

# SENATE COMMITTEES ON GOVERNANCE & FINANCE AND TRANSPORTATION & HOUSING

November 16<sup>th</sup>, 2018

## *Committee Background*

This background paper prepares the members of the Senate Governance & Finance Committee and the Senate Transportation & Housing Committee for the November 16, 2018, informational hearing titled “**California’s Affordable Housing Crisis: Tailored Solutions to the Land Use Conundrum in Communities Big and Small.**” This hearing is the second of two hearings jointly held by the two committees on ensuring the availability of affordable housing in California. The first hearing, entitled “Housing for Working Families: How Do We Pay for It?” was held on October 2<sup>nd</sup> and assessed current state and local funding sources for affordable housing, identified funding gaps, and began to discuss the need for additional legislative changes beyond funding in order to address the state’s housing crisis.

Building on the first hearing, this hearing will examine changes to land use policies that are needed to increase density and ensure that housing is affordable to all Californians, as well as how the housing crisis looks different across the state.

For additional information on the state’s affordable housing gap and funding needs, please see the agenda, background paper, and other materials from the October 2<sup>nd</sup> hearing. Those materials are available on the Senate Governance and Finance Committee website at: <http://sgf.senate.ca.gov/hearings> and the Senate Transportation and Housing Committee website at: <https://stran.senate.ca.gov/content/oversightinfo-hearings>.

### **Recap of October 2<sup>nd</sup> Hearing: Housing for Working Families – How Do We Pay for It?**

The Senate Committees on Transportation & Housing and Governance & Finance conducted an informational hearing on affordable housing finance on October 2<sup>nd</sup>. The Committees first heard testimony on the state’s affordable housing gap, as well as state-level funding needs and future funding sources from officials in state government and their partners. This panel spoke to

the specific financing proposals that have been implemented by the Legislature and the Governor over the last several years to address the housing crisis, but emphasized that more action is needed to fill funding gaps, particularly after the loss of redevelopment agencies in 2011. Further, this panel noted that while the housing crisis is felt across all income levels, the greatest funding needs and housing unit deficits occurs with low-income households.

Next, the Committees heard from local government representatives on local housing finance and the tools local governments should be using to support affordable housing development at the local level. This panel noted the need for more state housing funding. In particular, the panel noted the need: (1) for funds to finance permanent supportive housing for the homeless and housing that espouses “housing first”<sup>1</sup> principles; (2) to bring back redevelopment agencies to provide funding for housing for low- and moderate-income households; and (3) to provide funds to local housing trust funds that empower locals with flexibility to address specific local needs.

Finally, the Committees heard from the development community and affordable housing advocates on additional steps needed to address the state’s housing crisis. This panel noted that housing production should be a state priority, next year and beyond. Such efforts should take land value capture (i.e. a policy approach that enables communities to recover and reinvest land value increases that result from public investment and other government actions) for new housing projects into account, provide adequate protections for low-income tenants who may be displaced by new developments, and account for regional differences throughout the state. Further, this panel noted that better coordination between statewide housing programs would greatly assist applicants navigate the application process.

## **Housing Development Approval Is Largely Local**

As noted in the previous hearing and background paper, even if the Legislature provides additional funding for affordable housing, a significant gap in housing production at all income levels is likely to remain for the foreseeable future. Accordingly, it is unlikely that increased funding alone can ensure affordable housing for many Californians; additional unsubsidized housing production is needed to rein in California’s housing prices in the long term.

However, 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

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<sup>1</sup> According to the United States Interagency Council on Homelessness, “housing first offers individuals and families experiencing homelessness immediate access to permanent affordable or supportive housing. Without clinical prerequisites like completion of a course of treatment or evidence of sobriety and with a low-threshold for entry, Housing First yields higher housing retention rates, lower returns to homelessness, and significant reductions in the use of crisis service and institutions.”

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.

