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California's 2020 Housing Laws: What You Need to Know

A Statewide Rent Control Measure, New Procedural Protections, Significant Steps Forward for Accessory Dwelling Units, Surplus Land Amendments and Regional Funding Authorities Are Among the Highlights

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Highlights

- The biggest news out of Sacramento in housing law is a historic measure providing statewide rent control and "just cause" eviction requirements for California renters.
- For advocates of increased housing production, the most significant effort enacted into law is the "Housing Crisis Act," which creates important new vesting rights for housing developments and limits on local review procedures.
- The California Legislature also again embraced Accessory Dwelling Units (ADU), with a package of laws that some are calling "the end of single-family zoning," allowing most single-family homes to be converted into three separate housing units.
- In its first year, the Newsom Administration is focusing on planning for housing development on surplus state lands and further reforming the regional housing needs allocation process. It remains to be seen whether next year's legislative session will yield the major steps forward on streamlining housing approvals that will be necessary for the administration to come close to meeting its goal of building 3.5 million homes by 2025.

As California's housing supply and homelessness crisis continues, the State Legislature has for the past several years passed numerous pieces of housing legislation in each legislative session. (See Holland & Knight's previous alerts, "A Closer Look at California's New Housing Production Laws," Dec. 6, 2017 and "California's 2019 Housing Laws: What You Need to Know," Oct. 8, 2018.) This year was no exception, with more than 30 individual pieces of housing legislation enacted into law.

This Holland & Knight alert takes a closer look at these laws, grouped into following categories:

- **Tenant Protections.** A statewide rent control measure that will take effect in 2020, among other tenant protection measures.
- **Streamlining, Increasing Density and Reducing Barriers to Production.** Sen. Nancy Skinner's "Housing Crisis Act" creates important new vesting rights for housing developments, and the Legislature has also enacted important new reforms to the Density Bonus Law and clarifications to SB 35's Streamlined Ministerial Approval Process.
- **Accessory Dwelling Units and "Triplexes."** A groundbreaking package of new laws that some are calling "the end of single-family zoning" will create new incentives and streamlined processes to build ADUs and triplexes.
- **Surplus Land Availability / Planning and Impact Fee Data.** New laws significantly expand Surplus Lands Act requirements for local agencies in an effort to achieve more affordable housing on surplus publicly owned properties.
- **CEQA and Housing.** The major transit stop definition was broadened to make more projects eligible for streamlining and a handful of limited California Environmental Quality Act (CEQA) exemptions were created for specific homelessness projects.

- **Funding.** Gov. Gavin Newsom vetoed a bill that would have created an "Affordable Housing and Community Development Investment Program" that would have revived redevelopment, but he signed a number of smaller funding bills, including laws that will create new regional finance agencies in the Bay Area and the San Gabriel Valley.

This alert also includes some observations about the important work California still needs to do to stem the housing crisis, and consider what may be around the corner in the 2020 legislative session. Except where noted, these new laws take effect Jan. 1, 2020.

Tenant Protections

The most significant housing law of the 2019 legislative session was the enactment of a statewide rent control law.

AB 1482 (Assembly Member David Chiu) – The Tenant Protection Act of 2019 enacts a cap of 5 percent plus inflation per year on rent increases statewide for the next 10 years. The new law does not apply a cap to vacant units, and owners can continue to reset rents to market rate at vacancy. It also prevents landlords from evicting certain tenants without landlords first providing a reason for the eviction and requires relocation assistance. The law does not apply to properties built in the last 15 years, nor does it apply to single-family home rentals (unless owned by large corporations) or to projects already under construction or under current rent control schemes. The new law defers to more stringent local measures, including existing local rent control with lower limits and local just cause eviction laws. The law's anti-eviction protections, which would limit evictions to lease violations or require relocation assistance, will kick in after a tenant has lived in an apartment for a year. Gov. Newsom's enactment of a rent cap comes less than a year after California voters rejected a ballot measure that would have expanded local rent control policies statewide, which would have likely resulted in tighter restrictions in some cities than those now offered by AB 1482. (For additional detail, please see Holland & Knight's previous alert, "Rent Control Bill Gets Gov. Newsom's Support as Clock Ticks on Deadline for New Laws," Sept. 9, 2019.)

