

California Housing: 2022 and Beyond

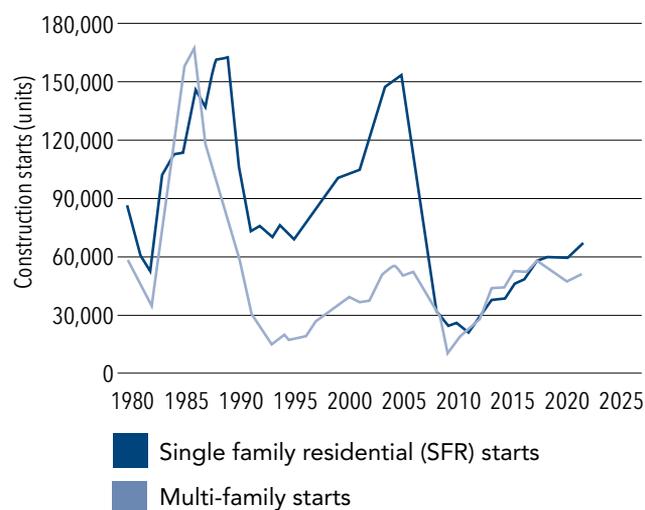
Comprehensive Reform, Re-Evaluation of Environmental, Vehicle Miles Traveled Policies Needed

California remains deeply mired in a housing crisis driven largely by decades of policies that have stifled housing production. The ongoing crisis continues to exacerbate inequality in the state as more Californians are priced out of their neighborhoods, forced to spend more income toward housing or rent, and move farther from and commute longer to and from their job centers, or decide to leave the state entirely. Homeownership has proven to be one of the most important components of building long-term wealth for families, yet the dream of home ownership becomes harder every year for Californians.

The COVID-19 pandemic greatly accelerated changes already taking place in the marketplace, including a record number of workers telecommuting and an exodus of workers from expensive cities. Perhaps what accelerated most from the pandemic was California home prices. The median home price in the Golden State is forecast to rise more than 5% to \$834,400 in 2022, following a projected 20.3% increase in 2021. High demand and continued low supply will continue to put upward pressure on prices. However, the shift in housing demand to more affordable areas as remote working continues to grow could help to keep prices in check and prevent the statewide median price from rising too fast in 2022, according to the California Association of Realtors housing and economic forecast.

The Department of Housing and Community Development estimates California needs upwards of 200,000 housing units per year just to meet current demand. But to overcome the existing housing deficit, many experts agree the state needs roughly

ANNUAL RESIDENTIAL CONSTRUCTION STARTS IN CALIFORNIA



Source: First Tuesday Journal (November 18, 2021).

3.5 million new housing units — a number Governor Gavin Newsom promised to overcome during his 2018 campaign.

Unfortunately, California saw a decline in the number of housing units built in 2020, with a particular falloff in multifamily units. The bright spot for California is that after back-to-back years of decline, residential construction is up 20% from last year, while multi-family construction is up 21%. Still, much more must be done by the Legislature and Governor to meaningfully address California's ongoing housing crisis.

CALIFORNIA HOUSING LEGISLATION IN 2021: SECOND TIME'S A CHARM

Expectations were high in 2020 that the California Legislature would deliver a plethora of pro-housing bills to help alleviate the crisis and meaningfully address the growing homeless population. Unfortunately, of the more than 100 housing bills introduced in 2020, only a handful ever made it to the Governor's desk.

The start of a new session provided the Legislature with another opportunity to try again on several housing bills.

Agenda for California Recovery

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Bill Repeats and Redos

- **SB 8 (Skinner; D-Berkeley)**, introduced by Senator Nancy Skinner, extended several key provisions from SB 330 (Skinner; D-Berkeley), also known as the Housing Crisis Act of 2019 (Act), and was one of the few major pro-housing bills to pass in 2020. SB 330 streamlines more housing by limiting local governments' ability to downzone residential parcels after a project is deemed complete, limiting fee increases on housing applications to provide more certainty to housing developers, and sets new limits on the local approval process for housing projects.

SB 8 extends the sunset provision in the Act from 2025 until January 1, 2030 and also adds new protections, such as prohibiting a city or county from approving a housing development project if it required the demolition of occupied or vacant protected rental units unless certain requirements were met protecting the renters.

- **SB 9 (Atkins; D-San Diego)**: Senate President pro Tempore Toni G. Atkins introduced SB 9 in the 2021 session as a redo of her SB 1120, which died in 2020. SB 9 evolved over the legislative session to make it distinguishable from SB 1120 — with probably the most notable change being the addition of an owner-occupancy requirement — yet largely remained the same.