***General Plans Establish Allowable Intensity of Development.*** 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.

***Zoning Ordinances More Precisely Shape Development.*** Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

Local governments have broad authority to define the specific approval processes needed to satisfy these considerations. Some housing projects can be permitted by city or county planning staff “ministerially” or without further approval from elected officials, but most large housing projects require “discretionary” approvals from local governments, such as a conditional use permit or a change in zoning laws. This process requires hearings by the local planning commission and public notice and may require additional approvals. Still other projects may be permitted under a development agreement, which is a contract negotiated between a project proponent and a city or county. A development agreement governs the land uses that a city or county may allow in a particular project, as well as the fees and procedures that apply to the approval. Neither the applicant nor the public agency is required to enter into a development agreement; it acts as an alternative to the traditional approval process.

***Developer Fees.*** When approving development projects, counties and cities can require the 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.*** State housing law requires local governments to plan for future housing needs. A city or county’s housing element must identify adequate sites for housing at all income levels—very low, low, moderate, and above moderate income—and must include rental housing, factory-built housing, mobile homes, and emergency shelters. Each local jurisdiction must also ensure that its housing element makes enough sites available to accommodate its share of the regional housing need assessment (RHNA), which is an estimate of housing needs for various regions in the state that is developed by the Department of Finance and the Department of Housing and Community Development (HCD). Then councils of government (COGs) allocate housing within each region based on these estimates to individual local jurisdictions. Local governments must generally update their general plan every eight years and identify an adequate number of sites through its entire planning period. Every city and county must submit a report to HCD and the Office of Planning and Research annually on its implementation and progress towards meeting its RHNA amount and removing governmental obstacles to housing development.

## **Barriers to Housing Development**

A variety of causes have contributed to the lack of housing production, including restrictive zoning ordinances, local permitting processes that provide multiple avenues to stop a project, and fiscal incentives associated with development decisions. These issues pose challenges to constructing market-rate and affordable housing developments alike.

***Restrictive Zoning Limits Housing Density.*** California’s high—and rising—land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density. In a 2016 analysis, the Legislative Analyst’s Office (LAO) found that the housing density of a typical neighborhood in California’s coastal metropolitan areas increased only by 4 percent during the 2000s.<sup>2</sup> The LAO also compared California’s coastal areas to similar metropolitan areas across the country and found that new housing constructed during the 2000s in California’s coastal cities was nearly 30% less dense on average than new housing in other comparable cities—10 units/acre in California compared to 14 units/acre in the other metropolitan areas.

In addition, the pattern of development in California has changed in ways that limit new housing opportunities. A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores

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<sup>2</sup> Alamo, Chas and Brian Uhler. “California’s High Housing Costs: Causes and Consequences.” Legislative Analyst’s Office, March 2015.

surrounded by vast swaths of low-density single-family housing.<sup>3</sup> Specifically, construction of moderately-dense housing (2-49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades. For example, in the Los Angeles metropolitan area, land area given to producing homes in moderately-sized multifamily structures has sharply decreased as a share of total land, from a peak of 23.7 percent in the 1960s and 70s to just 6.5 percent in the years since 2016. In addition, the share of census tracts in the area that saw almost no housing construction in this area dramatically increased—from less than 1 percent to over 50 percent.

Zoning ordinances add additional constraints that can reduce density: setbacks, floor-area ratios, lot coverage ratios, design requirements, dedications of land for parks or other public purposes, and other regulations can reduce the space on a lot that a building can occupy in ways that lower the number of units it is feasible to construct on a lot.

Local governments also sometimes establish stringent zoning restrictions specifically to maintain discretion over development.<sup>4</sup> This practice allows them to bargain more effectively with developers for contributions to services in order to overcome the fiscal effects of residential development (discussed below), or to simply provide more opportunities to deny projects.

