SB 330

CC 4-16-19
#11

Liang Chao

From: Liang Chao
Sent: Tuesday, April 16, 2019 4:48 PM
To: Steven Scharf
Subject: Concerns on SB 330

General Concerns

- "A number of sections in the bill are also confusing, and the multiple repeated sections raise the concern that the bill may not be internally consistent."
- "It also confers substantial benefits to developers without provisions to requireaffordabilityfor theprojectsthat will benefit from the restrictions placed on local planning departments." (Letter by American Planning Association, California Chapter on 4/10 Version of SB 330)
- "it is difficult to judge if the requirements in the bill will really produce more housing faster and more affordably." (Letter by American Planning Association, California Chapter on 4/10 Version of SB 330)
- "A tight definition of "housing emergency" and who determines when it starts,and ends would also make for a cleaner process, rather than changing the entitlement procedures for projects every year based on fluctuations in the housing market." ((Letter by American Planning Association, California Chapter on 4/10 Version of SB 330)

Freezing requirements in effect on January 1, 2018
"-Freezing requirements in effect on January 1, 2018 leaves a lot of critical requirements off the table. For instance,all of the housing requirements imposed in legislation last year could not be imposed, or new requirements related to a newly adopted General Plan or approved housing element, or wildfire, seismic, energy and inclusionary requirements. Many new building and efficiency measures are actually useful and do not increase costs." (Letter by American Planning Association, California Chapter on 4/10 Version of SB 330)

⇨ Cities cannot increase the percentage of affordable units or fire safety standards.

Voter Initiative or Referendum Voided
"In 1911, California voters amended the Constitution to provide voters the power to enact initiatives and referenda. The voter initiative is a "reserved power;" it is not a right granted to them, but a power reserved by them. As such, the power of initiative is integral to California's political process. **SB 330 removes the ability of local elected officials, and more importantly, local voters, to enact new growth management ordinances or even enforce existing ones.**" (Legislative Analysis on 4/4 Version of SB 330)

Complete Initial Application:
"**SB 330 freezes in time the standards that were in place when a complete initial application, a new term created in the bill, is filed.** But these completed applications **do not include all the information a local government needs** to understand a development's impacts, make a decision on the project, or to even necessarily know which standards apply to it. That's why **it's important to have a completed final application**. Should the Legislature prevent new ordinances from applying before a local government has a chance to understand the impacts of a development?" (Legislative Analysis on 4/4 Version of SB 330)

Objective standards:

- "The standardized checklist in(b) is a reasonable concept, but the checklist should be developed by the jurisdiction, with requirements limited to those materials identified in advance. OPR could then develop a standard form for those jurisdictions without capacity to do their own." ." (Letter by American Planning Association, California Chapter on 4/10 Version of SB 330)
- The term "Objective standards" was just introduced in Sb 35 in 2018/ The Cities have not had time to introduce objective standards in the General plan and Muni. Code. SB 330 would not allow cities to adopt any revision to clarify vague standards, leaving Cities with no standards in their plan. And SB 330 planes the burden of proof in local agency with a hefty fine.

NOT ALLOW Parking Requirement:

"Regardless of the size of the housing project, proximity or availability of high quality public transit, SB 330 would strictly prohibit local agencies from imposing any type of parking standard." (Letter by League of California Cities on 3/25 Version of SB 330)

"SB 330 voids local parking requirements in areas that it affects, regardless of whether residents can realistically go without cars.... for developments that aren't close to transit or are built in smaller cities that may not have the density of amenities to allow going car-free" (Legislative Analysis on 4/4 Version of SB 330)

Freeze impact fees – requiring local residents to subsidize market-rate development without any guarantee for lower rent.

"Freeze impact fees – This measure would lock in place nearly all fees or exactions imposed on development projects. These fees are imposed in order for the local jurisdiction to provide the public improvements and public services necessary to meet the needs of the new residents. Cities can only charge a fee to cover the cost of delivering the service." (Letter by League of California Cities on 3/25 Version of SB 330)

Limit Hearings:

SB 330 would limit the number of hearings to three, regardless of the project size or complexity, in addition to a limit of 12 month for project approval, including CEQA analysis. A project which might accommodate a small city of tens of thousands people and workers have the same limit of three hearings and the same limit of 12 months for approval as a development of 5 units.

Project only needs to comply with either Zoning Ordinances OR General Plan.

SB 330 would ignore zoning ordinances for specific areas so that a project could effectively has no density limit if such limit is not specified in the General Plan.

"SB 330 provides that a project isn't inconsistent with local zoning if it meets the objective standards for density and other metrics in the general plan, but that misunderstands how general plans and zoning ordinances are applied. For example, a general plan may specify a range of densities for an area, which is only then specifically applied through the zoning ordinance." (Legislative Analysis on 4/4 Version of SB 330)

"Complete Initial Application" does not include enough information

"Definition of "complete initial application"-As stated above, APA strongly objects to the addition of a new complete application layer. And, the new definition in S. 65941.1 does not include enough information to lock in a project as envisioned in this bill. The list of required information doesn't include for instance ownership verification, public notice information, materials required by the subdivision ordinance (if a map requested), landscape plan, or full environmental checklist/EA/or local equivalent." (Letter by American Planning Association, California Chapter on 4/10 Version of SB 330)

No accountability for developers

- "Since there is no deadline by which the developer has to pull the building permit,..." (Letter by American Planning Association, California Chapter on 4/10 Version of SB 330)

- "Language should be added to prevent the clock from running while a developer is withholding information." (Letter by American Planning Association, California Chapter on 4/10 Version of SB 330)

CC 4-16-19
#11

The Honorable Mike McGuire
Chair, Senate Governance and Finance
California State Capitol, Room 5061
Sacramento, CA 95814

RE: SB 50 (Wiener) Planning and zoning: housing development: incentives.

Notice of Opposition

Dear Senator McGuire:

The City of Cupertino opposes SB 50.

The fundamental problem in California is that insufficient affordable housing is being built. We have an affordable housing crisis. Unfortunately, SB 50 will worsen the affordable housing crisis in California.

