

## 2021 Legislative Update: Housing Advocates Score Key Wins

### Housing Highlights

- Throughout California, most single-family zoned parcels may now be split into two lots, with up to four primary residences.
- Density bonus applications may no longer be rejected if a proposed waiver of development standards will cause specific adverse impacts on the physical environment.
- Developers' ability to lock in development standards under SB 330 and the Housing Accountability Act has been extended from 2025 to 2030.
- Small-scale developers have more options for seeking streamlined environmental review and relaxed development standards.

Continuing our series on the State of Housing in California, this article notes the key housing legislation takeaways from California's 2021 legislative session. After limited success in 2020, pro-housing advocates made up for the lost pandemic year by securing Governor Newsom's signature on 27 housing-related bills with a general theme of limiting local authority on housing policy and approvals. These bills, however, are not without dispute. The most controversial is **SB 9**, which allows up to two duplexes (i.e., four primary residences) to be built on existing parcels. SB 9 opponents have already started preparing a statewide proposition initiative for the November 2022 ballot.

Other headlines include **SB 290**, which provides additional incentives and limits on local discretion when evaluating density bonus applications for student housing. In addition, **SB 10** and **SB 478** support certain small-scale housing developments by streamlining environmental review for rezoning and limiting floor area ratio (FAR) requirements.

Through **SB 8**, the state also extended provisions of the Housing Crisis Act of 2019, commonly known as **SB 330**, from 2025 to 2030. Housing development applications submitted in accordance with the Housing Accountability Act before January 1, 2030, will remain subject to the local rules in effect when a preliminary application is submitted. Many state housing policy observers agree that this extension may be the most impactful new law because housing developers typically prefer predictability before investing in new projects.

by Alan D. Linch & Robin R. Baral



## Reforming Single-Family Zoning

Pro-housing advocates have long pointed to single-family zoning as a symbol of racial exclusion and as a significant obstacle to increasing California's housing stock. With the passage of **SB 9**, California and Oregon are now the only states that allow more than one home on single-family parcels. The net impact is that property owners may now split parcels over 2,400 square feet into two lots and then have two housing units on each lot. Parcels in historic or high fire risk areas are excluded, as are units designated as affordable housing. Lot splits are also not permitted for projects that alter or destroy units a tenant has occupied within the last three years, and to limit speculation, the homeowner must sign an affidavit that they will not move for three years after the lot split.

In an earlier alert in this series, we chronicled similar local efforts, such as the City of Berkeley's March 2021 resolution establishing an informal goal to end exclusionary zoning by December 2022. Tools like SB 9 will make it easier for such zoning reform to come to fruition. Again using Berkeley as an example, approximately 78% of single-family parcels there would be eligible for new development under the law. Allowing four-plexes continues to be evaluated in other areas of Berkeley and also in Sacramento. Other local jurisdictions, including the City of San Jose with its consideration of "opportunity housing" this month, are reviewing ideas to pair SB 9 with broader single-family zoning reform.

## Density Bonus Law Updates

After a multi-year effort, Senator Skinner's **SB 290** and its density bonus law reform measures also passed this year, with impacts on student housing and density bonus applications generally. With this law, student housing projects which reserve at least 20% of the total units for lower-income students now qualify for one density bonus incentive. In addition, the bill limits the definition of "specific, adverse impact" to be consistent with the Housing Accountability Act by removing impacts caused by any waiver of development standards on the "physical environment" as a basis for denying density bonus projects. Accordingly, such impacts may no longer be a local agency basis for denying a requested development standard waiver, incentive, or concession.

Other key density bonus revisions include:

- Revising the definition of "total units" that must be set aside to qualify for density bonuses and incentives. Density bonus units are now excluded in that calculation, while units needed to satisfy inclusionary zoning requirements are now included.
- Making certain moderate-income projects eligible for reduced parking requirements. If a project's units are at least 40% moderate-income and within a half-mile of a major transit stop, local agencies may not impose a parking ratio exceeding 0.5 spaces per bedroom.

## Streamlining Small-Scale Housing Development

Senator Wiener scored two significant wins in this year's session. **SB 10** provides the option for local public agencies to bypass environmental review under CEQA for upzoning parcels in order to allow up to 10 units per parcel. This option is only available for parcels in urban infill or transit-rich areas. Importantly, local governments are not required to take advantage of this streamlining provision.

It is noteworthy that projects proposed on the upzoned parcels are still subject to environmental review unless they qualify for a CEQA exemption or streamlining. Projects over 10 units may also benefit from SB 10 upzoning but would be unable to use other CEQA exemptions and may not be approved ministerially or

by right. **SB 35** could provide an avenue for streamlining in connection with SB 10, if the local jurisdiction allows residential units to be developed as a permitted use subject to objective design standards.

Senator Wiener's second bill signed into law, **SB 478**, supports small-scale projects in multi-family residential and mixed-use zones. In short, local governments now cannot establish a Floor Area Ratio (FAR) requirement that is (a) less than 1.0 for projects with 3-7 units; or (b) less than 1.25 for projects with 8-10 units. Minimum lot size cannot be the basis for denying an otherwise qualifying project.

## Enforcement and Next Steps

To help the new laws achieve their goals, the state has also deployed additional incentives for local compliance and support for housing production efforts. For example, **AB 215** requires cities and counties to adopt pro-development policies if they are not on pace to meet their housing targets. In addition, the state created two new housing oversight "units." The new Housing Accountability Unit will help the state verify local government compliance with state housing laws, and the new Surplus Land Unit will assist local agency efforts to develop housing on government property.

Despite all of this activity, housing advocates are quick to point out that these laws will be unlikely to facilitate construction of the 3 million residential units that Governor Newsom's administration has identified as the statewide housing deficit. Several bills targeting larger housing development projects, such as SB 6 (requirements for housing in commercial zones) and AB 1401 (removing parking standards for transit-oriented development), did not pass this year. Those issues will likely continue to be on the table in the 2022 legislative session.

We will continue to monitor housing cases and legislative developments in the coming months. For more information about these changes or any other land use issue you are facing, please contact the authors or the [Hanson Bridgett Land Use Group](#).

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