

KEY STATE HOUSING LAWS

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- *Housing Accountability Act*
- *Density Bonus Law*
- *SB 35*

HAA INTENT LANGUAGE

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“The Legislature’s intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval & construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects. This intent has not been fulfilled.”

QUALIFYING PROJECTS

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Applies to “housing development projects” and emergency shelters, defined as:

- ▣ Residences only;
- ▣ Transitional & supportive housing;
- ▣ Mixed use projects with at least 2/3 the square footage designated for residential use.

Affordable AND market-rate

BUT: additional protections for 20% low income projects and emergency shelters

NON-QUALIFYING PROJECTS

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- Rezoning, General/Specific Plan amendment; any legislative approval
- One single-family home
- Inconsistent with objective standards
- **Non-residential developments**
 - ▣ CEQA review and mitigation measures can also be imposed

“PRELIMINARY APPLICATIONS”

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- Short application with only limited requirements
- “Freezes” all development standards and most fees as of date all materials are submitted
- Limited exceptions

HOUSING ACCOUNTABILITY ACT

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Objective Standards

- **Only objective standards** may be used to deny or reduce the density of **qualifying** housing projects
- CEQA applies

Example

- **“Materials and Detailing.** Walls and fences *shall* be made of wood, masonry, or stone. Chain link fencing is *prohibited* as a fencing type.”

IF QUALIFYING PROJECT COMPLIES WITH OBJECTIVE STANDARDS

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- If qualifying housing development project complies with “objective” general plan, zoning, & subdivision standards, the City can only **reduce density** or **deny** if it finds:
 - ▣ A specific adverse impact to public health & safety; AND
 - ▣ The impact can't be mitigated in any other way.

WHAT IS AN OBJECTIVE STANDARD?

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- “Standards that 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 and the public official **prior to submittal.**”
- ▣ Examples: Height, setbacks, lot coverage, % open space, density, FAR, parking, etc.

NOT OBJECTIVE STANDARDS

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- “Address unmet need for senior housing.”
- “Special care shall be taken to avoid obstructing views to the surrounding hills.”
- “Produce high quality authentic design.”
- “Reflect look and feel of the community.”
- “The site is not physically suitable for the project.”

REVIEWING QUALIFYING HOUSING DEVELOPMENTS

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- City can apply *conditions of approval* so long as doesn't deny project, reduce density, or have the effect of reducing density.
- CEQA mitigation measures can be applied.
- Difficult to make health & safety finding.

PROJECT REVIEW

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- ***Most decisions to deny or reduce density of qualifying housing development must be based on lack of compliance with objective standards***

OTHER RECENT CHANGES

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- **Replacement housing required**
 - Housing *occupied by* lower income households
- **No downzoning unless “concurrent” upzoning**

OTHER RECENT CHANGES

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- **5 meeting limit; includes:**
 - ▣ Subcommittee meetings
 - ▣ Continued hearings
 - ▣ Appeal hearings
 - ▣ Any meeting conducted by the City
- **Need to leave 2 hearings for appeal body**

OTHER RECENT CHANGES

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- **5 meeting limit does not include hearings on:**
 - Incomplete applications
 - Projects not consistent with objective standards
 - CEQA-required hearings
 - Legislative approvals

DENSITY BONUSES

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□ **Developer Must Give. . .**

- Affordable Housing
- Senior Housing
- Land for Affordable Housing
- Student Housing

□ **To Get. . .**

- Bonus Units
- Reduced Parking Standards
- Incentives/Concessions
- Waivers

DENSITY BONUS AVAILABLE MIXED INCOME PROJECTS

Category	Minimum Percent	Minimum Bonus	Additional Bonus for 1% Increase	Percent Required for 35% Bonus	Percent Required for 50% Bonus (AB 2345)
Very-low Income	5%	20%	2.5%	11%	15%
Lower Income	10%	20%	1.5%	20%	24%
Moderate Income (ownership units)	10%	5%	1%	40%	45%

DENSITY BONUS AVAILABLE 100% AFFORDABLE PROJECTS

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100% Affordable	Density Bonus
All 100% affordable projects	80%
Within 1/2 mile of a Major Transit Stop	Unlimited + 3 stories or 33 feet

DENSITY BONUS EXAMPLE

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Project without Density Bonus	100 units
Affordability	15% very low income (15 units)
Bonus Units	50% = 50 units
Project with Density Bonus	150 units 135 market-rate, 15 affordable

DENSITY BONUS + INCLUSIONARY HOUSING ORDINANCE

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Type of Project	Required Affordability	Density Bonus*
Rental Project	5% VLI, 5% Low, 10% Moderate	20%
For-Sale Project	20% Moderate	15%

* Project must choose bonus from only one category. Must have at least 5% VLI, 10% lower (VLI + Low), or 10% moderate to qualify.

STATE INCENTIVES AVAILABLE

Target Units/Category	Percent of Target Units			
Very low income	5%	10%	15%	
Lower income	10%	17%	24%	80% (with 20% moderate)
Moderate income (ownership units)	10%	20%	30%	
Incentives	1	2	3	4*

*If located within 1/2 mile of a major transit stop, may also receive a height increase of up to 3 stories, or 33 feet

PASADENA AFFORDABLE HOUSING CONCESSION MENU

- If project complies with Inclusionary requirements, two of the following concessions granted:
 - ▣ Additional 0.5 FAR
 - ▣ Additional 12 ft of height over 60% of building footprint
 - ▣ 50% reduction in side and rear setbacks
 - ▣ 50% reduction in parking
 - ▣ Waiver of loading requirements

INCENTIVES

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- Modifications of development standards that result in: (1) “identifiable, and actual cost reductions” (2) “to provide for affordable housing.”
- Can only be denied if health or safety impact that can’t be mitigated, violation of state or federal law, no cost reductions or don’t provide for affordable housing.

WAIVERS

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- City cannot apply development standards that “physically preclude” the construction of the project with the density bonus or incentive(s) the project is entitled to
- Developer may request unlimited waivers
- No economic justification required

INCENTIVES V. WAIVERS

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- Incentives save the developer money so that the affordable housing can be provided. Examples:
 - ▣ Waive required utility undergrounding
 - ▣ Waive requirement to install 6-foot masonry wall

- Waivers are needed to allow the project with the bonus to fit onto the site. Examples:
 - ▣ Increased height
 - ▣ Reduced setbacks

PROJECT REVIEW – DENSITY BONUSES

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- *Objective design and zoning standards still apply to the project, but the applicant may request incentives or waivers to modify them*
- *Density bonuses and parking reductions must be granted if project qualifies*

SB 35

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Eligible Projects

- Residential or mixed-use projects
- Strict labor requirements
- No rental housing last 10 years
- Tribal consultation required

Characteristics

- **Only objective standards** may be used
- Staff Approval
- NO discretionary approvals
- NO CEQA

ON THE HORIZON!

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- **SB 8:** Extends Housing Crisis Act to 2030
- **SB 9:** 4-6 units on single-family lots
- **SB 10:** City can elect to allow 10 units on individual lots
- **AB 989:** HAA appeals to state
- **AB 1401:** no required parking near transit