Cupertino has significant concerns with the following:

SB 50 undermines our General Plan, and Housing Element (which are certified by HCD). By allowing developers to override state approved housing plans, SB 50 seriously calls to question the need for cities to develop community based plans in the first place.

SB 50 does not address the key issue of housing development for Cupertino (and many other cities)--developers with RHNA entitlements are refusing to actually construct their projects. In Cupertino, where we have exceeded our RHNA entitlement by about 40%, out of 1408 entitled units, including 10% BMR, only 19 units are under construction. Developers have a long list of reasons why they do not want to use their entitlements, including the requirement to include affordable units. Developers that fail to use their RHNA entitlements in a timely manner should lose their entitlements and their property should be purchased under eminent domain so that housing, both market rate and BMR, can be developed.

SB 50 rewards construction of 85-ft towers next to single-family homes. SB 50 encourages 75-ft and 85-ft-tall luxury towers in single-family areas that are either too close to transit or too close to jobs and good schools. The height limit is NOT 45 feet and 55 feet, the density bonus allows up to thirty additional feet.

SB 50 discourages alternative transportation. While getting people out of single occupancy vehicles is a worthwhile goal, the reality is that in cities without mass transit, residents will still use cars. Without sufficient parking vehicles will be parked on the street in adjoining neighborhoods, further endangering pedestrians and cyclists. The proper place for parking in multi-unit developments is underground, but developers don't want to incur this expense and they want to export the parking problem to public streets.

Despite being allowed to not provide sufficient parking, there is nothing in SB 50 that mandates that the cost savings of not providing parking be passed on to renters and purchasers.

Under SB 50, housing developers and transit agencies would have the power to determine housing densities, heights up to 85 feet, parking requirements, and design review standards for "transit-rich housing projects" within one-half mile of a major transit stop. For those "transit-rich housing projects" within one-quarter mile radius of a stop on a high-quality bus corridor,

developers would be able to determine housing density, and limit parking requirements to 0.5 spots per unit.

SB 50 hurts cities with no mass transit service, either existing or planned. Cupertino would be subjected to densification in areas where all nearly residents would be forced to drive everywhere, creating more traffic congestion and more degradation of the environment. SB 50 will create a transportation crisis while failing to solve the affordable housing crisis.

SB 50's definition of a "high-quality bus corridor" is ludicrous. Transit agencies like VTA continue to cut service and there are no guarantees that existing service will continue at the present levels. 15 minute headways on a slow bus line, that doesn't go between housing rich areas and job-rich areas (such as the 22 and 23 lines in Santa Clara County), should not be the parameters used to define a "high-quality bus corridor."

SB 50 allows some communities to be exempt if they develop their own plan that is consistent with the objectives of the bill. All jurisdictions should have the ability to have a community-led planning process that takes into account local needs and input as long as state objectives are still met.

SB 50 does not take into account the existing jobs/housing balances of cities that have been responsible in terms of not permitting excessive office space without commensurate housing. Responsible cities with very good jobs/housing balances, like Cupertino, Sunnyvale, and San Jose, are lumped in with cities that have very poor jobs/housing balances, like Santa Clara, Palo Alto, and San Francisco.

SB 50 will increase displacement of housing insecure families as high-cost luxury housing replaces naturally affordable housing. We are already seeing Ellis Act evictions spreading throughout the Bay Area as property owners exit the rental housing business. SB 50 increases the incentives to redevelop affordable housing into high-cost housing. SB 50 will have the unintended consequence of increased homelessness and more individuals and families living in vehicles.

SB 50 is not data-driven, it is developer-driven. Cities that have met their RHNA entitlements are being punished for circumstances beyond their control.

SB 50 drives up the value of land, exacerbating the affordable housing crisis. Upzoning increases land speculation without actually increasing construction.More market-rate housing will be built in areas that are already expensive and congested.

SB 50 does not identify the funding for the infrastructure needs that densification brings. Cities and school districts need to provide roads, sewers, parks, and schools, for new residents. Mitigation fees are insufficient to fund this infrastructure. Cupertino Union School District is one of the lowest funded school districts in the state, despite being a high-quality school district. The schools that will be impacted by SB 50 are already severely overcrowded and there are not sufficient funds to add additional school facilities.

HCD should not be tasked with identifying "job-rich" areas, without any accountability or transparency. "Job-rich" is the wrong criteria to be using. The criteria should be areas with a jobs to housing imbalance.

SB 50 does not require that net job growth (or loss) be used when determining a "job-rich" area. In Cupertino, Apple Inc., purchased a large parcel of land from Hewlett-Packard. As HP shrunk, 9,800 Hewlett Packard employees left Cupertino. 13,000 employees occupy the new Apple campus, but most of them came from other Apple facilities.

SB 50 does not require higher percentages of BMR housing as height and density increase.

SB 50 does not prohibit developers from paying in-lieu fees instead of providing inclusionary housing but in-lieu fees are too low to provide an equivalent amount of BMR housing.

SB50 does not prohibit developers from constructing lower-quality, smaller, BMR units than the market-rate units. Inclusionary BMR housing should not be permitted to be sub-standard.

In conclusion, SB 50 is a real estate bill. It is intended solely to enrich private developers. It will not provide the affordable housing needed by housing-insecure Californians.

Cupertino acknowledges that there is an affordable housing shortage in California. It is imperative that laws intended to address the affordable housing shortage look at the big picture and do not worsen this shortage.

For these reasons, the City of Cupertino opposes SB 50. Amending SB 50 to fix all its flaws is impractical.

Sincerely,

Steven Scharf
Mayor
City of Cupertino

cc. The Honorable Scott Wiener
The Honorable Jim Beall
The Honorable Evan Low
League of California Cities, cityletters@cacities.org

Kirsten Squarcia

From: Govind Tatachari <gtc2k7@gmail.com>
Sent: Tuesday, April 16, 2019 9:22 PM
To: City Clerk; Steven Scharf; Liang Chao; Rod Sinks; Darcy Paul; Jon Robert Willey; Cupertino City Manager's Office
Subject: Adopt positions opposing new housing related bills

Dear Honorable Mayor, City Clerk, Council members and City Manager,

This is regarding the Agenda item 11, Subject - Adopt positions opposing Senate Bills 50 and 330.