***Permitting Processes Create Many Paths to Halt Projects.*** Recent reports point to the permitting and approval processes as a major factor preventing more housing construction. 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 that may not want new neighbors. As described above, cities and counties often require multiple layers of approval for new housing projects and commonly include review by multiple departments within the city (such as the building department, fire department, and health department), a design review board, the planning commission, and the city council or board of supervisors. Many of these reviews must be conducted at public hearings, providing venues for residents that oppose development to make their voices heard. More complicated projects require even more approvals and procedural steps, such as:

- Neighborhood meetings;
- Demolition permits;
- Changes to zoning ordinances;
- General plan amendments;
- Subdivision map approval;
- Water supply assessments;

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<sup>3</sup> Romem, Issi. “America’s New Metropolitan Landscape: Pockets Of Dense Construction In A Dormant Suburban Interior.” BuildZoom, February 2018.

<sup>4</sup> Manville, M. and Osman, T. (2017), Motivations for Growth Revolts: Discretion and Pretext as Sources of Development Conflict. *City & Community*, 16: 66-85.

- Cultural heritage reviews;
- Endangered species act reviews, and;
- Arts commission reviews.

Most projects that require an approval where a local government exercises discretion must also complete California Environmental Quality Act (CEQA) review, which can entail complicated analyses of dozens of aspects of the environment upon which a development may have a significant impact, such as land, air, water, minerals, flora, fauna, ambient noise levels, and objects of historic or aesthetic significance. Development opponents can appeal many of these individual decisions to the planning commission and to the city council or board of supervisors. Finally, litigation over approvals is also common.

The building industry also points to environmental reviews and other permitting hurdles as a hindrance to housing development. They argue that the high cost of building and delays in the approval process reduce builders' incentives to develop housing. For example, a 2018 study by the National Association of Homebuilders and the National Multifamily Housing Council attributed an average of 32% of the cost of a new multifamily housing development to regulatory costs, such as obtaining zoning approval, complying with building codes, and paying impact fees.<sup>5</sup>

Each review or approval examines an important facet of a project, and the options of appealing decisions or challenging them in court ensures due process for developers and residents alike. However, these steps also provide many ways to stop or delay projects. Without each of these approvals, a project cannot move forward. Other projects experience delays as a result of these processes, which ties up the resources of builders that they could be using to construct additional housing.

The above challenges taken together can significantly deter housing construction. A 2016 analysis by Trulia Research found that length of approval processes, rather than zoning constraints, was a better predictor of whether a local jurisdiction provides enough housing to keep up with demand.<sup>6</sup>

***Fiscalization of Land Use.*** A series of propositions have drastically cut into local revenue sources, requiring local governments to look elsewhere to fund services that the public demands. First, Proposition 13 (1978) capped property tax rates at 1% of assessed value (which only changes when ownership changes) and required 2/3rds voter approval for special taxes; as a result local governments turned to general taxes to avoid the higher voter threshold. When

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<sup>5</sup> Emrath, Paul and Caitlin Walter. "Multifamily Cost of Regulation." National Association of Home Builders and National Multifamily Housing Council, 2018.

<sup>6</sup> McLaughlin, Ralph. "Is your town building enough housing?" Trulia Research, July 2016.

Proposition 62 (1986) required majority voter approval of general taxes, local governments imposed assessments that were more closely tied to the benefit that an individual property owner receives. Subsequently, Proposition 218 (1996) required voter approval of parcel taxes, assessments, and property-related fees.

In response to the reduction in property tax revenues from Proposition 13 and the difficulty of raising taxes, local governments have turned to other sources of funds for general operations, including sales taxes and hotel taxes. These taxes are paid exclusively by commercial developments, which simultaneously pay property taxes and demand relatively few services (such as public safety or parks). Residential developments, by contrast, do not directly generate sales or hotel tax revenue, and the new residents demand a wider variety of more intensive services. As a result, cities and counties face a disincentive to approve housing because of the higher net fiscal cost of residential development, particularly if they have the option to instead permit commercial development that may produce net fiscal *benefits*.

Furthermore, because these initiatives made it harder for local governments to spread the cost of infrastructure and services over the entire community, local governments have turned to developer fees and other assessments or taxes levied on new development to pay for the services used by new residents and businesses. As discussed above, some local governments may set artificially restrictive zoning rules to provide leverage over developers when negotiating financial contributions to local services. To the extent that developer fees reduce housing production, the fiscalization of land use also exacerbates this concern.

