

City of Palm Desert Housing Workshop

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Agenda

1. Process for Reviewing Applications
2. Limitations on Project Review (HAA, SB 330 and SB 35)
3. Accessory Dwelling Units
4. Urban Lot Splits (SB 9)
5. Density Bonus
6. Post-Entitlement Permits



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Background and Context

- Statewide housing crisis
- Extensive changes to state law in response to the housing crisis
- Increased oversight from state agencies
- Judicial decisions recognizing state authority to restrict local control
- Heightened public awareness

Preliminary Application (SB 330)

1. Local form or, if no local form, may use HCD form
2. Complete application results in vested rights that limit the ability to impose new ordinances, policies, or development standards
 - a. Application requirements: location, existing uses, site plan, proposed uses, parking, environmental and hazard information, among others
 - b. Applicant to disclose "[a]ny historic or cultural resources known to exist on the property"
 - c. Tribal cultural resource can be listed on national, state, tribal or local historic register list on or after preliminary application date
3. Developer required to submit full application within 180 days

Housing Accountability Act (HAA)

1. General requirements for approval of housing development projects that comply with objective general plan, zoning and subdivision standards
2. Process for development applications (different from SB 330 preliminary applications)
 - a. Is application **complete**? Determine if application is complete **within 30 days** of submission. Failure to give written notice of incompleteness within 30 days results in application being deemed complete.
 - b. Is the project **consistent, compliant or in conformity** with applicable plans, programs, policies, ordinances, or standards?
 - i. No new subjective standards after January 1, 2020
 - ii. Failure to give **written notice of inconsistency/non-compliance/non-conformity** by the statutory deadline results in the project being deemed consistent, compliant and in conformity with local requirements.
 - A. For projects with 150 units or fewer, within 30 days of the date the application is determined to be complete
 - B. For projects with more than 150 units, within 60 days of the date the application is determined to be complete
 - c. Limits an agency to five hearings on a project application

HAA (continued)

If a project meets the objective general plan, zoning, subdivision and design standards, the local agency may:

1. Enforce objective standards, and impose conditions of approval that do not require a project be developed at a lower density.
2. To disapprove, or approve at a lower density, the HAA requires written findings of specific, adverse impact on public health or safety unless the project is disapproved or conditioned at a lower density.

HAA (continued)

HAA further limits disapproval of affordable housing projects that meet certain affordability thresholds

1. Special conditions on disapproval apply to projects that meet the following:
 - a. (A) 20% of the total units for lower income households (80% AMI), or
 - b. (B) 100% of the units for moderate income households (120% AMI)
2. Projects submitted under these provisions should be reviewed on an individual basis to determine the limits on local control. Relevant factors may include:
 - a. Progress towards meeting RHNA goals
 - b. Whether the jurisdiction has adopted a substantially compliant housing element
 - c. Whether the project would have a specific, adverse impact on public health or safety, and whether those impacts could be mitigated without rendering development unaffordable
 - d. Whether land is zoned for agricultural or resource preservation purposes, or whether there is adequate water or waste water to serve the project
 - e. Other requirements under federal or state law

Ministerial Approvals

- Streamlined ministerial approval of qualifying multifamily affordable-housing (SB 35)
- ADUs and JADUs
- Urban lot splits and two-unit projects in R1 (SB 9)
- More and bigger density bonuses
- AB 2011 (2022) – Eligible affordable housing projects on commercial properties

Senate Bill 35

1. Streamlined ministerial approval process for multi-family affordable housing projects when a locality has failed to provide its share of “regional housing needs, by income category.”
2. Process initiated by "notice of intent"
 - a) Similar to preliminary application, but intended to begin process of tribal consultation
 - b) Local government to give notice to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development within 30 days of receiving that notice of intent; 30 days to receive responses; begin scoping and consultation process within 30 days
3. Full application can be submitted after completion of the tribal consultation phase
4. Deadline to approve or disapprove
 - i. Within 90 days of submittal of the development application if 150 units or fewer
 - ii. Within 180 days of submittal of the development application if more than 150 units

