Housing

More than 2017 Package Needed to Alleviate Housing Crisis

Background

In 2017, the Legislature passed and the Governor signed 15 bills designed to moderate housing costs and improve overall supply. California's housing crisis has been well-documented and concerns both affordability and supply—two issues that are inextricably linked. The Department of Housing and Community Development estimates that California must build at least 180,000 units to keep pace with demand, not accounting for the backlog of approximately 2 million units that has accrued over the last several decades. However, builders have been producing only approximately half of the number of units needed to stabilize housing costs. The Legislative Analyst's Office further reported California would have to raise upwards of $250 billion to subsidize itself out of the housing crisis—a feat that cannot be accomplished.

The supply shortage has sent home prices and rents soaring, resulting in many individuals and families being priced out of the market and leading to overcrowding, homelessness, substandard housing conditions, and an exodus of Californians to other states. According to a recent study by the National Association of Home Builders, for every $1,000 increase in a California home, 15,000 buyers are priced out of the market. The housing shortage is impacting businesses as well due to the lack of available workers to support growth, which, in turn, impacts California's economy.

The 2017 Housing Package: Funding

Two bills were passed and signed to raise funds for the state to subsidize affordable housing development. **SB 2 (Atkins; D-San Diego; Chapter 364)** creates a permanent source of funding for affordable housing by imposing a $75 recording fee on certain real estate transactions, with a $225 ceiling (that is, limiting it to three recording fees per transaction). The fee will not apply to home or commercial real estate purchases, but does apply to mortgage refinancing. The fee is estimated to collect $200 million–$300 million per year, or $1.2 billion over the next five years.

SB 3 (Beall; D-San Jose; Chapter 365), known as the Veterans and Affordable Housing Bond Act of 2018, places a $4 billion statewide housing bond on the November 2018 ballot, with $1 billion set aside for a veterans' home loan program. The remaining $3 billion would be used to finance various existing housing programs, as well as certain infill infrastructure financing and affordable housing matching grant programs. Whether California voters have an appetite for another bond measure remains to be seen.

Housing Accountability Act

One of the driving issues in the housing crisis is the reluctance of local governments to approve new housing projects due to "not in my backyard" (NIMBY) resistance. The Housing Accountability Act (HAA), also known as the "Anti-NIMBY Act," is part of the Planning and Zoning Law. One purpose of the HAA is to limit the ability of local agencies to reject or make infeasible housing developments without a thorough analysis of the economic, social, and environmental effects of the action. The HAA provides for a judicial remedy that allows a court to issue an order to compel a city to take action on a development project. An applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization, may bring an action to enforce the HAA.

Three bills were passed and signed to strengthen the HAA. **SB 167 (Skinner; D-Berkeley; Chapter 368)** and **AB 678 (Bocanegra; D-Pacoima; Chapter 373)** are identical bills that, among other things, do the following:

- Before a local agency can disapprove or grant conditional approval of a housing project, it must make specified written findings based on a preponderance of the evidence in the record, rather than substantial evidence (as currently required);
- Require a local agency to provide a specific written explanation for disapproving a project within a finite timeframe, and if it fails to do so, the project is deemed consistent;
- Allow a court to award reasonable attorney fees to housing organizations that are prevailing parties in an action to enforce the HAA;
- Provide courts with additional tools to ensure compliance with the spirit and requirements of the HAA;
- Set a minimum fine amount for local agencies found to have acted in bad faith; and
- Make clear that developments are required to comply only with zoning and general plans in existence at the time the application was deemed complete.

These bills provide some teeth to enforce the HAA and would properly require local agencies to substantiate their denial or conditional approval of much needed projects.

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The third bill, **AB 1515 (Daly; D-Anaheim; Chapter 378)**, makes various legislative findings and declarations relating to the housing crisis, and provides that a housing development project or emergency shelter is deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development or emergency shelter is consistent, compliant, or in conformity. The bill is intended to provide courts with clear standards for interpreting the HAA in favor of building housing, and requires courts to give less deference to local governments in legal challenges when a city or county determines a housing project is inconsistent with its general plan and zoning standards.

Housing Element Law

Several bills focused on enforcement of and modifications to the housing element law. Every local government is required to prepare a housing element as part of its general plan. The housing element process starts when the Department of Housing and Community Development (HCD) determines the number of new housing units a region is projected to need at all income levels (very low, low, moderate, and above-moderate) over the next housing element planning period to accommodate population growth and overcome existing deficiencies in the housing supply. This number is known as the regional housing needs assessment (RHNA).

Each local government is then assigned a share of the RHNA based on a variety of factors. The local government's housing element outlines a long-term plan for meeting the community's existing and projected "fair share" of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. If a community does not have enough sites within its existing inventory of residentially zoned land to accommodate its entire RHNA, then the community must adopt a program to rezone land within the first three years of the planning period. State law requires cities and counties to update their housing elements every eight years.

AB 72 (Santiago; D-Los Angeles; Chapter 370) gives the HCD authority to find a local government's housing element out of substantial compliance, if it determines that the local government acted or failed to act in accordance with its housing element. The bill also allows the HCD to refer violations of the law to the Attorney General, who is authorized to enforce state law.

AB 1397 (Low; D-Campbell; Chapter 375) attempts to ensure that sites contained in a local government's housing element can realistically be developed to meet the locality's housing needs by, among other things, requiring that such sites have sufficient infrastructure available to support housing development, and limiting a local government's reliance on sites over 10 acres or under half an acre and sites listed across multiple housing elements without being developed as housing.

