CLIENT NEWS BRIEF

AB 101 And SB 330: The Juggernauts Of The 2019 Housing Laws

December 2019
Number 76

During the 2019 legislative season, upwards of 20 housing bills were passed, all with the purpose of addressing California's affordable housing crisis. Chief among these bills were Assembly Bill (AB) 101 and Senate Bill (SB) 330, each of which, in different ways, will likely have a significant impact on the discretion exercised by local jurisdictions over how their housing elements are carried out and in their approval of housing developments. Below is a high-level overview of these bills and some practical takeaways.

AB 101

Enacted as urgency legislation as a trailer to the state's Budget Bill, AB 101 took effect immediately upon its approval by the Governor on July 31, 2019. As an omnibus bill, AB 101 contains distinct measures designed to address affordable housing, ranging from new regulatory enforcement mechanisms to creation of additional housing grants and tax credits for low-income housing projects. Here are the most critical to keep in mind:

1. New Regulatory and Judicial Enforcement of Housing Element Compliance

By way of amendment to Government Code section 65585, AB 101 establishes a detailed framework for enforcement actions against cities and counties when the Department of Housing and Community Development (HCD) finds the jurisdiction's housing element to be noncompliant with state law. After notification by HCD of a noncompliant housing element, the Attorney General may request a court order directing compliance by the city or county. If the alleged violation relates to the city or county meeting its regional housing need allocation under Government Code section 65863, the HCD must offer the city or county an opportunity for two in person or telephonic meetings to discuss the alleged violations, and must provide the city or county written findings regarding the violations prior to the Attorney General seeking a court order. After the Attorney General obtains a court order, if the city or county does not comply, the following penalty scheme applies:

- An initial penalty of between $10,000 and $100,000 per month, if within 12 months of the order, the city or county does not comply.
- Triple the initial penalty, if within three months of the imposition of the first penalty, the city or county does not comply.
- Six times the initial penalty, if within six months of the imposition of the first penalty, the city or county does not comply. The court may also appoint a receiver with all powers necessary to bring the city or county into substantial compliance.

2. Approval of Low Barrier Navigation Centers

AB 101 creates a special category of homeless shelters called "Low Barrier Navigation Centers" (LBNC), the development of which is a "use by right" in areas zoned for mixed use and nonresidential purposes. Use by right means that the development is ministerially approved through a streamlined process and exempt from review under the California Environmental Quality Act

Jenell Van Bindsbergen
Partner and Co-Chair
Municipal Practice Group
Fresno Office
jvanbindsbergen@lozanosmith.com

James N. McCann
Associate
Fresno Office
jmccann@lozanosmith.com

LS Lozano Smith
ATTORNEYS AT LAW

(CEQA). An LBNC is unique from other homeless shelters in that it is a Housing First, low-low barrier, service-enriched shelter focused on moving people into permanent housing while providing temporary living facilities and connecting individuals to basic resources and services such as income, public benefits, and health services. The purpose of this measure is to address the homeless crisis in California and remove legal challenges to the establishment of such navigation centers. Critically, the measure also requires cities and counties to respond to applications for navigation centers within 30 days of receipt in order to notify the prospective developer whether the application is complete and to approve or deny a completed application within 60 days of receipt.

3. Changes to Streamlined Approval Process, Housing Element Bonus Points, and New Grants

Other important changes from AB 101 include an amendment to Government Code 65913.4 (the streamlined ministerial approval process commonly known as SB 35), to make it easier for developers to qualify for streamlined approval by requiring cities and counties to consider any additional density, floor area, and units granted pursuant to a density bonus in their calculation of whether a development has at least two thirds of the square footage of the development designated for residential use. AB 101 also creates a sort of "carrot and stick" approach to housing element compliance with "prohousing" compliant jurisdictions awarded bonus points in the scoring of housing and infrastructure program applications, and conversely, HCD posting on its website each month a list of cities and counties that have failed to adopt a compliant housing element – public shaming if you will. Finally, AB 101 establishes two one-time grants, one in the amount of $650 million to assist cities and counties in addressing homelessness, and another in the amount of $250 million to assist in meeting regional housing needs. Applications must be submitted by February 15, 2020 for the first of these and by July 1, 2020 for the second.