As you are aware. a cluster of housing related new 2019 Assembly and Senate bills in various stages of the legislative process of hearing and voting by various committees.

Thank you for having a study session earlier this year on the new housing related bills. Due to the limitations of time and effort, I was able to take a look at only a handful of them.

Most of the new housing related bills are alarming (except for those related to ADUs) since they neither guarantee nor mandate affordable housing production. They seem to favor market-rate housing. Worse still, it seems there is big impact of new housing related bills in terms of stamping out local democracy and local control over city level zoning as drafted.

While the bills might be revised as part of the legislative process, please consider taking a position on all of the following bills as soon as possible: Senate Bills (SB 4, SB 50, and SB 330) and Assembly Bills (AB 68, AB 69, AB 587, AB 725 and AB 1487).

In my understanding, the challenge with ADU related bills as drafted is that they can be applied recursively to the subdivided lot and in addition to the other housing bills would cause a cluster of high-story buildings within even smaller sized lots. Would appreciate if the City can clarify it this is NOT so.

Thanking you for your consideration.

Best regards,
Govind Tatachari
Cupertino Resident

Kirsten Squarcia

From: Cupertino ForAll <cupertinoforall@gmail.com>
Sent: Tuesday, April 16, 2019 6:22 PM
To: City Council; City Clerk; Cupertino City Manager's Office; Steven Scharf; Liang Chao; Rod Sinks; Darcy Paul; Jon Robert Willey
Subject: Public Comment for 4/16/2019 Council Meeting, Agenda Item 11

Mayor Scharf and city council-members,

On behalf of Cupertino for All, I write to you to express our concern over the proposal that the city adopt positions officially opposing the pro-housing bills SB 50 and SB 330. Neither bill is finalized yet, and we believe they merit more productive attention.

We'd hope that the city of Cupertino would use its platform to share constructive criticism with Sacramento, addressing the legitimate concerns that have been raised. If Cupertino merely declares its opposition without offering effective alternatives, then we risk cementing our exclusionary image.

The region is waiting for Cupertino to demonstrate that it is serious about solving the housing crisis. How you address the state's efforts on housing will speak volumes.

—
Marie Liu – Chair
Cupertino For All

Kirsten Squarcia

From: Liang Chao
Sent: Wednesday, April 17, 2019 9:56 AM
To: Timm Borden; City Clerk; Steven Scharf
Subject: RE: Concerns on SB 330

Here are the documents that I used for SB 330:

Letter from League of California Cities "Notice of Opposition (as amended 3/25/19)"
http://blob.capitoltrack.com/19blobs/23b532a4-4406-4d07-9b03-0296b2f68369

Letter from American Planning Association, California Chapter "SB 330(Skinner) –Oppose Unless Amended"
https://www.apacalifornia.org/wp-content/uploads/2019/04/SB-330-OUA-S-Gov-Fin-4-3-19.pdf

Bill Analysis of SB 330 for 4/5 Senate Government and Finance Committee:
file:///C:/Users/lchao/Downloads/201920200SB330_Senate%20Governance%20And%20Finance_.pdf

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From: Liang Chao
Sent: Wednesday, April 17, 2019 9:26 AM
To: Timm Borden <Timmb@cupertino.org>; City Clerk <CityClerk@cupertino.org>; Steven Scharf <SScharf@cupertino.org>
Subject: Fwd: Concerns on SB 330

Here is the document Timm copied for all council members at 4/16 council meeting.

Please put it in the Council meeting record.

Liang

From: Liang Chao <liangchao@cupertino.org>

Sent: Tuesday, April 16, 2019 4:47 PM

To: Steven Scharf

Subject: Concerns on SB 330

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LEAGUE® OF CALIFORNIA CITIES

April 3, 2019

The Honorable Nancy Skinner
State Senator
State Capitol Building, Room 5094
Sacramento, CA 95814

RE: **SB 330 (Skinner) Housing Crisis Act of 2019**
Notice of Opposition *(as amended 3/25/19)*

Dear Senator Skinner:

The League of California Cities must respectfully oppose your SB 330. This measure would, among other things, declare a statewide housing crisis and for a ten-year period, prohibit a city from imposing parking requirements, adjusting impact fees, imposing impact fees on affordable housing projects, and limiting new design standards based on cost.

We agree with the fundamental problem—there aren't enough homes being built in California. The League of California Cities remains committed to working with you, the Legislature, and the Governor on finding ways to help spur much needed housing construction statewide without arbitrarily limiting how cities address community growth impacts.

Specifically, the League opposes the following provisions in SB 330:

- **No parking requirements** – Regardless of the size of the housing project, proximity or availability of high quality public transit, SB 330 would strictly prohibit local agencies from imposing any type of parking standard. Without parking requirements, developers will force new residents to compete for an ever-diminishing supply of parking. This will certainly lead to significant congestion and parking conflicts in many communities because people strongly resist giving up their vehicle, especially if public transit is inadequate.
- **Freeze impact fees** – This measure would lock in place nearly all fees or exactions imposed on development projects. These fees are imposed in order for the local jurisdiction to provide the public improvements and public services necessary to meet the needs of the new residents. Cities can only charge a fee to cover the cost of delivering the service. Freezing fees for a decade will make it very difficult for a city to serve its community.
- **No impact fees for affordable housing** – While it may seem reasonable to prohibit cities from imposing impact fees on affordable housing projects, the reality is that without these fees, local jurisdictions will be unable to provide the needed services or subsidize the project out of general fund revenues if they are available. Additionally, cities do not receive property tax from affordable housing projects that fall under the Welfare Exemption, thus further restricting funds available to provide essential services.

- **No new design standards if they are more costly** – SB 330 would prohibit a local jurisdiction from imposing any new design standard that is more costly than those in effect on January 1, 2018. This would effectively prohibit any new design standards for a ten-year period because the cost of material and labor continue to increase.