SB 35: Eligible Projects

- Multi-family (2 or more units)
- Site criteria: legal parcel within jurisdiction; urban area development; general plan or zoning designation allows residential or mixed use development
- Affordability housing requirement
 - 10% of units below 80% of area median income (AMI)
 - Different % of units in SF Bay Area; or
 - 50% below 80% of AMI
 - 55 years for rental/45 years for owned
 - Follow local inclusionary ordinance
- Labor requirements for prevailing wage or skilled and trained work force if project is more than 10 units

SB 35: Eligible Projects (continued)

- Meet “objective” land use requirements
- Consistent with objective zoning, subdivision and design review standards in place when application or NOI submitted
- “Objective” = Uniformly verifiable by reference to an external and uniform benchmark or criterion. No personal or subjective judgment.
- Can only apply objective standards that are both “available and knowable” by both the development applicant and the public official prior to application submittal.”
 - Examples: Height, setbacks, lot coverage, % open space, density, FAR, etc.

SB 35: Exclusions

- Coastal Zone, Prime Farmland, Wetlands, Hazardous Waste Site
- FEMA Flood Hazard area (exceptions) or floodway or delineated fault zone;
- Very high fire hazard severity zone unless building standards met;
- Protected species habitat or conservation area;
- Zoned for non-residential (unless GP allows residential);
- Site has been occupied by tenants within the last ten years (even if it has already been demolished);
- Site subject to affordability deed or other restrictions or rent control would be demolished;
- Site would require demolition of a historic structure (national, state or local register);

SB 35 Exclusions (continued)

- Project requires subdivision of land unless receives tax credit financing or pays prevailing wages (even if <10 units) (Gov't Code § 65913.4(a)(9)); or
- Site is subject to Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act or the Special Occupancy Act.
- Tribal resources:
 - Tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project;
 - If no enforceable agreement for methods, measures, and conditions to protect tribal cultural resource that could be affected
 - Parties do not agree on whether a potential tribal cultural resource would be affected

SB 35: Case Law

- *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal. App. 5th 277, 290, reh'g denied (May 19, 2021), review denied (July 28, 2021)
- What is a "**historic structure**" under the exemption?
 - Shellmound is an important historical site/resource but not a structure.
 - Tribal cultural resources are addressed during new tribal consultation and tribe can insist on traditional discretionary review
 - Demolition of a historic structure is not permitted through SB 35
 - Even though it was a local landmark, did not violate home rule doctrine
 - The statute applies to charter cities and occupies an area of statewide concern

Senate Bill 9: Ministerial approvals for projects on parcels zoned for single-family residential

- Requires ministerial approval of application to allow up to four units on a SFR parcel
- Project may include
 - Two-unit housing development on a single-family residential parcel
 - Urban lot split – subdivision of an existing single-family residential parcel into two parcels
- Limited to properties zoned as single-family residential and within an urbanized area or cluster
- Within limits of state law, local agency may apply:
 - Objective development standards, e.g., building height and setbacks (but SB 9 sets maximum rear and side set back at 4')
 - Objective subdivision standards, e.g., minimum lot depth
 - Objective design standards (e.g., roof pitch, eave protections, façade materials)

SB 9: Exclusions

- Historic districts and properties:
 - Properties located in a historic district
 - Property included on the State Historic Resources Inventory
 - Property within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance
- Demolition of affordable housing, rent-controlled housing, or housing withdrawn from the market in the last 15 years or tenant-occupied in the past 3 years.
- Prime farmland, wetlands, within a Very High Fire Hazard Severity Zone (unless mitigation measures apply), hazardous waste site
- Earthquake fault zone (unless compliance with seismic protections)
- Special flood hazard areas
- Land identified for conservation pursuant to existing plan or conservation easement
- Site is protected species habitat

SB 9: Special Requirements

- **Owner Occupancy Affidavit**: Local agency must require applicant sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split. (Exemptions for Community Land Trust and qualified non-profit corporations.)
- **Prohibit Short Term Rentals**: Local agency must require that rental of any unit created under SB 9 is for a term longer than 30 days.