AB 1110 (Assembly Member Laura Friedman) – Noticing Rent Increases requires 90-day notice, rather than 60-day notice, before a landlord may increase the rent of a month-to-month tenant by more than 10 percent.

SB 329 (Assembly Member Holly Mitchell) – Housing Discrimination prohibits landlords from discriminating against tenants who rely on housing assistance paid directly to landlords, such as a Section 8 voucher, to help them pay the rent.

SB 18 (Sen. Nancy Skinner) – The Keep Californians Housed Act removes the Dec. 31, 2019, sunset date on a state law which gives tenants at least 90 days' notice before their tenancy can be terminated if a landlord loses ownership of their rental property as a result of a foreclosure sale.

Streamlining, Increasing Density and Reducing Barriers to Production

Sen. Skinner's SB 330, the "Housing Crisis Act of 2019," stands out as the most important new law affecting large-scale housing developments.

SB 330 (Skinner) – Housing Crisis Act of 2019 includes a number of new procedural protections, including the following:

- *Preliminary Application Protections* – limitations on a jurisdiction's ability to change development standards and zoning applicable to the project once a "preliminary application" is submitted
- *Application Completeness Streamlining* – amends the Permit Streamlining Act to specify what constitutes a "preliminary application" and states that a jurisdiction has one chance to identify incomplete items in an initial application and after that may not request the submission of any new information that was not in the initial list of

missing items

- *Fees/Exactions Limitations* – prevents jurisdictions from increasing exactions or fees during a project's application period, but allows such increases if the resolution or ordinance establishing the fee calls for automatic increases in the fee over time
- *Hearing Limitations* – prohibits cities or counties from conducting more than five hearings if a proposed housing development complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete
- *Downzoning Prohibitions* – prohibits a jurisdiction (with some exceptions) from enacting development policies, standards or conditions that would change current zoning and general plan designations of land where housing is an allowable use to "lessen the intensity of housing"; from placing a moratorium or similar restrictions on housing development; from imposing subjective design standards established after Jan. 1, 2020; and limiting or capping the number of land use approvals or permits that will be issued in the jurisdiction, unless the jurisdiction is predominantly agricultural

Some of the most important provisions in SB 330 sunset on Jan. 1, 2025, if not extended. (For additional detail on SB 330, see Holland & Knight's previous alert, "California Legislature Passes Housing Crisis Act of 2019 and Rent Control Bill, Among Others," Sept. 12, 2019; For background on the Housing Accountability Act, upon which SB 330 builds, see Holland & Knight's previous alert, "California Governor Signs into Law Major Reforms to Housing Accountability Act," Sept. 29, 2017.)

AB 1763 (Chiu) – Density Bonuses for 100 Percent Affordable Projects creates enhanced density bonus options, including a potential 80 percent increase in base density and unlimited density bonuses for qualifying projects within a half-mile of a major transit stop, under the State Density Bonus Law. However, this only applies to projects that consist of 100 percent affordable housing (no more than 20 percent moderate-income, and the remainder for lower-income).

AB 1485 (Assembly Member Buffy Wicks) – Amendments to SB 35's Streamlined Ministerial Approval Process makes a number of important clarifications to SB 35 of 2017, a law that allows qualifying housing and housing-rich mixed-use projects to qualify for a streamlined, ministerial CEQA-exempt approval process if the project meets the local government's objective zoning, subdivision and design review standards, provides a specific minimum number of affordable housing units, agrees to pay prevailing wages to construction workers, and meets other qualifying criteria. AB 1485 amends SB 35 in several ways:

