

California Conundrum

New state rules aimed at easing the severe housing crunch mean planners need to make sure their zoning regulations are objective—and it's easier said than done.

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CALIFORNIA IS FACING A DEVASTATING HOUSING SHORTAGE.

In 2017, the California Legislature estimated that the state has an unmet housing backlog of nearly two million units, and that it must provide for at least 180,000 new units annually to keep pace with growth.

Supply isn't the only problem. A May 2018 report by the California Association of Realtors found that the median-priced home in the San Francisco Bay Area was affordable to only 23 percent of households and required an eye-popping annual income of \$186,000. The statewide numbers are not quite as extreme, but remain significant.

Perhaps the most poignant face of the problem is the number of homeless individuals and families in every major city in the state. San Francisco, for example, counted 7,499 residents living on the streets in 2017, despite allocating almost \$285 million per year to its Department of Homelessness; in Oakland, the number of homeless people exceeds 1,900. Both cities have dozens of tent encampments pitched along streets and hundreds of residents living under freeway overpasses, most without access to sanitary facilities.

The situation is complicated. Yes, there is pent-up demand, but there is also the fact that housing development applications in California must go through an extensive local discretionary review process that can cause significant delays. So can state mandates, such as the California Environmental Quality Act, which applies to any discretionary approval and allows any disaffected party, including NIMBY groups, to delay a project by years simply by filing suit.

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The conundrum feels a little like a "he said, she said" scenario, and in fact both the state and local governments have thrown up barriers to solving the crisis. Local governments point to the state legislature's unwillingness to exempt housing projects from CEQA or find significant financing tools to pay for public infrastructure and subsidies for below-market-rate housing.

The state, in turn, has placed the blame for the housing shortage squarely on the shoulders of local governments, and has enacted legislation to "meaningfully and effectively curb . . ." the ability of California cities and counties to deny or reduce the density of housing developments or render residential projects infeasible.

For two years in a row, the state has enacted comprehensive housing legislation designed to speed up and streamline housing approvals. In particular, under recent changes to the Housing Accountability Act, except in rare instances, cities and counties cannot deny or reduce the density of a housing project, whether affordable or market rate, unless it can identify violations of "objective" standards that justify the decision—a requirement that may dramatically change the way California cities and counties plan for housing and process applications. The problem, however, is that there are not yet clear guidelines as to what objective standards are.

What makes a standard 'objective'?

Although the Housing Accountability Act has been on the books since 1982, it was rarely invoked until the state legislature significantly strengthened it in 2017. It has now become a favorite of YIMBY groups promoting the construction of all housing types, including market rate (and even luxury) housing, in addition to affordable projects.

In a nutshell, the HAA states that any project conforming with all objective general plan and zoning standards may not be denied or reduced in density, unless an adverse impact on public health or safety can be identified, with no reasonable mitigation available. Moreover, cities and counties must provide developers with a list of any inconsistencies between a proposed project and all local plans, zoning, and standards within 30 to 60 days after the housing application is complete, or the project will be deemed consistent with all local policies. Much of the litigation revolves around the claim that housing has been denied based on nonobjective standards.

As already noted, however, the HAA contains no definition of "objective," nor has any court in a

published decision defined "objective" in the context of the HAA. California courts have weighed in on what standards are not objective, including "[avoiding] obstructing views to the surrounding hills," "[producing] high quality authentic design," and "[reflecting] the look and feel of the community." Even a standard requiring that a site be "physically suitable for the proposed development" has been held to violate the HAA's requirement.

Nonobjective standards like these have long been relied on by California planners to shape development and address public concerns related to housing on a project-by-project basis under the police power held by public agencies. But as more YIMBY groups and developers become familiar the HAA, the law is becoming an increasingly popular tool to challenge local control over proposed housing projects.

Implications for planning practice

Clearly typical zoning standards such as height, density, floor area ratio, setbacks, parking, and coverage meet any definition of "objective," and housing projects must continue to meet those adopted standards.

But many California cities require a final design review discretionary approval, and the standards applied to that approval—such as "be in character with the neighborhood"—may be considered nonobjective, and therefore may not withstand court review.

Planning staff and commissioners are accustomed to having great discretion to require changes in design based on subjective standards, such as when a conforming multifamily project is adjacent to a single-family neighborhood whose residents believe the new housing is "out of character." Now, the HAA requires that "character" be defined in objective terms, like use of specific materials and transition requirements such as daylight planes.

That means that California planners are scrambling to convert subjective standards to objective ones. Planner Josh Abrams, a consultant with the firm 21 Elements, is working with a group of 21 local jurisdictions to do just that.

"Some cities see the Housing Accountability Act's focus on objective standards as a threat that infringes on local control, while others see it as an opportunity to facilitate new developments or improve their zoning code. In actuality, it's probably a little of both," he says. "Regardless, we've had the most success by helping cities work together to create and share effective approaches."

That best-practice approach enables cities to share their ideas about which objective standards can

FROM SUBJECTIVE TO OBJECTIVE

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SUBJECTIVE STANDARDS

'Avoid obstructing views to the surrounding hills'

'Produce high-quality authentic design'

'Reflect the look and feel of the community'

'Site should be physically suitable for the development'

OBJECTIVE STANDARDS



FLAT ROOFS may be used, or shaped roofs may be treated as geometric forms or volumes that may "stand out." Examples include barrel vaults, angled planes, curved planes, and extended overhangs. Mansard roofs may also be used.

ROOFING may be tile, slate, wood shakes, or shingles, sheet metal shingles, or standing metal seam.

TRIM MATERIALS should be stucco, ceramic tile, or polished metal. Multiple trim materials may be used.

BAY WINDOWS should be polygonal or rectangular in plan, and the angles of the inside corners of the bay should be 135 or 90 degrees.

WINDOW SHAPES should be generally simple and rectangular, but may have angled or arched tops.

BUILDING COLORS should be composed of contrasting hues and tones, with individual building elements or forms emphasized through use of an accent color. Strong, saturated hues should be used to play off of neutral hues. Multiple wall colors may be used within each facade height articulation element or colors may vary from element to element.

best achieve the same goals (say, consistency with neighborhood character) as subjective standards, given the significant changes that may be required in local ordinances and the few available examples.

Some cities are already ahead of the curve—and the number of recent housing project approvals in those cities demonstrates the importance of objective standards. The semisuburban city of El Cerrito, where two Bay Area Transit District stations provide service to San Francisco and Oakland, adopted a form-based code in 2014 that has led to the approval of more than 550 multifamily units in four years, with nearly 600 others proposed. These results are compared with fewer than 80 units approved in the three years preceding plan adoption.

"Our form-based code, which has a very clear set of development standards, has helped both our residents and developers know what to expect," says Melanie Mintz, community development director of El Cerrito. That results, she says, "in a relatively quick and low-conflict development review process

and, as a result, a significant increase in the amount of approved housing."

Similarly, Redwood City, located on the San Francisco Peninsula in the Silicon Valley and host to Oracle and other high-tech firms, adopted a new downtown precise plan in 2011 that included key objective standards for height (especially adjacent to single-family homes), use, and design. Housing production downtown soared from slightly more than 200 units in the 2000s to 2,372 units (including more than 200 affordable units) in the 2010s.

It's too early to know how the new requirements will play out in every community, but El Cerrito's and Redwood City's experiences show the significant increases in housing production that might be achieved by a move to objective standards. ■

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