## **Effects of Restrictive Land Use Policies**

The consequence of the above barriers is that housing production has not kept up with the increase in population in many parts of California. For example, between 2010 and 2015, the City and County of San Francisco permitted one new housing unit for every 8.2 new jobs; throughout the entire Bay Area, local governments permitted one unit for every 6.8 jobs.<sup>7</sup> As a result, land use restrictions can have various negative consequences, including higher housing prices, increased displacement and segregation, lower economic growth, and negative transportation and environmental impacts.

***Higher Housing Prices.*** There is wide agreement among economists that restrictive land use policies increase housing prices, including findings that:

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<sup>7</sup> Salvati, Chris. "Housing Shortage: Where is the Undersupply of New Construction Worst?" *Apartment List*, July 2017.

- Housing prices in California are higher and increase faster in jurisdictions with stricter land use controls, and in some markets, each additional regulatory measure increases housing prices by nearly 5%.<sup>8</sup>
- Cities that require more independent reviews prior to obtaining a zoning change or building permit have higher land prices, which are a major component of housing prices. For example, reducing the number of reviews required for a building permit by three would reduce housing prices in the San Francisco Bay Area by 4-8%.<sup>9</sup>
- Land use regulations have a greater impact on housing prices in areas that are constrained geographically, such as coastal California, and these jurisdictions are therefore more likely to enact strict zoning controls because it provides greater benefits to existing residents that already own homes.<sup>10</sup>

***Displacement and Segregation.*** Stricter land use controls are also associated with greater displacement and segregation along both income and racial lines. Both the LAO and an analysis by the Institute of Governmental Studies (IGS) at the University of California, Berkeley indicate that building new housing would reduce the likelihood that residents would be displaced in future decades.<sup>11</sup> Restrictive land use regulations also exacerbate segregation by income.<sup>12</sup> Specifically, land use restrictions allow high-income households to cluster, excluding middle and lower income households from those areas. In addition, income segregation is higher in areas where local governments exert more control over land uses, and lower when state governments have more power over land use decision-making processes. Finally, other research indicates that restrictive land use policies can maintain and exacerbate racial segregation. Specifically, land use regulations that increase housing prices have greater negative effects on people of color because of their lower average income and wealth.<sup>13</sup> Furthermore, some research finds that white neighborhoods are more supportive of restrictive land use ballot measures. Cities that were

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<sup>8</sup> Quigley, John and Steven Raphael. “Regulation and the High Cost of Housing in California.” *American Economic Review* 95, 323–328, 2005.

<sup>9</sup> Kok, Monkkonen, and Quigley. “Land use regulations and the value of land and housing: An intra-metropolitan analysis.” *Journal of Urban Economics* 81 (2014) 136–148.

<sup>10</sup> Saiz, Albert. “The Geographic Determinants of Housing Supply.” *The Quarterly Journal of Economics*, August 2010.

<sup>11</sup> Zuk, Miriam and Karen Chapple. “Housing Production, Filtering, and Displacement: Untangling the Relationships.” Institute of Governmental Studies, University of California, Berkeley, May 2016.

<sup>12</sup> Lens, Michael C. and Paavo Monkkonen. “Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?” *Journal of the American Planning Association* 82(1): 6-21, 2016.