SB 9 permits an owner-occupied single-family homeowner to subdivide their lot and construct a duplex residential development on the new parcel pursuant to ministerial approval, without discretionary review or hearings, and thus no California Environmental Quality Act (CEQA) review, if certain enumerated requirements are met. SB 9 protects against gentrification and other community displacement by prohibiting the demolition or alteration of the following types of housing: housing that is subject to a recorded covenant, ordinance, or law that restricts rents to affordable levels; housing subject to rent control; or housing that has been tenant-occupied in the last three years (with no distinction drawn between market rate and affordable housing), among other protections in the law.

- **SB 10 (Wiener; D-San Francisco)** is for the most part a reintroduction of Senator Scott Wiener's SB 902, a bill that failed to pass in 2020. SB 10 creates a voluntary process for cities and counties to pass ordinances zoning any parcel for up to 10 residential units if the parcel is located in a transit-rich area and urban infill site. A "transit-rich area" is defined in Section 21064.3 of the Public Resources Code as a parcel within one-half mile of a major transit stop, or a parcel on a high-quality bus corridor. A zoning ordinance adopted pursuant to SB 10 may override a local ballot initiative which restricts zoning only if adopted by a two-thirds vote of the members of the legislative

body. Additionally, the creation of up to two accessory dwelling units (ADUs) or junior ADUs (JADUs) per parcel is allowed, and these units would not count toward the 10 units.

Bills Lowering Development Fees

California local jurisdictions have relied increasingly on development impact fees to fund local services, such as school, parks and transportation infrastructure. Although these fees can and often do finance necessary infrastructure, many local jurisdictions levy overly burdensome fees that can limit housing construction by impeding or disincentivizing new residential development, especially affordable residential development. Development impact fees inevitably raise the cost of housing construction, which then increases housing costs.

In 2020, eight bills introduced in the Assembly proposed to lower development impact fees for housing projects. All of them failed. But in 2021, the Legislature tried again — and this time with more success.

- **AB 345 (Quirk-Silva; D-Fullerton; Chapter 345)** was introduced by Assembly Member Sharon Quirk-Silva and signed into law in 2021. The bill requires local agencies to allow an accessory dwelling unit (ADU) to be sold or conveyed separately from the primary residence to a qualified buyer if certain conditions in existing law are met. Before the passage of AB 345, existing law permitted a local agency to allow an ADU to be sold if the local agency first passed an ordinance allowing it.

AB 345 also lowers, and in some cases eliminates entirely, impact fees for ADUs. Specifically, local governments are now limited to assessing a fee proportional to the square footage of the primary residence for ADUs 750 square feet or larger. For ADUs under 750 square feet, impact fees are eliminated altogether.

- **AB 571 (Mayes; NPP-Yucca Valley; Chapter 346)** was introduced by Assembly Member Chad Mayes and signed into law in 2021. The bill amends the Government Code to exempt any affordable units from being assessed housing impact fees, inclusionary zoning fees or in-lieu fees. Prior to AB 571, local governments included all units, including affordable, when calculating fees to levy against a housing project. AB 571 should help to lower the costs for any new housing project that contains one or more affordable housing units.

- **AB 602 (Grayson; D-Concord; Chapter 347)** was introduced by Assembly Member Tim Grayson and signed into law in 2021. AB 602 requires local governments to adopt an impact fee nexus study before fees can be levied on a project, and the study must be updated every eight years. Local governments must identify the existing and proposed new level of service for each public facility and explain why any new level of service is appropriate.

2022 CALIFORNIA HOUSING FORECAST

	2015	2016	2017	2018	2019	2020	2021 projected	2022 forecast
Single-Family Home Resales (000s)	409.4	417.7	424.9	402.6	398.0	411.9	439.8	416.8
% Change	7.00%	2.00%	1.70%	-5.20%	-1.2%	3.5%	6.8%	-5.20%
Median Price (\$000s)	\$476.3	\$502.3	\$537.9	\$569.9	\$592.4	\$659.4	\$793.1	\$834.4
% Change	6.60%	5.40%	7.10%	5.90%	4.00%	11.30%	20.30%	5.20%
Housing Affordability Index*	31%	31%	29%	28%	31%	32%	26%	23%
30-Year Fixed Rate Mortgage	3.90%	3.60%	4.00%	4.50%	3.90%	3.10%	3.00%	3.50%

*=% of households who can afford median-priced home

Source: California Association of Realtors (October 7, 2021).

For housing projects specifically, any nexus study adopted after July 1, 2022 must in addition to other enumerated requirements, also calculate the amount of fees based on the square footage of the proposed units of the development, unless the local agency demonstrates that another metric is more appropriate. Larger jurisdictions of a certain size must adopt a capital improvement plan as part of their nexus study. The new law establishes basic transparency and accountability standards.