- *Moderate-Income Options* – broadens eligibility for SB 35 to Bay Area projects that provide 20 percent of their units for moderate-income households (less than 120 percent of area median income), under certain conditions
- *Calculating "Two-Thirds" Mixed-Use Projects* – clarifies that the calculation to determine if a project qualifies for SB 35 where it consists of two-thirds residential excludes underground space such as parking garages and basements
- *Approval Expiration Dates* – clarifies that the three-year expiration for SB 35 approvals in case of litigation expires three years after a final judgment upholding the approval, and clarifies that the approval also remains valid as long as vertical construction of the development has begun and is in progress
- *Subsequent Permits* – clarifies that local governments must issue subsequent permits – such as demolition, grading, building permits and final maps – without unreasonable delay, as long as those subsequent permit applications substantially comply with the approved SB 35 permit
- *Standards of Review and Consistency with Other Laws* – clarifies that the standard for determining whether a project qualifies for SB 35 is highly deferential *to the project applicant*: a project complies with SB 35's criteria as long as "there is substantial evidence that would allow a reasonable person to conclude" that the development

complies

- *Housing Accountability Act*– clarifies that under existing law, SB 35 projects are entitled to protection under the Housing Accountability Act

(For further information on SB 35's streamlined ministerial approval process, see Holland & Knight's previous alerts, "California Issues Initial Implementation Guidance on 2017 Housing Laws," Feb. 15, 2018, and "A Closer Look at California's New Housing Production Laws," Dec. 6, 2017.)

AB 101 – Housing Development and Housing 2019-20 Budget Act – requires local governments to provide "by right," CEQA-exempt approvals to certain qualifying navigation centers that move homeless Californians into permanent housing. The law, which took effect on July 31, 2019, also creates additional incentives for cities to comply with their mandates to plan for sufficient housing in their Housing Elements, and provides some modest additional remedies that the state can use in court when cities fail to comply with housing element law. These reforms fall well short of Gov. Newsom's proposal at the beginning of 2019 to withhold state money from cities that fail to plan for and approve sufficient housing.

AB 430 (Assembly Member James Gallagher) – The Camp Fire Housing Assistance Act of 2019 is intended to create housing relief in areas of Butte County, where the housing stock was devastated by the 2018 Camp Fire. The new law creates a streamlined, ministerial CEQA-exempt approval process in and adjacent to the cities of Biggs, Corning, Gridley, Live Oak, Orland, Oroville, Willows and Yuba City for qualifying housing developments that comply with those localities' objective zoning, subdivision and design review standards.

AB 1783 (Robert Rivas) – Farmworker Housing creates a streamlined, ministerial CEQA-exempt approval process for qualifying agricultural employee housing developments on land zoned primarily for agricultural uses.

Accessory Dwelling Units and "Triplexes"

Accessory Dwelling Units (ADU) are additional living quarters on the same lot as a primary dwelling unit. While California laws have paved the way for increased ADU development, some cities have enacted ordinances that render ADU development infeasible or cost prohibitive. By further reducing barriers to ADU development, the new bills discussed below could bring tens of thousands of new ADUs online over the next few years.

AB 68 (Assembly Member Phil Ting) / AB 881 (Assembly Member Richard Bloom) – Processing Timelines, Ordinance Prohibitions and Triplexes requires local agencies to either approve or deny an ADU project within 60 days of receiving a complete building permit application on a ministerial (CEQA-exempt) basis. The new law further prohibits local agencies from adopting ADU ordinances that: impose minimum lot size requirements for ADUs; set certain maximum ADU dimensions; require replacement off-street parking when a "garage, carport or covered parking structure" is demolished or converted to construct the ADU. Notably, the new law allows for an ADU as well as a "junior" ADUs where certain access, setback and other criteria are met – this has been referred to the "tripelex-ation" of single-family zoning. The new law has also explicitly identified opportunities for ADUs in multifamily buildings, including storage rooms, boiler rooms, etc., where building standards are met. New enforcement mechanisms have also been added. The Department of Housing and Community Development (HCD) may now notify the Attorney General's Office of any violations of these new provisions.