The League of California Cities strongly questions the effectiveness of limiting parking, restricting fees, and limiting design standard costs and what this means for housing production or cost. SB 330 does not require any of the cost savings associated with these limitations to be passed on to the consumer. Developers would most likely pocket the savings and enhance their profits.

For the reasons stated above, the League of California Cities opposes SB 330. If you have any questions, please feel free to contact me at (916) 658-8264.

Sincerely,

Jason Rhine
Assistant Legislative Director

cc. Members, Senate Committee on Governance and Finance
Anton Favorini-Csorba, Consultant, Senate Committee on Governance and Finance
Ryan Eisberg, Consultant, Senate Republican Caucus

American Planning Association
California Chapter

Making Great Communities Happen

April 3, 2019

Senator Nancy Skinner
Room 5094
State Capitol
Sacramento, California 95814

SUBJECT: SB 330 (Skinner) – Oppose Unless Amended
Housing Crisis Act of 2019
In Senate Government & Finance Committee Wednesday, April 10th

Dear Senator Skinner:

The American Planning Association, California Chapter has taken an oppose unless amended position on SB 330 as recently amended. SB 330 would freeze or prohibit a number of housing-related requirements for 10 years with the goal of speeding up housing production in areas with the most severe housing shortages. We appreciate your staff meeting with APA to thoroughly discuss the issues that APA outlined in our original letter of concerns.

It is important to note that APA believes that the general concepts in the bill are worth pursuing. APA supports the freeze for local limits on the number of land use approvals or permits, as well as the imposition of a moratorium on housing development without a health or safety finding. Voiding requirements for local voter approval before key housing decisions are made also makes sense. In the amendments to the Permit Streamlining Act, APA also agrees with the clarification that in response to the local agency's determination that the application for development project is not complete, the local agency may only decide if an amended application has items on the submittal requirement checklist that were listed in the original list of items that were not complete. Jurisdictions should not be asking for new requirements beyond the list.

However, other provisions in the bill are too proscriptive and will have widely differing impacts depending on the circumstances in the city or county, notwithstanding our organization's general support for the concept of requiring jurisdictions to plan for and facilitate their fair share of housing development. A number of sections in the bill are also confusing, and the multiple repeated sections raise the concern that the bill may not be internally consistent. It also confers substantial benefits to developers without provisions to require affordability for the projects that will benefit from the restrictions placed on local planning departments.

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C/O STEFAN/GEORGE ASSOCIATES
1333 36TH STREET
SACRAMENTO CA 95816-5401

P: 916.736.2434
F: 916.456.1283
www.calapa.org

In addition, it is difficult to judge if the requirements in the bill will really produce more housing faster and more affordably. Enforcement of required upzoning and requiring use by right on all of those sites would have more immediate impacts. A tight definition of "housing emergency" and who determines when it starts, and ends would also make for a cleaner process, rather than changing the entitlement procedures for projects every year based on fluctuations in the housing market.

Below are APA's major concerns:

Restrictions on General Plan, zoning and specific plan requirements

-The General Plan, zoning and specific plan sections of the bill should be combined into one section rather than the repetitive differing code sections that are hard to read and sort out. The repetitive structure will lead to inconsistencies that a single list of imposed provisions would avoid.

-Making the determination of "affected county or city" each year would be too difficult to implement. Instead, APA suggests that the bill use the SB 35 model: once a jurisdiction is determined to be subject to the provisions, there is a check every 4 years to determine if circumstances have changed.

-The threshold of "land where housing is an allowable use" should be clarified. Even on agricultural land at least one house is allowed, but these rural lands should not be part of the state's effort to provide additional residential opportunities.

-Changing land use designations to a less intensive use is extremely limiting and difficult to administer. It also makes it difficult to do long range planning and attract development. APA suggests instead focusing on residential capacity, expanding the no net loss provision that currently applies only to sites identified in the housing element to instead apply to all sites citywide.

-Freezing requirements in effect on January 1, 2018 leaves a lot of critical requirements off the table. For instance, all of the housing requirements imposed in legislation last year could not be imposed, or new requirements related to a newly adopted General Plan or approved housing element, or wildfire, seismic, energy and inclusionary requirements. Many new building and efficiency measures are actually useful and do not increase costs. Ideally, the start date should relate to the date the emergency is ordered or specified, and limitations should be focused on increasing predictability by limiting non-objective standards but not focused on measures that result in healthier, safer, or more affordable communities, even if the requirements affect a developer's bottom line.

-This same concern holds for the requirement that design standards cannot be imposed if they are not objective or if they are more costly than those in effect on January 1, 2018. The retroactive provisions will cause complete confusion. This will be hard to define, is too subjective and will be too difficult for the local agency to determine what will be covered. In some ways, any standard would increase costs. Efforts to improve fire safety, increase energy efficiency, etc. should continue to be permitted. It could also impede or undermine local requirements to meet other state priorities, such as the reduction of VMT and sustainability, and make standards objective. A better alternative would be to be more straightforward about what the bill is actually targeting.

-Specific to S. 65850 that applies to zoning, (B) (i) prohibits a moratorium or other similar restriction on or limitation of housing development "other than to specifically protect against **an imminent threat** to the health and safety…" An imminent threat is an impossible threshold. The purpose of a moratorium is to prevent anticipated problems before they threaten the health and safety of residents, such as a moratorium for jurisdictions without water allocations or other legitimate health/safety issues such as potential wildfire threat. Such issues are not imminent, but they are clearly legitimate reasons for a building moratorium until measures can be put in place to deal with them.

-The definition of "objective standard" is the definition of SB 35, but outside the SB 35 context it should be triggered from completeness, not application submittal, to be consistent with the Housing Accountability Act and the Permit Streamlining Act.

Amendments to the HAA

The changes in this new proposed section unfortunately include a number of amendments to the HAA that were strongly opposed by APA when the HAA was revised just two years ago.