SB 9: Special Requirements (continued)

- **Limited authority to deny**: Local agency's building official must find that project would have a specific, adverse impact on public health and safety or the physical environment, and there is no feasible, satisfactory mitigation.
- **Annual Report to HCD**: Include the number of SB 9 lot split applications in annual housing element report.

Accessory Dwelling Units

- California's laws on accessory dwelling units ("ADU") and junior accessory dwelling units ("JADU") have been amended and updated many times in recent years. Most recently, in 2022, SB 897 made further amendments and repealed the automatic sunset on provisions of Government Code section 65852.2 and 65852.22, which generally impose limits on local authority to regulate ADUs and JADUs.
- Ministerial review:
 - Ministerial approval within 60 days of a complete application if the proposed ADU or JADU meets specified criteria regarding access, setbacks, size and height limitations;
 - Ministerial review is based on compliance with objective standards
 - Denial requires written notice with detailed reasons for denial to applicant
- Objective standards:
 - Local agency may impose "objective standards" on accessory dwelling units that "include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size."
 - Limitations on parking standards, e.g., within ½ mile walking distance of public transit or if located within an architecturally and historically significant historic district.

ADUs (continued)

- State law includes a schedule of impact fees based on the size of the ADU
- Minimum of 30 days on ADU rentals (i.e., no short term rentals);
- A five-year amnesty period during which owner of an ADU that violates a building standard may correct the violation, if the correction is not immediately necessary to protect public health and safety;
- Construction of an ADU on a property does not trigger a requirement for fire sprinklers in the proposed or existing primary dwelling;
- Local agency cannot require, as a condition for ministerial approval, correction of a violation on the primary dwelling unit, provided that correcting the violation is not necessary to protect health and safety.
- HCD review of each local ADU ordinance; and,
- A local agency may count an ADU for purposes of identifying adequate sites for its housing element.

Density Bonus Law

- Projects that provide affordable housing or senior housing and meet established criteria are entitled to:
 - A density bonus to allow development that exceeds maximum density in local code
 - Concessions or incentives: (1) a reduction in development standards, (2) approval of mixed use zoning, or (3) other regulatory incentives or concessions that reduce affordable housing costs
 - Waivers: Reduction of development standards that would physically preclude construction of the development at the allowed density

Density Bonus Law (continued)

- AB 2334 (2022)
 - Base density to be calculated by dwelling units per acre
 - If local zoning does not establish dwelling units per acre, then developer may propose base density based on realistic development capacity using existing objective standards (e.g., floor to area ratio, site coverage, height limits)
 - Expanded eligibility for no maximum controls on density for 100% affordable projects within "very low vehicle travel area" (removed requirement to be within ½ mile of transit stop)
- Parking Standards
 - 1 space/unit for 1BR units, 1.5 space/unit for 2BR units, 0.5 space/unit if within ½ mile of major transit stop
 - AB 2334: No parking standards for certain developments restricted to 100% lower-income households
- City burden to establish basis for denial of density bonus request

Post-Entitlement Permits

- AB 2234 (2022) established deadlines and ministerial approval process for "nondiscretionary" permits that are "filed after the entitlement process has been completed"
- Applies to: building permits, permits for minor or standard off-site improvements, demolition permits, and permits for minor or standard excavation and grading
- 15 business days to determine if application is complete
- Once application is complete: (A) 30 business days to approve or disapprove if project has 25 or fewer units, or (B) 60 business days to approve or disapprove if project has more than 25 units
- Requires online permit application system. If no online permitting system, then application may be submitted via email

Urgency Ordinances

- Many jurisdictions adopted urgency ordinances in response to changes to state law
- Palm Desert adopted
 - Urgency Ordinance No. 1373 regarding SB 9
 - Urgency Ordinance No. 1389 regarding Accessory Dwelling Units

Next steps

- Review and, if necessary, adopt policies and procedures for receiving applications and completing project review (SB 330 applications, SB 35 checklist, SB 9 lot splits, ADUs)
- Consider adoption of ordinances implementing state law, including adoption of permanent ordinances in place of the previously adopted Urgency Ordinances



Questions?

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