SB 13 (Sen. Bob Wieckowski) – Owner-Occupancy Prohibitions and Fee Limitations provides, until Jan. 1, 2025, that cities may not condition approval of ADU building permit applications on the applicant being the "owner-applicant" of either the primary dwelling or the ADU. Additionally, agencies cannot impose impact fees on ADUs under 750 square feet.

AB 587 (Friedman) – Separate Conveyances provides that local agencies may now allow ADUs to be sold or

conveyed separately from a primary residence if certain conditions are met. Prior law that prohibited ADUs from being sold or conveyed separately from the primary residence in which they are co-located hindered shared ownership models, such as tenancies in common. This law, therefore, is expected to increase the ability of affordable housing organizations to sell deed-restricted ADUs to eligible low-income homeowners.

AB 670 (Friedman) – HOA Limitations prevents homeowners' associations from barring ADUs. Many single-family neighborhoods in California were established as common-interest developments under the Davis-Stirling Common Interest Development Act. These properties are typically governed by a set of Covenant, Conditions and Restrictions (CC&Rs), which often restrict the types of construction that can occur within and adjacent to a member's home. AB 670 makes unlawful any HOA condition that "prohibits or unreasonably restricts" the construction of ADUs on single-family residential lots.

AB 671 (Friedman) – Local Government Assistance requires local governments to include in their General Plan housing elements plans to incentivize and promote the creation of affordable ADUs. The law also requires HCD to develop, by Dec. 31, 2020, a list of state grants and financial incentives for ADU development.

Surplus Land Availability, Planning and Impact Fee Data

Several new laws intend to collect and make information available regarding surplus state and local land suitable for affordable residential development and to revamp the Surplus Lands Act procedures to ensure that affordable housing entities have early opportunities to purchase available land. (For additional information on HCD's release of interactive maps identifying surplus properties, see Holland & Knight's previous alert, "New California Surplus Lands Maps and Legislation to Facilitate Affordable Housing," Sept. 17, 2019.) Other notable laws require reporting on impact fees and HCD to prepare a 10-year housing data strategy.

AB 1486 (Ting) – Surplus Lands Act Process Amendments expands the Surplus Lands Act's (Act) requirements for local agencies in an effort to achieve more affordable housing on surplus properties. Existing law requires agencies, when disposing of surplus land, to first offer it for sale or lease for the purpose of developing affordable housing. The bill analysis states that local agencies have attempted to circumvent the Act process in the past. Notable amendments include a new requirement for a local agency to provide information about its disposition process to HCD and for HCD to submit, within 30 days, written findings of any process violations that have occurred. Amendments also provide that a local agency that violates the Act is liable for 30 percent to 50 percent of the final sale price.

SB 6 (Sen. James Beall) – Available Residential Land requires local agencies preparing a housing element or amendment on or after Jan. 1, 2021, to submit an inventory of land suitable residential development. Additionally, new law requires HCD to provide to the Department of General Services a list of lands suitable and available for residential development that were identified by a local government as part of the housing element. The Department of General Services must create a database of information regarding available local and state lands available and searchable by the public online.

AB 1255 (Rivas) – Surplus Public Land Inventory further requires agencies to make a central inventory of all surplus land and to report such information to HCD by April 1 of each year, beginning April 1, 2021. Agencies are further required to provide a list of its surplus land to requesting parties without charge. HCD must then report the information to the Department of General Services for inclusion in a digitized inventory or surplus properties.

AB 1483 (Assembly Member Tim Grayson) – Housing Impact Fee Data Collection and Reporting requires local agencies to make information available on housing development fees, applicable zoning ordinances and standards, annual fee reports and archived nexus fee studies. Such agencies are then required to update the information within 30 days of any changes. Additionally,HCD will be required, on or after Jan. 1, 2020, to prepare a 10-year housing data strategy that identifies the data useful to enforce existing housing laws and inform state housing policymaking. Among

other information requirements, the strategy must include information that provides a better understanding of project appeals, approvals, delays and denials and provides an understanding of the process, certainty, costs and time to approve housing.