<sup>13</sup> Zasloff, Jonathan. “The Price of Equality: Fair Housing, Land Use, and Disparate Impact.” 48 *Columbia Human Rights Law Review* 98, 2017.



whiter than their metropolitan area in 1970 are also more likely to have restrictive land use patterns in 2006, and liberalizing land use policies through lawsuits under the Fair Housing Act significantly increases the percentage of people of color within a jurisdiction.<sup>14</sup>

***Lower Economic Growth.*** Restrictive land use policies also hurt economic growth more broadly because they keep residents from moving to more productive areas where they can take more productive jobs that pay higher wages. For example, one analysis found that highly productive cities in the United States have not contributed to economic growth as much as their productivity would imply because of housing constraints that keep workers from those cities, and that gross domestic product (GDP) could be as much as 9.5% higher if those constraints were relaxed.<sup>15</sup> Other scholars argue that low-density zoning also hurts the regional economy: there is some indication that housing costs have pushed startups from California to other states, and have driven some companies, such as Toyota, to relocate out of California.<sup>16</sup>

***Transportation and Environmental Impacts.*** Restrictive zoning that does not allow for additional density in already developed areas has several environmental and transportation-related impacts. Restrictions that maintain existing levels of density in highly desirable areas caps the overall population capacity in a given area, encouraging sprawl by directing developers to build on the edges of developed areas. This encourages lower-income workers to commute longer distances because they must look further from their jobs for housing that they can afford, costing these workers time and money. Finally, low-density housing works against the state's environmental goals, including reducing greenhouse gases, preserving agricultural and open space, reducing water usage, and reducing vehicle miles traveled.<sup>17</sup>

## **Limitations of Lowering Housing Prices by Encouraging New Supply**

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<sup>14</sup> Trounstein, Jessica. "The Geography of Inequality: How Land Use Regulation Produces Segregation and Polarization." University of California, Merced, July 2018.

<sup>15</sup> Hsieh, Chang-Tai and Moretti, Enrico, "Why Do Cities Matter? Local Growth and Aggregate Growth." *Kreisman Working Paper Series in Housing Law and Policy*, 2015.

<sup>16</sup> Monkkonen, Paavo. "Understanding and Challenging Opposition to Housing Construction in California's Urban Areas." *UC Center Sacramento Housing, Land Use and Development Public Lectureship and White Paper Award*, December 2016.

<sup>17</sup> Chapple, Karen. "Integrating California's Climate Change and Fiscal Goals: The Known, the Unknown, and the Possible." *California Journal of Politics and Policy*, 8(2), 2016.

Although increasing housing supply can lead to lower housing prices over time, there are limitations to an approach to ensuring housing affordability that relies purely on generating new housing supply.

***New Housing Stock Takes Decades to Become Affordable.*** First, the process by which new homes become more affordable over time, known as “filtering,” proceeds slowly, meaning that it takes several decades for market-rate housing to become affordable to lower-income families. Moreover, some research indicates filtering works more slowly in housing markets where home prices are rapidly increasing, as is the case in many desirable California cities. One estimate by IGS puts filtering rates in the Bay Area at 1.5% a year, meaning that new housing affordable to the median income would take nearly 50 years to become affordable to a household making half of the median income in the area.<sup>18</sup>

***Immediate Displacement Concerns.*** In addition, new housing can displace existing residents if adequate safeguards are not in place. Specifically, pockets of displacement may exist in an area, even though as discussed above, new housing production can mitigate displacement pressures at the regional scale over time. For example, the IGS report found that “market-rate production is associated with a higher housing cost burden for low-income households, but lower median rents in subsequent decades.” The IGS report also estimated that producing subsidized housing is twice as effective at preventing displacement as market-rate production. Furthermore, continuing the trend of very high-density development in small pockets surrounded by low-density housing may exacerbate displacement concerns.

Thus, policies that exclusively encourage very dense development in urban cores is likely to have tradeoffs. Accordingly, legislators may wish to consider measures to encourage wider redevelopment of urban and suburban areas at moderate density, as was pursued in the 1960s and 1970s. In addition, new housing in desirable areas may need to be paired with mitigation measures to prevent displacement in the near term, such as inclusionary zoning that mandates a percentage of deed-restricted affordable housing in new developments and guaranteed right-of-return for existing tenants.