C/O STEFAN/GEORGE ASSOCIATES
1333 36TH STREET
SACRAMENTO CA 95816-5401

P: 916.736.2434
F: 916.456.1283
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-It introduces a new concept of a "complete initial application" rather than using "complete application". APA is opposed to adding this new term. Cities and counties rely on the determination that an application is complete as a black and white determination that applies in numerous instances and statutes. When is "complete initial application" determined? What if the information is not actually complete? The completeness determination is already a short process, so this change does not even accomplish any new streamlining. This section would also restrict the imposition of new fees after this stage. Regulatory fees don't change but are imposed later in the project and are necessary. This is not a helpful new layer of requirements in the development process.
-Adding in (6) the SB 35 definition of "objective standard" to the HAA makes sense, but the trigger of having the standards in place "before submittal of an application" doesn't work with the "complete initial application" concept. Again, the trigger for non-SB 35 projects should be at the time the application is deemed complete. Freezing objective standards retroactively before submittal of a complete initial application is backwards.
-The new (o) raises a number of new issues. The addition of (D) helps get rid of the unlimited vesting issue from the original version of the bill. And although commencing the construction within 3 years following the date the project received "final approval" is consistent with the longer life of the permit just put into law last year, given the purpose of this bill, a shorter timeframe to inspire faster construction after approval is warranted. Since there is no deadline by which the developer has to pull the building permit, the developer has time before that clock starts to get financing, construction contracts, etc. in place and get started – 18-24 months should be more than enough time then to commence construction. Additionally, the exceptions in (E) and (3) don't work together. If the applicant initiates the change, it should be their risk that new standards apply. The density increase language in (E) is ok, but (3) makes it hard to know how to apply certain physical development standards to portions of projects, and it would be preferable for standards to apply to all (or none) of a project.

<u>Definition of "complete initial application"</u>
-As stated above, APA strongly objects to the addition of a new complete application layer. And, the new definition in S. 65941.1 does not include enough information to lock in a project as envisioned in this bill. The list of required information doesn't include for instance ownership verification, public notice information, materials required by the subdivision ordinance (if a map requested), landscape plan, or full environmental checklist/EA/or local equivalent.
-The standardized checklist in (b) is a reasonable concept, but the checklist should be developed by the jurisdiction, with requirements limited to those materials identified in advance. OPR could then develop a standard form for those jurisdictions without capacity to do their own.

<u>Limit of three hearings</u>
S. 65905.5 would limit hearings to three. That is an arbitrary limit and may not be enough for particularly large or controversial projects. Requiring a specific time requirement instead would still allow the local agency flexibility to complete all necessary hearings and is a fairer process.

<u>S. 65913.3 – Another provision for specific projects similar to the earlier General Plan, zoning and specific plan limitations and freezing fees for 10 years</u>
-Freezing changes on January 1, 2018 is too limiting as noted in the first three sections of the bill. And, to the extent the language is similar to the first three sections, APA has the same concerns as noted above.
-Restricting fees to the amount in place as of January 1, 2018 is particularly problematic as is eliminating all fees for affordable housing. There are legitimate reasons fees may either increase or decrease over ten years and those fees and costs can't be shifted to existing residents. There is also no liability protection offered to jurisdictions in exchange for a process that forces them to cut corners at risk to public health and safety. And, not all jurisdictions have funding to waive fees – this is a major new mandate.

C/O STEFAN/GEORGE ASSOCIATES
1333 36TH STREET
SACRAMENTO CA 95816-5401

P: 916.736.2434
F: 916.456.1283
www.calapa.org

Process for projects required to have a conditional use permit, zoning variance, or other permit

In (B) (3) of 65913.10, the bill would "lock historic status at time of completeness". This will not always be possible. If this is not done correctly, this provision could lead to the unconscionable loss of legitimately historic building, neighborhoods, districts, cultural artifacts, and Native American tribal resources. It may not always be possible to tell what may underlie a site at the completeness stage.

Amendments to the PSA

Language should be added to prevent the clock from running while a developer is withholding information.

New S. 65950 – Limits on hearings and total approval process time

-As stated, the three hearings limit is arbitrary and may not be enough depending on the size and complexity of the project. It also isn't clear if the limitation includes study sessions, Planning Commissions which have specified authority under state law, or appeals.

-This section now also limits consideration and final action on a project to no longer than 12 months. Twelve months is not nearly long enough to complete an EIR if one is required. It is important to note that the PSA is designed to complete CEQA first and then project approval must occur within 12 months. But since the bill now requires the CEQA timeline to be mandatory not directory, CEQA would have to be completed within the PSA timeline. It isn't possible to meet CEQA and review comments and make changes. Courts now are requiring much more detail and analysis and CEQA requires certain things that take longer than the bill's timeframe. It is better not to rush it and lose in court – that takes longer.

If you have any questions, please contact our lobbyist, Sande George, with Stefan/George Associates, sgeorge@stefangeorge.com, 916-443-5301.

Sincerely,

Eric S. Phillips
Vice President, Policy and Legislation - APA California

cc: Senate Government and Finance Committee, Republican Caucus
OPR, Governor's office

C/O STEFAN/GEORGE ASSOCIATES
1333 36TH STREET
SACRAMENTO CA 95816-5401

P: 916.736.2434
F: 916.456.1283
www.calapa.org

SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2019 - 2020 Regular

Bill No:	SB 330	**Hearing Date:**	4/10/19
Author:	Skinner	**Tax Levy:**	No
Version:	4/4/19	**Fiscal:**	Yes
Consultant:	Favorini-Csorba		

HOUSING CRISIS ACT OF 2019

Enacts the "Housing Crisis Act of 2019," which, until January 1, 2030: (1) makes changes to local approval processes, (2) modifies the Permit Streamlining Act, (3) imposes restrictions on certain types of development standards, and (4) creates separate building standards for occupied substandard buildings.

Background

Planning and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Planning and Zoning Law. State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory "elements," including a housing element that establishes the locations and densities of housing, among other requirements. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Cities and counties must provide a path to appeal a decision to the planning commission and/or the city council or county board of supervisors.