SB 235 (Sen. Bill Dodd) – Napa Regional Housing Need Allocation Reporting allows the City of Napa (city) and County of Napa (county) to reach an agreement under which the county would be allowed to count housing units built within the city in connection with the approximately 700 unit Napa Pipe project toward the county's regional housing needs assessment requirement. The governor's signing statement included an unusually direct message that the governor "expects permits will be issued expeditiously by the local jurisdictions, allowing [the] project to proceed immediately."

CEQA and Housing

Legislative efforts regarding CEQA include an important revision broadened the definition of a major transit stop as well as streamlining the process for supportive housing and homeless shelter projects.

AB 1560 (Friedman) – Defining "major transit stop" broadens the definition of a "major transit stop" under Public Resources Code Section 21064.3 to include bus rapid transit. Projects located within a half-mile of a qualifying bus rapid transit stop that meet other qualifying conditions may qualify for multiple benefits: parking reductions pursuant to the State Density Bonus Law; CEQA infill housing, aesthetic and parking exemptions; SB 375 streamlining for qualifying transit priority projects; a less than significant Vehicle Miles Traveled (VMT) impact presumption. The new definition also applies to local incentives, such as those adopted per Measure JJJ and implemented in the City of Los Angeles' Transit Oriented Guidelines, for residential projects located within 1,500 feet of a major transit stop.

SB 744 (Sen. Anna Caballero) – No Place Like Home Projects streamlines the approval process for supportive housing projects by clarifying that a decision to seek funding through the No Place Like Home program is not a project for the purpose of CEQA. No Place Like Home is a voter-approved bond measure that will allocate up to $2 billion for the development of permanent supportive housing and wrap around mental health services. The new law also provides a number of clarifying amendments that ensures a local government's design standards, impact fees and exactions are applied similarly to supportive housing projects as other residential projects in the same zone.

AB 1197 (Assembly Member Miguel Santiago) – CEQA Exemption for Supportive Housing and Emergency Shelters exempts from CEQA, until Jan. 1, 2025, any action taken by certain local public agencies to convey, lease, encumber land or provide financial assistance in furtherance of providing emergency shelters or supportive housing in the City of Los Angeles. The legislation carried an urgency clause, making the new law effective on Sept. 26, 2019.

Funding

Hopes of a return to Redevelopment Authority days were dashed when Gov. Newsom vetoed SB 5 (Beall), which would have created the "Affordable Housing and Community Development Investment Program,"a program similar to redevelopment in which cities and counties could redirect local property tax revenues toward projects such as affordable housing. In his veto message, Gov. Newsom cited the potential for the program to cost $2 billion annually. The governor and Legislature did, however, successfully enact into law a number of bills aimed at increasing overall funding for housing development, including laws that will create new regional finance agencies in the Bay Area and the San Gabriel Valley. Such housing bills include:

AB 1487 (Chiu) – Bay Area Housing Finance Authority (BAHFA) establishes a new regional authority to raise, administer and allocate funding for affordable housing in the San Francisco Bay area, and provide technical assistance at a regional level for tenant protection, affordable housing preservation and new affordable housing production. BAHFA will be governed by the Metropolitan Transportation Commission (MTC) Board and staffed with MTC personnel, but will operate as a separate legal entity than MTC. The law permits BAHFA, with approval from the

Association of Bay Area Governments, to place measures on the regional ballot measure to raise funding for affordable housing, including parcel taxes (on per parcel basis) or special taxes on businesses (measured by gross receipts).

SB 751 (Sen. Susan Rubio) – San Gabriel Valley Regional Housing Trust (Trust) authorizes the creation of the Trust, a joint powers authority, by the County of Los Angeles and any or all of the cities within the jurisdiction of the San Gabriel Valley Council of Governments, with the stated purpose of funding housing to assist the homeless population and persons and families of extremely low, very low and low income within the San Gabriel Valley. SB 751 authorizes the Trust to fund the planning and construction of housing, receive public and private financing and funds, and issue bonds.

