on an inventory site parcel, it must find that:
  - The reduction is consistent with the GP; and
  - The remaining sites are adequate to accommodate the remaining RHNA for the planning period (including a quantification of the unmet RHNA and the remaining capacity of inventory sites)(§ 65863(b)(1)(A)-(B))
    - If the City can't make these findings, it must identify additional sites and rezone before or concurrently with the action to reduce the parcel's density (§65863(c)(1))
- If the City approves a project with fewer units by income category than identified in the sites inventory for that parcel, then at the time of approval, it must make a finding as to whether the remaining sites are adequate to accommodate the remaining RHNA for the planning period (§ 65863(b)(2))
  - If the remaining sites are inadequate, the City has up to 180 days to identify and rezone additional sites to accommodate the remaining RHNA by income category (§ 65863(c)(2))
  - The City cannot deny a housing project on the basis that approval would require the City to identify and rezone additional sites to accommodate RHNA (§ 65863(c)(2))

Misc. – Five Hearing Rule

- City may hold no more than five "hearings" on a housing project that complies with objective general plan and zoning standards (§ 65905.5(a))
  - "Hearing" is defined broadly and includes "any public hearing, workshop, or similar meeting, including any appeal, conducted by the city . . . with respect to the housing development project . . . whether by the legislative body of the city [City Council] . . . the planning agency [Planning Commission] . . . or any other agency, department, board, commission, or any other designated hearing officer or body of the city . . . or any committee or subcommittee thereof" (§ 65905.5(b)(2))
  - "Hearing" does not include a hearing to review a legislative approval, including any appeal, for the housing project (e.g., GPA, specific plan amendment, or a zoning amendment) (§ 65905.5(b)(2))

Misc. – AB 130

- Part of the 2025 budget trailer bills and took effect on June 30, 2025. Among other things, AB 130:
  - Amended the Permit Streamlining Act to require ministerial housing applications to be reviewed or denied within 60 days of the City's receipt of a complete application (§ 65950(a)(6))
  - Created a new CEQA exemption for discretionary in-fill housing projects. City must approve or deny a qualifying project within 30 days from the later of two specified application processing events (§ 65950(a)(7)[as amended by SB 158]; 65589.5(j)(2)(A)(i)(-(ii))
  - Automatically deems approved any project that is not approved or denied by the applicable PSA deadline (§ 65956(b))

Recently Signed Legislation

- SB 79: high density residential development near major transit stops (§ 65912.155 et seq.)
  - Only applies in an "urban transit county," which is defined as a county with more than 15 passenger rail stations. According to the bill's sponsors, SB 79 will only apply in the following eight counties: Los Angeles, San Diego, Orange, Santa Clara, Alameda, Sacramento, San Francisco and San Mateo counties
- AB 462, AB 1154, SB 9, SB 543: ADUs and JADUs
  - Requires any CDP for an ADU to be reviewed concurrently with the ADU application and approved or denied within 60 days (§ 66329(a) [as amended by AB 462])
  - Requires local agencies to make an ADU/JADU application completeness determination within 15 business days and provide an appeal option for application incompleteness determinations and/or denials (§§ 66317, 66335 [as amended by SB 543])
  - Limits JADU owner-occupancy to instances where the JADU shares sanitation facilities with the SFR. Also prohibits JADUs from being used as STRs (§ 66333(b), (g)[as amended by AB 1154])
  - Renders null and avoid any ordinance that is not sent to HCD for review within 60 days of adoption or if the local agency fails to respond to HCD's comments within 30 days (§ 66326(d)[as amended by SB 9])
  - Clarifies that ADUs and JADUs created under Government Code section 66323 may be combined (e.g., a SFR property owner can develop a converted ADU and JADU under Gov. Code section 66323(a)(1) and a detached ADU under 66323(a)(2))(§66323 [as amended by SB 543])

Recently Signed Legislation Cont.

- AB 1061: urban lot splits and two-unit projects (SB 9) and historic resources
  - Deletes the absolute exclusion of SB 9 projects in historic districts. Replaces with provision excluding SB 9 projects on parcels or properties individually listed as historic resources or landmarks (§§ 65852.21(a)(5)(A)-(B); 66411.7(a)(3)(E), (F)(i)-(ii) [as amended by AB 1061])
- AB 87, SB 92: density bonuses and hotel uses
  - Local agencies do not have to grant a concession/incentive or waiver to a hotel, motel, bed and breakfast-inn or other visitor-serving use as part of a housing development project (§65915(l)[as amended by AB 87/SB 92])
- AB 920: Centralized application portal for housing projects
  - Requires a city or county with a population of 150,000 persons or more to make a centralized application portal available on its internet website for housing projects by January 1, 2028 (§65940.3 [added by AB 920])
    - Can extend deadline to January 1, 2030 is specified findings are made

Questions?