SB 330

This bill, known as the "Housing Crisis Act of 2019," adds additional teeth to the Housing Accountability Act and Permit Streamlining Act and continues the trend from the last few years of removing local discretion in the approval of housing developments. The purpose of the bill is to address the current housing supply crises, and to that end, to suspend certain restrictions on housing development and work with local governments to expedite the permitting of housing in those areas hit the worst by the housing shortage. In effect, SB 330 makes the process for approving non-ministerial housing projects more akin to the ministerial approval process by strengthening existing requirements that cities and counties apply objective standards in their review of project applications.

SB 330 makes the following important changes:

1. Addition of a Preliminary Application. The most important change with SB 330 is the addition of a checklist and preliminary application to the housing development approval process. Cities and counties must develop their own checklist and preliminary application for housing projects to satisfy this requirement, or in the absence of doing so, use an application developed by the HCD.

2. Limited Information Requested in the Preliminary Application. The checklist and preliminary application is limited to approximately 17 categories of information and an application developed by a city or county may not require or request information beyond the information specified in SB 330. However, it may be permissible to request information to substantiate claims made in the preliminary application, such as a cultural resources study to substantiate the statement that no cultural resources exist on the property, though this is an open question.

3. Earlier Date for Deemed Completion of the Application. A preliminary application is deemed complete once the developer submits the preliminary application with all the required information and pays the permit processing fee. The determination of when the application is deemed complete is important because the city or county may only use their zoning ordinance and general plan land use designation as they existed at the time the application was deemed complete for purpose of approving or denying the final application for the development project.

Importantly, SB 330 does not include requests for mitigation measures under CEQA in its prohibition against the application of new ordinances, policies, and standards.

4. Limited Opportunity to Challenge the Sufficiency of the Preliminary Application. SB 330 states that a preliminary application is deemed complete once the required information is submitted, *without any determination as to its completeness by the city or county*. While the bill is unclear on the degree to which a city or county can respond to an incomplete preliminary application, it is likely that a city or county would be permitted to make a request for any of the information specified in SB 330 that is not provided with the application.

5. Updated Timeframes for Approval/Denial. SB 330's addition of the preliminary application adds complexity to the timeframes for approval or denial of housing projects, including the addition of a 180-day timeframe in which an applicant must submit a final development application following submission of a preliminary application, as well as a 90-day timeframe in which an applicant must provide information missing from the final application when requested.

6. Limited Amount of Information Requested for the Final Application. Through a small but significant amendment to the Government Code, SB 330 completely changes the process and practice of cities and counties in reviewing and approving the *final development application*. While current law permits cities and counties to make multiple requests for additional information to clarify information submitted with the application, SB 330 limits this process by requiring cities and counties to provide *one exhaustive list* of the information missing from the final application. Once this exhaustive list has been provided, no new information may be requested in a subsequent review of the application.

7. Limitations on "Affected" Cities and Counties. SB 330 places restrictions on the ability of affected cities and counties, defined as those in urban areas or urban clusters, to downzone any property to a less intensive use by changing the general or specific plan land use designation or zoning of a parcel, unless such less intensive designation was in effect on January 1, 2018 or there is no net loss in residential capacity. This includes any new or increased space or lot requirements. SB 330 also places strict limits on the ability of affected cities and counties to impose a moratorium or similar restriction on housing development, except to protect against imminent health and safety threats.

8. Steep Penalties. Cities and counties found to have violated SB 330 and existing housing development approval laws may be subject to fines of at least $10,000 per housing unit, which may be increased by a factor of five with a finding of bad faith.

AB 330 will take effect on January 1, 2020 with many of its provisions set to expire on January 1, 2025.

Takeaways

AB 101 and SB 330 make significant changes to California's housing laws and the way in which local governments review and approve housing developments. Cities and counties can respond to AB 101, which is now in effect, by reviewing their housing elements to ensure compliance with all applicable state laws and ensuring a process exists for timely response to the HCD if allegations of noncompliance are made. To prepare for SB 330, cities and counties should, prior to January 1, 2020, develop a checklist and preliminary application. This checklist and application must be available in writing and on the city's or county's website. In addition, cities and counties may wish to establish a local housing trust fund to capture and keep local any fines that may be assessed under SB 330. Finally, any policies implicated by either AB 101 or SB 330 should be updated to reflect changes in the law.

If you have any questions about AB 101, SB 330, or housing laws in general, please contact the author of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcast, follow us on Facebook, Twitter and LinkedIn or download our mobile app. Over the next few weeks our housing

experts will also be developing materials in response to the 2019 housing laws including sample checklists and preliminary applications to assist local governments in complying with SB 330. Keep an eye out for these resources.