AB 116 (Ting) – Enhanced Infrastructure Financing District Creation removes the requirement that Enhanced Infrastructure Financing Districts (EIFDs) must receive voter approval prior to issuing bonds. EIFDs were created by the Legislature in 2014 after the demise of redevelopment in order to allow local governments to devote tax-increment financing for public and private projects such as transportation facilities, environmental remediation and affordable housing. Instead of requiring voter approval, the law will now permit the EIFD's governing body to issue bonds as long as its resolution to do so contains specified information related to the issuance of the bonds, and the board holds at least three public hearings on an enhanced infrastructure financing plan. (For more information on EIFDs and related infrastructure financing mechanisms that could assist your project, see Holland & Knight's previous alerts, "Enhanced Infrastructure Financing Districts," Nov. 12, 2014, and "What's Old, What's New and What Works," October 2016.)

SB 196 (Beall) – Community Land Trust Tax Exemption enacts a new welfare exemption for property owned by a Community Land Trust (CLT) that is being or will be developed or rehabilitated as housing. Traditionally, under California law property used for religious, hospital, scientific or charitable purposes is exempt from property taxes under the "welfare exemption." The new legislation extends the exemption during the construction phase until the homes are sold, but provides that a CLT will be liable for property taxes if the property was not developed, rehabilitated, or in the course of construction within 5 years of the lien date following its acquisition.

AB 1743 (Bloom) – Welfare Exemption expands the properties that are exempt from Community Facilities District (CFD) taxes to include properties that qualify for the property tax welfare exemption, and limits the ability of local agencies to reject housing projects because they qualify for the exemption.

SB 113 (Committee on Budget and Fiscal Review) – National Mortgage Special Deposit Fund (Fund) enables $331 million in state funds to be transferred to the Fund to provide funding for borrower relief and legal aid to vulnerable homeowners and renters.

AB 1010 (Assembly Member Eduardo Garcia) – Housing Program Eligible Entities allows duly constituted governing bodies of Native American reservations and Rancherias eligible applicants to participate in various state affordable housing programs.

Conclusion

The Legislature's housing output is certainly impressive in terms of total volume – and the new ADU package and SB 330 are important steps forward for homebuilders and housing advocates alike. But it is important to put these efforts within the context of the immense scale of California's housing supply crisis.

California home values remain the highest in the nation, and California renters pay 43 percent above the nationwide median, leading to immense strain on low- to moderate-income households. The homelessness crisis is evident on the streets of every city, and the state's homeless residents represent a quarter of the national total. Yet homebuilding in California has averaged less than 100,000 new units per year, much slower than in other states.

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Prompted by the important work of the "Three P's" Coalition for Housing Production, Protection and Preservation, the governor pushed for a major effort that would take dramatic steps forward on all three of these areas, by limiting the ability of local governments to obstruct housing development, and even promising to withhold state transportation funding from local governments that fail to approve their fair share of affordable housing.

In the end, the Legislature's statewide rent control bill represented an historic step forward for "Protection" and "Preservation." But laws that would have represented a comparably dramatic step forward for housing production, such as Sen. Scott Wiener's SB 50, were not enacted. (SB 50, which will return next session, would eliminate highly restrictive zoning rules near existing job centers and public transportation.) The governor abandoned his proposal to withhold transportation funds from local governments that fail to meet their fair share of housing goals. Meanwhile, midyear statistics show that 2019 new housing starts may even decline in production from prior years – and certainly will come nowhere near the 500,000 units annually that would be necessary to stay on pace to meet the administration's goals.

In this year's package of housing laws, the Legislature has continued emphasizing (as seen in AB 68, AB 881, AB 101, AB 1485, SB 744, AB 1197, AB 1763 and AB 430) that it believes that the best way to build housing is to reform and streamline the local review process and move toward a "by right" model for housing that complies with local zoning and planning rules. However, the Legislature continues to apply this principle on a very limited scale rather than to advance the construction of the 3.5 million homes that Gov. Newsom has said must be built by 2025. In next year's session, builders and housing advocates must be active and vocal to ensure that California rises to the challenge of the housing crisis.

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