• **SB 319 (Melendez; R-Lake Elsinore; Chapter 385)** was introduced by Senator Melissa Melendez and also signed into law in 2021. SB 319 clarifies and expands the scope of the audits that local agencies must perform when failing to comply with their reporting obligations under the Mitigation Fee Act (Government Code, Section 66000 et seq.), while also closing what many regarded as a “loop-hole” in cost recovery of audits pursuant to Government Code Section 66023.

With the passage of SB 319, local agencies are required to pay for each consecutive audit year that the local agency was out of compliance with existing law regarding annual impact fee reports. The intent is that this will hold local governments more accountable by providing a more transparent view of whether the local agency is justified in assessing the impact fee or whether it should be adjusted.

COVID-19 Housing Bills

The California Legislature passed a number of COVID-19-related housing bills. Most notable were AB 3088, SB 91 and AB 832, intending to help renters financially struggling due to

COVID-19-related hardships stay in their units and landlords to receive rental income.

• **AB 3088 (Chiu; D-San Francisco; Chapter 37, Statutes of 2020) and SB 91 (Committee on Budget and Fiscal Review; Chapter 2, Statutes of 2021)**

Passed in August 2020, AB 3088 provided renter and homeowner protections and a statewide moratorium on evictions for tenants hit by COVID-19-related troubles through March 1, 2021. The Legislature then extended the moratorium until June 30, 2021 with the passage of SB 91, which established the California COVID-19 Rent Relief Program to provide up to \$2.6 billion in federal rental assistance to low-income renters and landlords.

• **AB 832 (Chiu; D-San Francisco; Chapter 27, Statutes of 2021)** was passed and signed into law in June 2021, extending the eviction moratorium until September 30, 2021 and expanding the program to provide up to 100% assistance for rental and utility financial obligations, including both arrearages and prospective payments.

In a September 13, 2021 news release, the Governor’s office reported that since AB 832 was signed into law on June 28, 2021, there had been more than 243,000 applications received and more than \$2.2 billion in rent and utility assistance requested. Tenants earning less than 80% of the area median income were to be protected through a pre-eviction diversion process through March 31, 2022, as long as they had submitted a completed application for rental relief through either the state or

a locally administered program. In addition to providing 100% of back rent and prospective rent, AB 832 also gave California renters some of the strongest eviction protections in the country.

WHAT LEGISLATURE SHOULD ADDRESS IN 2022 RELATING TO HOUSING

Amend Vehicle Miles Traveled Policy

Legislation signed into law in 2013 (SB 743; Steinberg; D-Sacramento; Chapter 386) directed the Governor's Office of Planning and Research (OPR) to develop a new approach to measuring transportation impacts for projects under the California Environmental Quality Act (CEQA). After several years, OPR adopted new regulations directing lead agencies to measure transportation impacts for projects using vehicle miles traveled (VMT) as essentially a proxy for reducing greenhouse gas emissions.

The problem is, as local lead agencies began complying with the regulations, extremely high-cost estimates for VMT mitigation became alarmingly clear. For example, San Diego County estimated VMT mitigation for new housing would range from \$50,000 to \$900,000 per new unit of housing, depending on how far the new units were from major transit. Homes built farther from major transit saw the highest mitigation fees applied.

It is precisely because of California's expansive and diverse landscape that the California Legislature bifurcated its statutory mandates in SB 743 so that OPR would treat "transit priority areas" differently from all other areas of the state. Since "transit priority areas" are those localities within one-half mile of a major transit stop and comprise less than 1% of California's 100 million acres of land, SB 743 required OPR to develop new criteria for determining the significance of transportation impacts of projects based on VMT. But for all other areas outside of "transit priority areas," which is the vast majority of California land, SB 743 expressly stated OPR may adopt guidelines establishing an alternative metric to level of service (LOS) impacts from transportation.

Unfortunately, OPR's regulations apply a one-size-fits-all VMT standard over all new housing construction in California. OPR looks at the state's transportation sector as it was, almost a decade ago when SB 743 was passed, rather than where the state is going. Executive Order N-79-20 underscores California's transportation sector is expeditiously heading toward zero emissions over the next decade.

The efficacy of a VMT-focused land use planning that adds significant costs to each new unit of housing should be

re-evaluated by the Legislature in light of an ongoing and growing affordability and homelessness crisis. At a minimum, the Legislature could amend the law to further clarify that the VMT as a metric for analyzing transportation impacts should apply only to "transit priority areas" in California.

California Environmental Quality Act (CEQA) Abuse

CEQA is not the sole cause of the housing shortage, but often is a major impediment to housing development in California. CEQA requires local governments to conduct a detailed review of discretionary projects prior to their approval. CEQA protects human health and the environment by requiring lead agencies to analyze project impacts and then require project developers to mitigate any potentially significant environmental impacts.