When approving development projects, counties and cities can require applicants to mitigate the project's effects by paying fees. The California courts have upheld these mitigation fees for sidewalks, parks, school construction, and many other public purposes. When imposing a fee as a condition of approving a development project, local officials must determine a reasonable relationship between the fee's amount and the cost of the public facility.

State housing law. The Legislature has enacted a variety of statutes to facilitate and encourage the provision of housing, particularly affordable housing and housing to support individuals with disabilities or other needs. Among them is the Housing Accountability Act (HAA), enacted in 1982 in response to concerns over a growing rejection of housing development by local governments due to not-in-my-backyard (NIMBY) sentiments among local residents (SB 2011,

Greene). The HAA, also known as the "Anti-NIMBY" legislation, restricts a local agency's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA limits the ability of local governments to reject or render infeasible housing developments based on their density without a thorough analysis of the economic, social, and environmental effects of the action. Specifically, when a proposed development complies with objective general plan and zoning standards, including design review standards, a local agency that intends to disapprove the project, or approve it on the condition that it be developed at a lower density, must make written findings based on substantial evidence that the project would have a specific, adverse impact on the public health or safety and that there are no feasible methods to mitigate or avoid those impacts other than disapproval of the project.

Permit Streamlining Act. The 1977 Permit Streamlining Act requires public agencies to act fairly and promptly on applications for development permits, including wireless facilities. Public agencies must compile lists of information that applicants must provide and explain the criteria they will use to review permit applications. Public agencies have 30 days to determine whether applications for development projects are complete; failure to act results in an application being "deemed complete." However, local governments may continue to request additional information, potentially extending the time before the clock begins running.

Once a complete application for a development has been submitted, the Act requires local officials to act within a specific time period after completing any environmental review documents required under the California Environmental Quality Act. Specifically, local governments must act within (1) 60 days after completing a negative declaration or determining that a project is exempt from review, or (2) 180 days after certifying an environmental impact report (EIR). If the local government fails to approve or disapprove the application in the applicable time period, the application is deemed granted, and the applicant may file suit in state court to order the local government to issue the permit.

California's housing challenges. California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes have contributed to the lack of housing production. Recent reports by the Legislative Analyst's Office (LAO) and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members who may not want new neighbors. The building industry also points to CEQA review, and housing advocates note a lack of a dedicated source of funds for affordable housing.

Many local governments have adopted policies that limit or outright prohibit new residential development within their jurisdictions, or implement restrictive zoning ordinances, or otherwise impose costly procedural and design requirements on building. The author wants to remove some of these barriers in areas where housing is most acutely needed.

Proposed Law

Senate Bill 330 enacts the "Housing Crisis Act of 2019," which, until January 1, 2030: (1) makes changes to local approval processes, (2) modifies the Permit Streamlining Act, (3) imposes restrictions on certain types of development standards, and (4) creates separate building standards for occupied substandard buildings.

Approval process changes. SB 330 establishes a process for submitting a complete initial application—separate from and prior to the complete application required for the Permit Streamlining Act clock to begin running—and restricts the changes that local governments may apply to a project after a completed initial application is submitted.

SB 330 deems a complete initial application to have been submitted by a housing development applicant if they have provided the following information about the project:

- The specific location.
- The major physical alterations to the property on which the project is to be located.
- A site place showing the location on the property, as well as the massing, height, and approximate square footage, of each building that is to be occupied.
- The proposed land uses by number of units or square feet using the categories in the applicable zoning ordinance.
- The proposed number of parking spaces.
- Any proposed point sources of air or water pollutants.
- Any species of special concern known to occur on the property.
- Any historic or cultural resources known to exist on the property.
- The number of below market rate units and their affordability levels.

However, if a project applicant revises the project to change the number of units or square footage by 20 percent or more, excluding density bonus, the initial application is no longer complete.

SB 330 directs HCD to adopt a standardized form that applicants may use for submitting an initial application, and provides that the adoption of the form is not subject to the Administrative Procedures Act.

SB 330 prohibits a city or county from conducting more than three de novo hearings on a proposed housing development if it complies with the applicable, objective general plan and zoning standards in effect at the time a complete initial application. The city or county must consider and either approve or disapprove the application at any of the three hearings consistent with the applicable timelines under the Permit Streamlining Act. In addition to those requirements, the city or county must either approve or disapprove the permit within 12 months from when the date on which the application is deemed complete. However, SB 330 stops the clock from running while the applicant is revising their application materials.

SB 330 states that a project cannot be found inconsistent, not in compliance, or not in conformity with the zoning, and the project does not require rezoning, if the zoning does not allow the maximum residential use, density, and intensity allowable on the site by the land use or housing element of the general plan.

SB 330 amends the HAA to prohibit a local agency from applying ordinances, policies, and standards to a development after a completed initial application is submitted. The bill allows local governments to apply new standards after the complete initial application is submitted in the following circumstances:

- A development fee or exaction is indexed to inflation in the ordinance.

- A local government finds that a new standard is needed to mitigate or avoid a specific, adverse impact to public health or safety based on a preponderance of the evidence in the record, and there is no feasible alternative to mitigate it.
- A new policy, standard, or ordinance is needed to mitigate an impact of the project to a less than significant level pursuant to CEQA.
- The housing development project has not commenced construction within three years following the date that the project received final approval, as defined.
- The housing development project is revised following submittal of a complete initial application such that the number of residential units or square footage of construction changes by 20 percent or more, excluding the application of density bonus.

A local agency may also subject new square footage or units to the ordinances, policies, and standards in effect when the complete initial application is submitted.

A development applicant, a person who would be eligible to apply for residency in a proposed development, or a housing organization can file a lawsuit if a local agency requires a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a complete initial application was submitted.

Permit Streamlining Act changes. SB 330 also amends the existing application process under the Permit Streamlining Act. Specifically, SB 330 requires a public agency to provide an applicant with an exhaustive list of items in their application that was not complete. That list must be limited to those items actually required on the agency's checklist that is required by existing law. In any subsequent review of the application determined to be incomplete, the local agency cannot request the applicant to provide any new information that was not stated in the initial list of items that were not complete. When determining if the application is complete, the public agency must limit its review to only determining whether the application includes the missing information. SB 330 also requires each city and each county to make copies of any list of required application information available both (1) in writing to those persons to whom the agency is required to make information available, and (2) publicly available on their website.

