Senate Bill 330 – the Housing Crisis Act of 2019

This following is an overview of Senate Bill 330, the Housing Crisis Act of 2019 (SB 330) as amended on April 4, 2019. A copy of the legislation and information on its status is available here.

SB 330 would declare a statewide housing emergency to be in effect until January 1, 2030. During that period, cities and counties found to have high rents and low rental vacancy rates would:

- Be prohibited from reducing housing densities, increasing development fees, or taking a range of other actions affecting housing development (both for-sale and rental);
- Have any such actions taken since January 1, 2018 declared null and void;
- Be prohibited from imposing fees on new units that are deed restricted for families earning less than 80% of the area median income;
- Be prohibited from enforcing requirements that new developments include parking;
- Be required to process housing development applications under the general plan and zoning ordinance in effect at the time the application is deemed complete.

Other provisions of SB 330 would apply to all jurisdictions, not only those with high rents and low vacancy rates. These include establishing a statewide development application form for use in all jurisdictions and statewide standards for the contents of a complete development application, requiring cities and counties to process housing development applications under the general plan and zoning ordinance in effect at the time the application is deemed complete, and a ban on holding more than three de novo public hearings on a project. The bill would also call for the State Department of Housing and Community Development to update building standards for "occupied substandard buildings."

A more detailed summary of SB 330 is provided below.

I. Limits on "Affected" Cities and Counties

Many of SB 330's provisions apply only to an "affected county or city." These are cities with rents and vacancy rates exceeding the national average by a yet to be determined threshold. An "affected county" is one in which more than half the cities are affected cities.

The bill requires the State Department of Housing and Community Development (HCD) to make an annual determination of affected cities by calculating (i) the percent by which a city's rent exceeds 130 percent of the national median rent, and (ii) the percent by which a city's rental vacancy rate is below the national vacancy rate (both based on the federal 2013-2017 American Community Survey 5-year Estimates). HCD then must determine the average of these two numbers. If the average exceeds the threshold that will be included in the legislation prior to its adoption then the city in question will be considered an "affected city."

"Affected" cities and counties would be subject to the following constraints on exercising their land use authority until January 1, 2030.

A. Prohibitions on Legislation Limiting Residential Development

For areas where housing is an allowable use, SB 330 will prohibit the legislative body or voters of an affected county or city from amending a General Plan or zoning ordinance in a manner that would:

- change the zoning or General Plan designation to a less intensive use (e.g., reductions to height, density, or floor area ratio or increases in open space or lot size requirements) or reduce the intensity of land use within an existing zoning district or plan designation below what was previously allowed on January 1, 2018. This limit would not apply if the change is accompanied by concurrent changes to development standards that increase development potential elsewhere in the jurisdiction such that there is no net loss in residential capacity.

- impose a moratorium on housing development, except pursuant to a zoning ordinance that protects against an imminent threat to the health and safety and is approved by the Department of Housing and Community Development.

- impose or enforce design standards established on or after January 1, 2018 that are not objective (meaning they involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official).

- establish a maximum number of conditional use or other discretionary permits for the development of housing or impose a cap on the number of housing units or the population.

In addition, any amendment on or after January 1, 2018 that had any of the effects noted above would be deemed void.

The bill expressly allows General Plan and zoning amendments that would prohibit the commercial use of land that is designated for residential use. The commercial use regulation could include limits on short term occupancy of residences. Further, these provisions do not apply to actions that would allow facilitate, allow greater density in, or reduce the costs of a housing development project, or as necessary to comply with the California Environmental Quality Act or Coastal Act. These provisions also would not apply in State-designated very high fire hazard severity zones.

B. Limits on Review of Proposed New Housing Development Projects

SB 330 would impose limits similar to those above on local government review of proposed housing development projects. Specifically, for areas where housing is an allowable use, SB 330 will prohibit an affected county or city from:

- enforcing requirements that a proposed housing development include parking or imposing any new or increased parking requirements.

- charging any fee (other than in lieu housing fees) or imposing an exaction in connection with the approval of a housing development in excess of the amount of fees/exactions that would have applied to the project as of January 1, 2018 (unless the fee increase is based on an automatic annual adjustment based on an independent cost index that is referenced in the legislation establishing the fee).

- charging any fee in connection with approval of any affordable unit within a housing development that meets these two criteria:

    - unit is affordable for household incomes equal to or less than 80 percent of the area median income; and
    - unit is subject to a recorded affordability restriction for at least 55 years.

SB 330 would also provide that, in affected cities and counties, a project falling within the maximum density and intensity of the range of uses contemplated by the General Plan's land use or housing element must be approved at the denisty/intensity proposed even if the zoning had established a lower level. Projects requiring conditional use permits would be eligible to move forward at the higher of current General Plan density or density limits in the General Plan and zoning in effect prior to January 1, 2018.