AB 879 (Grayson; D-Concord; Chapter 374) requires charter cities to submit an annual general plan report and requires cities and counties to include an expanded analysis of governmental and nongovernmental constraints on the maintenance, improvement and development of housing in the housing elements of their general plans.

For example, with regard to nongovernmental constraints, the bill requires a local government to include information about any requests to develop housing at lower densities below those specified in the housing element's analysis of density levels zoned to accommodate the local government's share of the RHNA, the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a local government's share of the RHNA, and any local efforts to remove nongovernmental constraints that create a gap between the local government's planning for the development of housing for all income levels and the construction of that housing. The bill further requires the analysis of governmental constraints to include any locally adopted ordinances that have a direct impact on the cost and supply of residential development.

The housing element now also must address and remove nongovernmental constraints (it previously was required only to address and, where appropriate and legally possible, remove governmental constraints). In addition, the bill directs the HCD to complete a study evaluating the reasonableness of local fees charged to new developments by June 30, 2019.

SB 166 (Skinner; D-Berkeley; Chapter 367) imposes new requirements on local governments to, as development occurs, assess their ability to accommodate new housing on other sites in their inventory and make adjustments in zoning, if needed, to maintain adequate housing sites at all times throughout the planning period for all levels of income.

Streamlined Permit Processing or 'By-Right' Approval

Several bills were passed and signed to require by-right, ministerial approval of certain projects under certain conditions.

SB 35 (Wiener; D-San Francisco; Chapter 366) creates a streamlined, ministerial approval process for infill developments in localities that have failed to meet their RHNA numbers under their housing elements. While the ministerial approval of projects has many benefits (for example, takes less time, costs less money, and avoids California Environmental Quality Act litigation), SB 35 would allow for streamlined, ministerial approval of projects only in limited circumstances.

In addition to the requirement relating to the locality's failure to meet its share of the regional housing needs, the development must meet very specific and narrow requirements relating to the site (for example, location, zoning, characteristics of adjoining parcels, and land use restrictions) and the proposed development (for example, mandated minimum percentage of below market-rate housing units). SB 35 further requires that the project be built with prevailing wage, a condition that might discourage developers from pursuing such projects.

SB 540 (Roth; D-Riverside; Chapter 369) authorizes a city or county to establish a Workforce Housing Opportunity Zone (WHOZ) with front-loaded planning and environmental reviews. Specifically, the city or county must prepare an environmental impact report (EIR) to identify and mitigate impacts from establishing the WHOZ and adopt a specific plan. A housing development approved within the WHOZ that meets specified criteria would be subject to expedited project approval.

Because the local government would have fully conducted the necessary environmental reviews, no project-specific additional environmental reviews would be needed, allowing for housing developments within these planned areas to proceed in an expedited manner. A project must be approved or rejected within 90 days of a submitted application.

There are various requirements and limitations, however, including affordable housing requirements (for example, no more than 50% of the total units constructed or substantially rehabilitated may be sold or rented to persons or families of above-moderate income). SB 540 also requires that the project be built with prevailing wage, which may discourage developers from pursuing such projects.

AB 73 (Chiu; D-San Francisco; Chapter 371) provides incentive payments to local governments that rezone more densely with a certain level of affordability. Local governments may establish "Housing Sustainability Districts"—zoned at higher densities, near public transit, with front-loaded planning and environmental reviews. Similar to SB 540, projects approved in these districts would be subject to expedited project approval. AB 73 also applies only in limited circumstances, including when 20% of the housing in the district is zoned at affordable levels and the projects are built with prevailing wage, which may limit the use of such projects.

Preservation Notice Law

AB 1521 (Bloom; D-Santa Monica; Chapter 377) requires advance notice of subsidized rental units returning to market-rate pricing, requires an owner of expiring affordable rental properties to accept a bona fide offer to purchase from a qualified preservation entity that intends to maintain the property's affordable restrictions, if specified requirements are met, and gives the HCD additional enforcement authority.

Inclusionary Housing for Rental Developments

AB 1505 (Bloom; D-Santa Monica; Chapter 376) authorizes a local government to establish inclusionary housing requirements for rental developments requiring, as a condition to the development, that the development include a certain percentage of affordable housing units, and allows the HCD to review inclusionary ordinances in specified circumstances.

The bill supersedes the 2009 appellate decision in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, as applied to inclusionary ordinances for rental housing. The bill specifies that the ordinance must provide an alternative means of compliance that may include, but is not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

Farmworker Housing Tax Credit Program

AB 571 (Garcia; D-Coachella; Chapter 372) seeks to incentivize greater use of the Farmworker Housing Assistance Tax Credit Program by decreasing the occupancy requirement from 100% farmworkers and their families to 50%, increasing the amount of credits such projects can receive and expanding how the credits can be used to make the credits more valuable and to allow greater leveraging of other bonding authority.

CalChamber Position

The 2017 housing package does not end the need for further aggressive strategies in addressing the housing crisis. The California Chamber of Commerce supports efforts to expedite project approvals; however, tying prevailing wage and other limitations to expedited approvals is unlikely to yield much by way of additional housing units.

While the CalChamber is mindful that achieving meaningful reform of the California Environmental Quality Act (CEQA) continues to be one of the most substantively and politically difficult issues in the Capitol, it believes CEQA reform is an important piece in addressing the housing crisis and reducing housing costs. The CalChamber further believes it is important to encourage market-rate housing for upper-income and higher-income families as well. When families move up from their starter homes, they free up housing for lower- and lower-middle income families.

Other strategies that deserve consideration include revival of some version of California's redevelopment agencies and property tax reform. The Legislature will need to consider all available and possible avenues to increase supply as it continues to address the state's housing crisis—the stimulation of actual construction being of the utmost importance.

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