The bill also requires any determination of whether the site of a proposed housing development is a historic site to be made at the time when the application for the project is deemed complete under the Permit Streamlining Act.

SB 330 provides that the timelines under the Permit Streamlining Act are mandatory.

Restrictions on local development standards and policies. SB 330 imposes restrictions on several types of development standards in an affected city or county. SB 330 defines "affected city" to be those that meet all the following conditions:

- The percentage by which the city's average rate of rent exceeded 130 percent of the national median rent in 2017, based on the federal 2013-2017 American Community Survey 5-year estimates.
- The percentage by which the vacancy rate for residential rental units is less than the national vacancy rate, based on the federal 2013-2017 American Community Survey 5-year estimates.
- The city has a population of more than 5,000, or has a population of 5,000 or less but is located within an urban core.

SB 330 defines an affected county to mean a county where at least half the cities are affected cities.

In an affected city or county, SB 330 prohibits a local government from adopting a development policy, standard, or condition that would have any of the following effects:

- Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use, as defined to include specified zoning standards, or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018.
- Imposing a moratorium or similar restriction or limitation on housing development, including mixed-use development, within all or a portion of the jurisdiction of the affected county or city, other than to specifically protect against an imminent threat to the health and safety. A city or county cannot enforce the moratorium until HCD approves it.
- Imposing or enforcing design standards established on or after January 1, 2018, that are not objective design standards.
- Limiting the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city, as applicable.
- Capping the number of housing units that can be approved or constructed either annually or for some other time period.
- Limiting the population of the affected county or affected city, as applicable.

However, a local government may change land use designations or zoning ordinances to allow a less intensive use if it concurrently increases intensity elsewhere it ensure that there is no net loss of residential capacity. SB 330 also allows a local government to enact a policy that prohibits commercial use of land that is designated for residential use, such as short-term occupancy of a residence.

SB 330 also prohibits an affected city or county from:

- Imposing any new, or increasing or enforcing any existing, requirement that a proposed housing development include parking.
- Charging a development fee or exaction, including water or sewer connection fees, in an amount that exceeds the amount that would have applied to the project on January 1, 2018, except if that fee or exaction is indexed to inflation, or if that fee is charged in lieu of an inclusionary housing requirement.
- Charging any development fees or exactions to deed-restricted units affordable to lower income persons and families, as defined.

An affected city or county cannot deny a housing project solely because the applicant does not pay a fee that is prohibited by the bill.

SB 330 provides that if the affected county or affected city approves an application for a conditional use permit for a proposed housing development project and that project would have

been eligible for a higher density under the affected county's or affected city's general plan land use designation and zoning ordinances as in effect prior to January 1, 2018, the affected county or affected city must allow the project at that higher density.

A development that would require demolition of specified types of affordable housing units or rental units cannot benefit from SB 330's provisions unless (1) the developer agrees to provide relocation benefits to the current residents and offers them first right of refusal in the new development, and (2) the development is at least as dense as the existing residential use of property.

SB 330 nullifies any development policy, standard, or condition enacted on or after January 1, 2018, that does not comply with the above prohibitions. The bill states that it must be construed broadly to maximize the development of housing, and that any exceptions shall be construed narrowly.

SB 330 applies its provisions to the electorate of an affected city or county, and voids any voter initiative or other policy that requires local voter approval for an increase the allowable intensity of housing, to establish housing as an allowable use, or to provide services and infrastructure necessary to develop housing.

SB 330 exempts the Very High Fire Hazard Severity Zone, as defined in existing law, from its provisions, and provides that it does not affect the California Coastal Act of 1976, nor does it prevent the operation of CEQA.

Substandard buildings. SB 330 also establishes a process for legalizing occupied substandard buildings. The bill requires HCD to develop building standards and other rules that apply to an occupied substandard building, defined to be a building in which one or more persons reside that an enforcement agency finds is in violation of any health and safety requirements. SB 330 applies these standards, once developed, in lieu of the requirements that apply to buildings under existing law. The standards developed by HCD must:

- Require that an occupied substandard building include adequate sanitation and exit facilities and comply with seismic safety standards;
- Permit those conditions prohibited under existing substandard building laws that do not endanger the life, limb, health, property, safety, or welfare of the public or the occupant; and
- Meet rules and regulations developed by the State Fire Marshal.

SB 330 deems the occupied substandard building in compliance with state building codes and health and safety laws if it meets the substandard building requirements developed by HCD for a period of seven years. After that time, the current building standards in force at the time apply.

SB 330 sunsets all its provisions on January 1, 2030 and provides throughout the bill that nothing in the bill supersedes, limits, or otherwise modifies the requirements of CEQA. The bill also states that its provisions are severable, makes technical and conforming changes, and includes findings and declarations to support its purposes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. California is in the midst of a housing crisis. Rents across the state significantly exceed the rest of the United States, and homeownership has fallen to abysmal levels. Demand is clearly high, but builders find themselves unable to meet that demand because of local rules that limit the number of units or simply prohibit building altogether. At a time when housing is so desperately needed, there are some local policies that should just be off limits. SB 330 is a targeted approach that prohibits the most egregious practices in the areas that are hardest hit by the housing crisis. It repeals local voter initiatives enacted by NIMBYs that have prevented well-meaning local officials from taking the steps they need to ensure that housing can get built. It prevents local governments from downzoning unless they upzone elsewhere, and it stops them from changing the rules on builders who are in the midst of going through the approval process. SB 330 also limits the application of parking ratios and design standards that drive up the cost of building. These are not uncontroversial changes, but SB 330 sunsets its provisions so that the Legislature can evaluate its effectiveness. The first rule of holes says that when you're in one, stop digging: SB 330 applies this principle to one of the state's greatest challenges.