The bill would impose conditions on projects involving demolition of existing residences that are either (i) assisted pursuant to Section 8; (ii) subject to any form of rent or price control; (iii) affordable to persons earning 80 percent or less of the area median income; or (iv) in a residential structure containing residential dwelling units that are currently occupied by tenants, or were previously occupied by tenants if those dwelling units were withdrawn from rent or lease in accordance with the Ellis Act and subsequently offered for sale.

Projects involving demolition of the types of residences described above could be approved only if the new project is at least as dense as the existing units and the developer agrees to provide relocation benefits and a right of first refusal for units available in the new development project. The affected county or city must also not be otherwise prohibited from approving the demolition of the affordable rental units.

SB 330 states that the limits in this part of the bill do not prohibit planning standards that allow greater density or reduce the costs to a housing development project or as necessary to comply with the California Environmental Quality Act. It further states that these limits would not apply in State-designated very high fire hazard areas and are not intended to supersede any requirements of the Coastal Act.

II. Provisions Applicable to All Cities and Counties

SB330 includes provisions that would be applicable to all cities regardless of average rents and vacancy rates. These are:

A. Uniform Statewide Standards for Application Completeness

Many provisions of the State's housing laws set deadlines based on the date and a project application is deemed complete. SB 330 would set specific standards for what a jurisdiction may require in development applications and would require all jurisdictions to use a standardized form to be developed by the State's Department of Housing and Community Development. An application will be considered complete if it includes:

(1) The specific location of the project.
(2) The major physical alterations to the property on which the project is to be located.
(3) A site plan showing the location on the property, as well as the massing, height, and approximate square footage, of each building that is to be occupied.
(4) The proposed land uses by number of units or square feet using the categories in the applicable zoning ordinance.
(5) The proposed number of parking spaces.
(6) Any proposed point sources of air or water pollutants.
(7) Any species of special concern known to occur on the property.
(8) Any historic or cultural resources known to exist on the property.
(9) The number of below market rate units and their affordability levels.

If the application is not complete, agencies must within 30 days specify those parts of the application which are incomplete and indicate the manner in which they can be made complete, including "a list and thorough description of the specific information needed to complete the application." In reviewing subsequent submittals agencies would be limited to determining whether the application as supplemented or amended includes the information required by the earlier list; no additional information could be requested. If the written determination is not made within that 30-day period, the application together with the submitted materials would be deemed complete.

SB 330 would set various other standards relative to processing applications for housing development projects. It provides that an otherwise complete application will be deemed compete if the applicant subsequently revises the project such that the number of units or square footage changes by 20 or more (exclusive of increases from a density bonus or related concession).

B. Standards for Review of Housing Development Projects

SB 330 would provide that housing development applications be reviewed under the local laws in effect at the time the application is deemed complete except:

- for applying laws necessary to mitigate or avoid a specific adverse impact on public health or safety as shown by a preponderance of the evidence and where there is no feasible alternative;

- to mitigate impacts pursuant to CEQA;

- when the project has not commenced construction within three years fo the date of final approval;

- when the project is revised such that the number of units or square footage changes by 20 or more (exclusive of increases from a density bonus or related concession); and

- for fee increases resulting from an automatic annual adjustment based on an independently published cost index referenced in the ordinance adopting the fee.

As it does for affected cities and counties, SB 330 proves that in all jurisdictions a housing development project that falls within the range of maximum residential use, density, and intensity allowable on the site by the land use or housing element of the general plan shall not be found to be inconsistent with zoning if the zoning is set at a level below the highest levels referenced in the General Plan.

In addition, cities and counties would be required to determine if the site of the proposed project is a historic site at the time the application is deemed complete and this determination is to remain valid throughout the pendency of the project for which the application was filed.

C. Maximum Three Hearings

SB 330 would prohibit all local governments from conducting more than three de novo hearings related to the approval of an application for a zoning variance or development permit, on an application for a zoning variance, conditional use permit, or equivalent development permit for a housing development project. Jurisdictions would be required to approve or disapprove the permit within 12 months from when the application is deemed complete subject to extensions under specified circumstances.

D. New Regulations for "Occupied Substandard Building"

Under SB 330, the Department of Housing and Community Development would be required to propose the adoption, amendment, or repeal of building standards to the California Building Standards Commission for "occupied substandard buildings." The proposed building standards and regulations must establish minimum health and safety standards for occupied substandard buildings, including adequate sanitation and exit facilities and comply with seismic safety standards.

An occupied substandard building that complies with the building standards, rules, and regulations adopted pursuant to SB 330 would be deemed to be in compliance with the State Building Standards Code for a period of seven years following the date on which an enforcement agency finds that the occupied substandard building is otherwise in violation of any building standard, rule, or regulation adopted pursuant to this bill.