But unlike most environmental laws and regulations in California, CEQA is enforced through private litigation. The law enables litigation abuse that can substantially slow or even stop housing projects when opponents do not want added density in their neighborhood.

Community resistance to new housing construction also exacerbates the housing shortage. Local communities often fear that increasing housing density will change the character of their neighborhood, increase traffic congestion, lower their home values, and bring new crime. Local residents often place significant pressure on local officials to use their land use authority to suppress new development.

As a result, approximately two-thirds of the cities and counties in California's coastal metropolitan areas have adopted growth control ordinances that limit housing development. These growth control ordinances are effective at limiting growth and consequently increasing housing costs. One study found that each additional growth control policy a city adopted correlated to a 3% to 5% increase in home prices. And even where local officials do not bend to community pressure, California's initiative process provides active residents with the ability to circumvent their local officials and intervene in local land use decisions via the initiative and referendum process.

CEQA can add significant cost and time to the housing development process. Even the threat of litigation, which is never reflected in data regarding CEQA abuse, is highly effective at discouraging or raising the costs of development. And because housing costs are ultimately borne by future home buyers, CEQA inevitably increases housing prices in California even if the project is never challenged.

California's cost of housing increased significantly the same decade in which the California Legislature passed CEQA and community resistance to new homes got stronger. According to

a [report from the Legislative Analyst's Office](#), California home prices went from 30% above U.S. levels to more than 80% higher between 1970 and 1980.

Although there were several failed attempts to amend, streamline or expand CEQA in 2020, there were no serious attempts to reform CEQA in the 2021 session. SB 950 (Jackson; D-Santa Barbara), which the sponsor touted as “CEQA 2.0” to bring the statute into the 21st century, remains the last attempt by the Legislature. At that time, the California Chamber of Commerce led a coalition to defeat the bill, labeling it a job killer because it proposed amendments that would have substantially expanded CEQA to create onerous translation requirements, amended CEQA’s intent language to incorporate environmental justice, removed bond protections for middle class housing, and changed the Elections Code to override a California Supreme Court decision in order to apply CEQA to certain qualified ballot initiatives.

Local Finance Structures Favoring Commercial Development

Different types of developments (for example, commercial, residential, industrial) yield different amounts of tax revenues and service demands. California’s local government finance structure provides cities and counties with a much larger fiscal incentive to approve nonresidential development or lower density housing development. For example, commercial developments like major retail establishments and hotels often yield the highest net fiscal benefits for cities and counties, as increased sales and hotel tax revenue that a city receives usually more than offsets the local government’s costs to provide public services to the commercial developments.

In contrast, housing developments generally do not produce sales or hotel tax revenues directly and the state’s cities and counties typically receive only a small portion of the revenue collected from the property tax. As a result, cities and counties often incentivize commercial developments by zoning large swaths of land for these purposes and by offering subsidies or other benefits to the prospective business owners. Opposed by the CalChamber, Proposition 15 on the November 2020 ballot was defeated, but a split roll property tax has been proposed for the 2022 California

ballot. Successful split roll measures would further incentivize local governments to favor commercial development over residential and substantially raise costs on businesses.

Historic Budget Surplus Leads to Historic Spending on Housing and Homelessness

California’s historic budget surplus provided the Governor with a unique opportunity to allocate substantial fiscal resources toward housing and homeless programs. Notably, the budget apportions a record \$10 billion for numerous housing programs and \$12 billion through 2023 for programs aimed at addressing the state’s growing homeless population.

It should be noted that the housing crisis stems from several major problems, namely a lack of supply sufficient to meet housing demand. Accordingly, while this funding is important, the state cannot spend its way out of the crisis. The housing supply developed by private markets must increase to meet demand.

Additionally, the Attorney General set up inside the California Department of Justice a new “Housing Strike Force” tasked with enforcing California housing laws. This “Housing Strike Force” is intended to go after cities across the state that have been evading or ignoring housing laws.

CALCHAMBER POSITION

California’s housing crisis is driving many residents and businesses out of state and discouraging new economic investments. Unaffordable housing also forces many Californians into extra-long commutes — adding to air pollution, traffic congestion, reduced worker productivity — or into more crowded living situations.

Comprehensive reform of environmental and zoning laws is necessary to remove obstacles that hamper housing construction and raise new and existing home prices and rent across California. A comprehensive re-evaluation and reform of CEQA, including VMT policies being implemented by OPR, is critical to spurring housing development and avoiding further increases in housing development costs in California. Maintaining CEQA’s legacy of protecting human health and the environment is not incongruent with more streamlined housing development.



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