***Housing Prices Depend on Overall Market Conditions.*** Third, reductions in the cost of producing housing do not necessarily lead to a reduction in housing *prices*. The overall market price for housing determines what a developer can charge for a new unit, instead of what it costs them to build the unit. According to LAO, housing prices in California’s highest-cost areas are as much as three times higher the cost to produce new units in those areas—allowing developers to pocket the difference because they can sell new units at the price that the market will bear. Thus, reducing the cost of producing housing—such as by reducing regulatory hurdles, relaxing

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<sup>18</sup> Zuk, Miriam and Karen Chapple. “Housing Production, Filtering, and Displacement: Untangling the Relationships.” Institute of Governmental Studies, University of California, Berkeley, May 2016.

building codes, or lowering development fees—is unlikely to reduce housing prices in the near term and may instead benefit developers. For example, a 1997 study of developer fees in Contra Costa County by the Public Policy Institute of California found that in some cases, developer fees are passed on to homebuyers, but in other cases developers must absorb the costs.<sup>19</sup> Thus, while lowering costs might encourage more developers to enter the market--and will certainly benefit affordable housing developers that sell or rent units for less than what it costs them to build—policymakers should not expect measures to lower development costs to directly lower housing prices.

***Developers Control Construction.*** While local governments control housing approvals, developers are ultimately responsible for construction. For-profit developers face incentives to maximize returns from the housing they build, and local governments generally do not control the types of units that get built, such as whether the target market for a particular housing development is high-income or middle-income households. As a result, builders may emphasize construction of luxury housing. In addition, builders face some incentives to gauge the direction of housing prices and to build at times when housing prices are high. Thus, local governments that welcome housing may issue the needed approvals to allow new construction, but developers may wait to request the final building permit needed to begin construction if housing prices appear to decline.

***Pent-up Demand For Housing Can Dampen Effect of New Supply on Housing Prices.*** Finally, some modelling research indicates that even adding large amounts of new housing to desirable areas has only a modest impact on housing prices and rents in the long run because neighboring residents want to live in the area. These prospective residents quickly fill the newly-produced units, meaning that competition remains robust for housing, even at high prices.<sup>20</sup> Accordingly, very large-scale increases in housing supply may be needed to have a meaningful impact on housing prices. (However, any new housing supply may increase overall economic activity and well-being because more residents are able to live and work in productive areas, raising their wages and lowering their transportation costs.)

## **Recent Legislative Efforts on Land Use and Housing Approvals**

***2017 Housing Package.*** Last year, the Legislature enacted a substantial package of legislation aimed at addressing the state’s housing crisis. In addition to SB 2 (Atkins, Chapter 364, Statutes of 2017) and SB 3 (Beall, Chapter 365, Statutes of 2017), which provided long- and short-term

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<sup>19</sup> Dresch, Marla and Steven Sheffrin. “Who pays for development fees and exactions?” Public Policy Institute of California, 1997.

<sup>20</sup> Anenberg, Elliot, and Edward Kung (2018). “Can More Housing Supply Solve the Affordability Crisis? Evidence from a Neighborhood Choice Model,” Finance and Economics Discussion Series 2018-035. Washington: Board of Governors of the Federal Reserve System.

funding sources for affordable housing construction, the package contained several measures that address the housing crisis by streamlining housing approval processes, strengthening existing housing laws, providing more state enforcement power, creating more local accountability, and clarifying existing local zoning powers.

SB 35 (Weiner, 2017) established a streamlined, ministerial process for approving housing developments that comply with the applicable objective local planning standards—including the general plan, zoning ordinances, and objective design review standards. In addition, to be eligible for streamlining under SB 35, a specified percentage of the total housing units in the development must be affordable to lower-income households (those under 80 percent of area median income).

SB 540 (Roth, Chapter 369, Statutes of 2017) and AB 73 (Chiu, Chapter 371, Statutes of 2017) provide alternatives for expedited housing approvals and streamlining CEQA review. These bills allow localities to identify zones where CEQA review is conducted “up-front” for the entire zone or district, thus exempting project-level CEQA review.