2. Home rule. California is a diverse state, with 482 cities and 58 counties. Local elected officials for each of those municipalities are charged by the California Constitution with protecting their citizens' welfare. One chief way local governments do this is by exercising control over what gets built in their community. Local officials weigh the need for new housing against the concerns and desires of their constituents. Where appropriate, those officials impose enact ordinances to shape their communities or set standards to make sure that the impacts of new development are considered and mitigated, based on local conditions. SB 330 runs roughshod over the unique features of California's communities by imposing blanket prohibitions on certain types of development regulation.

3. Time marches on. Local governments update their development policies and standards over time to reflect new circumstances within their jurisdiction or to respond to mistakes made in the past. In some cases, this may mean amending those standards while a city or county is actively considering a project for approval. SB 330 freezes in time the standards that were in place when a complete initial application, a new term created in the bill, is filed. But these completed applications do not include all the information a local government needs to understand a development's impacts, make a decision on the project, or to even necessarily know which standards apply to it. That's why it's important to have a completed *final* application. Should the Legislature prevent new ordinances from applying before a local government has a chance to understand the impacts of a development?

4. Power to the people. In 1911, California voters amended the Constitution to provide voters the power to enact initiatives and referenda. The voter initiative is a "reserved power;" it is not a right granted to them, but a power reserved by them. As such, the power of initiative is integral to California's political process. SB 330 removes the ability of local elected officials, and more importantly, local voters, to enact new growth management ordinances or even enforce existing ones. Locals adopt these measures for a variety of reasons, some more noble than others: for example, some are adopted out of environmental concerns, such as preventing sprawl or

reducing pressure to convert agricultural land to urban uses, while others are intended to block new neighbors from moving in. To avoid universally overturning the will of the voters and to draw a distinction between some, the Committee may wish to consider amending SB 330 to allow the continuation some duly adopted growth management ordinances, such as those that may need enhanced open-space protections, that still allow for affordable housing development, and that have been in effect for a longer period of time.

5. Gridlock. Ask any local elected official: Californians love their cars and consider it of paramount importance that they have somewhere to park them. For this reason, many local governments impose minimum parking requirements. But building new parking is expensive and potentially increases the cost of new development. Developers, for their part, would prefer to only build the parking they absolutely need to include in order to rent or sell their units. SB 330 voids local parking requirements in areas that it affects, regardless of whether residents can realistically go without cars. The Committee may wish to consider amending SB 330 to allow some parking requirements to remain in force for developments that aren't close to transit or are built in smaller cities that may not have the density of amenities to allow going car-free, or otherwise allowing local governments to impose some parking limits where they are truly needed.

6. Time is money. Developers face lots of costs when they try to get a project built: the "hard" construction costs of the actual structure, plus the "soft" costs of completing all the procedural steps and documentation that are needed to secure approval, plus the time value of money. SB 330 aims to reduce these costs in several ways, including by imposing a 12-month time limit on approval and limiting the number of hearings on development applications that are consistent with local zoning to three. But this reduction in the number of hearings constrains public input on new developments. Given that the bill caps the total time to approval, developers' soft costs may be sufficiently reduced to encourage new production without having to limit public comment. The Committee may wish to consider amending SB 330 to increase or remove the limit on the number of hearings allowed on development approvals that is imposed by the bill.

7. Whither general plans? The general plan is often called the "constitution for future development." It serves an important role in shaping the location and type of development that will occur, ensuring that there is adequate infrastructure to support that development, providing adequate open space, and mitigating future risks from fire, floods, and climate change. Zoning ordinances then effectuate the requirements in the housing element and general plan—those ordinances are specific where the general plan is, well, general. SB 330 provides that a project isn't inconsistent with local zoning if it meets the objective standards for density and other metrics in the general plan, but that misunderstands how general plans and zoning ordinances are applied. For example, a general plan may specify a range of densities for an area, which is only then specifically applied through the zoning ordinance. AB 3194 (Daly) of last year initially made similar changes to the HAA as SB 330 does, but was amended to more accurately reflect the way zoning works in practice. The Committee may wish to consider amending SB 330 to track the changes made in the final version of AB 3194.

8. Pay the man. Local governments have seen their revenues significantly constrained over the past several decades. Local governments have seen their sources of revenue slashed by a series of propositions, while demand for public services have increased. As a result, cities and counties follow a simple principle: new developments should pay for the impacts that they have on the community and the burden they impose on public services. Developer fees pay for important public services, including schools, new infrastructure for water and wastewater, roads, transit,

and parks. SB 330 prevents most increases in fees, even if they follow the stringent requirements of the Constitution and state law, and outright exempts affordable units, even though those units are likely to generate similar demands for public services. Without the ability to charge appropriate fees, residents may find that their services are scaled back.

9. Mandate. The California Constitution generally requires the state to reimburse local agencies for their costs when the state imposes new programs or additional duties on them. Because SB 330 expands the penalties under state housing law and requires new duties of local planning officials, Legislative Counsel says it creates a new state mandate. But the bill disclaims the state's responsibility for reimbursing local governments for enforcing these new crimes. That's consistent with the California Constitution, which says that the state does not have to reimburse local governments for the costs of new crimes (Article XIIIB, 6[a] [2]). SB 330 also says that if the Commission on State Mandates determines that the bill imposes a reimbursable mandate, reimbursement must be made pursuant to existing statutory provisions.

10. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. SB 330 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding that the provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, is a matter of statewide concern.

11. Double referral. The Senate Rules Committee has ordered a double referral of SB 330: first to the Governance and Finance Committee to hear issues relating to local permitting, and then to the Senate Housing Committee.

12. Related legislation. The Legislature is considering numerous bills to increase the production of housing in the state. Most notably, SB 4 (McGuire) and SB 50 (Wiener), increase zoning near transit and in other parts of the state.

Support and Opposition (4/5/19)

Support: Bay Area Council; Bridge Housing Corporation; Building Industry Association of the Bay Area; California Building Industry Association; California Community Builders; California Yimby; Enterprise Community Partners, Inc.; Facebook, Inc.; Silicon Valley At Home (Sv@Home); TMG Partners.

Opposition: League of California Cities.

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