

TOWNSEND

PUBLIC AFFAIRS

EST TPA 1998

MEMO

To: City of Cupertino
Legislative Review Committee

From: Townsend Public Affairs, Inc.

Date: June 18, 2021

Subject: Consider adopting a position on AB 989 (Gabriel) Housing Accountability Act:
Appeals: Housing Accountability Committee

Bill Information

The official text of AB 989 can be found [here](#)¹.

Summary

AB 989 creates the Housing Accountability Committee (HAC) to review appeals of affordable housing projects denied by a local government and to approve those projects if the denial violates the Housing Accountability Act. Among its provisions, this bill:

- Requires the HAC to receive appeals from applicants when a local government denies a qualified affordable housing development or approves the development subject to conditions that, in the applicant's judgment, render the project economically infeasible.
- Requires the committee to consist of eight members, including the directors of the Department of Housing and Community Development and the Governor's Office of Planning and Research and six others appointed by the Governor, each for two-year terms.
- Requires an applicant to file an appeal within 30 days after the date of the decision by the local agency and the committee to notify the local agency of the filing within 10 days of receipt of the application. If the local agency transmits a copy of its decision and reasoning within 10 days, the committee must schedule an appeal hearing within 30 days. The hearing must occur no more than 60 days after the local agency receives the initial notice unless all parties to the hearing agree to a later date.
- Requires the committee to vacate a local decision if it finds that the local agency disapproved the housing development or conditioned the approval of the housing development in violation of the Housing Accountability Act, and requires the committee to order the local agency to issue any necessary approval for the development and, if applicable, to modify or remove any condition or requirement to make the development no longer infeasible

¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB989

- Requires the local agency to carry out a committee decision within 30 days of that decision.
- Authorizes an applicant to enforce the order in court and recover attorney's fees, and allows the court to impose fines on the city or county as allowed under the Housing Accountability Act.
- Authorizes the Department of Housing and Community Development to charge applicants a fee for an appeal that does not exceed the cost of the hearing and requires a local agency to reimburse the applicant if the committee orders approval of the proposed development or modifies or removes the imposed conditions.

Status

AB 989 passed the Assembly and awaits committee assignment and consideration in the Senate.

Support

According to the author, "Despite California's well-documented affordable housing crisis, some local government officials have defied state law and denied affordable housing projects even when they are fully compliant with all local zoning and regulatory requirements. These officials understand that in most cases affordable housing proponents will have no practical means to challenge the unlawful denial as the current remedy, litigation in Superior Court, is almost always prohibitively expensive, time-consuming, and otherwise impractical.

AB 989 would address this problem by creating an alternate appeal panel with specialized expertise. Modeled off an approach that has been successfully implemented in states such as Connecticut, Illinois, Massachusetts, and Rhode Island, this review panel would include representatives of both local government and affordable housing. The panel would be able to resolve disputes around improper and unlawful denials of affordable housing in a more expedited, less expensive, less confrontational, and more consistent manner.

To be clear, AB 989 simply provides a new procedural remedy to resolve disputes, it does not upzone, change any local zoning or land use policies, or otherwise change substantive state law around housing. Local jurisdictions that follow state law in good faith are highly unlikely to have any interaction with this new appeal panel, while those that have been actively and willfully violating the law will be encouraged to come into compliance."

Supporters of AB 989 include: California Apartment Assn; California Housing Partnership Corporation; Bridge Housing Corporation; California Assn of Realtors; California Building Industry Assn; California Housing Consortium; Housing California; Sacramento Mayor Darrell Steinberg; Sacramento Housing Alliance; and SV@Home.

Opposition

The League of California Cities writes in opposition, "We are cognizant of the time it takes to resolve a dispute through the courts. The HAA addresses this issue in Section 65589.5(m) and (n). Adding a hearing by the Executive Branch of the State Government to the process of resolving the dispute will not get housing built faster. In fact, doing so will only slow development, increasing conflict and add time to the process. AB 989 will do nothing to bridge the gap between the time a city or county approves a housing project and when a developer actually begins construction."

Opponents of AB 989 include: California Cities for Local Control; California State Assn of Counties; City of Moorpark; League of California Cities; Livable California; Rural County Representatives of California; and Urban Counties of California.

Recommended Action

Adopt an oppose position on AB 989 and authorize the Mayor to send letters to the state legislature