AB 1505 (Bloom, Chapter 376, Statutes of 2017) provides flexibility to locals to require affordable housing construction. Roughly 170 localities in California have adopted inclusionary ordinances to facilitate and encourage the construction of affordable housing. A 2009 appellate court decision – *Palmer v. City of Los Angeles* – for the first time called these policies into question when applied to rental housing. This bill clarifies that localities have the authority to establish inclusionary housing requirements as a condition of development, as long as they provide alternatives to construction (such as in lieu fees or land dedication).

SB 167 (Skinner, Chapter 368, Statutes of 2017) and AB 678 (Bocanegra, Chapter 373, Statutes of 2017) makes changes to strengthen the Housing Accountability Act (HAA), which limits the ability of local agencies to reject or reduce the viability of housing developments without a thorough analysis of the economic, social, and environmental effects of the action. These bills amend the HAA by increasing the burden of proof on localities when denying a housing project and imposing fines on those localities that violate state law. These changes make it more difficult for localities to unlawfully deny a housing project, as well as encourage localities to approve a housing project in the first place.

SB 166 (Skinner, Chapter 367, Statutes of 2017) and AB 1397 (Low, Chapter 375, Statutes of 2017) together strengthen housing element law and ensure locals identify adequate sites for housing construction. As described above, the state housing element law requires a locality to identify adequate sites in its housing element to meet its share of the regional housing needs assessment. State law requires HCD to review each community’s housing element for compliance with state housing element law. These bills give HCD authority to find a housing element out of compliance if a locality’s action or failure to take action, including down zoning

sites, is inconsistent with state housing element law and may refer a violation to the Attorney General for action. These bills also ensure that as development occurs on sites identified for housing, a locality continues to maintain an ongoing supply of sites available to meet the unmet need for housing for all income levels and tighten the standard for what is considered an "adequate site" for housing development.

**2018 Legislation.** Following on the heels of the 2017 housing package, the Legislature took further steps in 2018 to encourage housing production. Two measures, AB 1771 (Bloom, Chapter 989, 2018) and SB 828 (Wiener, Chapter 974, 2018) reform RHNA process in an effort to address concerns that the process is driven more by regional politics than housing need. AB 1771 increases transparency in the process of developing the RHNA allocation, requires COGs to consider additional factors such as the number of low-wage jobs versus the number of housing units affordable to those in low-wage jobs, requires localities to publicly justify any revisions they may request, and repeals the existing law authority for localities within a COG to shift allocations among each other. SB 828 adds to the data COGs must provide to HCD, requiring COGs to provide the overcrowding rate for a comparable housing market and the percentage of cost burdened households versus the rate for a healthy housing market. SB 828 also authorizes HCD, in determining the RHNA methodology, to make adjustments based on the region's total projected households, which includes existing households; and prohibits COGs from using prior underproduction of housing, or stable population numbers, in a city or county as justification for a determination or reduction in a city's or county's share of the RHNA.

The Legislature also enacted AB 2923 (Chiu), which requires, until January 1, 2029, certain cities and counties to adopt zoning standards in the San Francisco Bay Area Rapid Transit District's (BART) transit-oriented development guidelines. It also establishes a streamlined approval process for projects on BART-owned land that are up to one story taller than the highest allowable residential zoning near the station and have a floor-area ratio of 0.6 or less. AB 2923 requires 20% of the units constructed under its authority to be affordable to lower-income families and requires skilled and trained workforces to be employed on the projects, among other labor protections.

## **Next Steps**

The two committees will be exploring solutions that can be adopted to effect change at a regional level—acknowledging that one size does not fit all and that solutions that apply to the state's major metropolitan areas may not work in rural or suburban areas. At the same time, these solutions must ensure that all communities across the state do their part to address the housing crisis. These solutions may include policy changes and financial incentives, and a successful path forward will include both carrots and sticks to encourage cities and counties to permit

housing—some of which will be unpopular among local officials and others that will be welcomed.

A successful approach will combine funds for affordable housing to immediately produce housing needed for the most vulnerable Californians along with steps that increase market-rate housing production to prevent the crisis from worsening and to reduce rents in the long term.