



American Planning Association

Orange County Section

2018 LEGISLATIVE UPDATE

RICHARDS | WATSON | GERSHON

355 South Grand Avenue, 40th Floor

Los Angeles, California 90071-3101

Telephone: 213.626.8484

Facsimile: 213.626.0078

April 18, 2019

Dave Snow, AICP, Esq.
Diana Varat, Esq.

dsnow@rwglaw.com

dvarat@rwglaw.com

Outline of Today's Update

- **Housing (Again)**
- **Safety Elements**
- **CEQA**
- **Sidewalks**
 - Vendors
 - Scooters
- **Small Cell Installations**
- **Cottage Food**
- **Quick Hits**
- **Conflicts of Interest**
- **2019 Legislation**

Housing-Related Planning Laws

- **RHNA Allocation Process**
- **Affirmatively Furthering Fair Housing**
- **Housing Accountability Act**
- **State-Mandated Ministerial Housing Approvals**
 - SB 35 & AB 2162
- **Density Bonus Law**
- **Application to Charter Cities**

Changes to RHNA Allocation Process

- RHNA allocation determines the number of units that each city must accommodate in its planning process (both in total and at specific income levels)
- **New focus in RHNA allocation process (as of 2019):**
 - 1) Jobs-Housing Balance, focused on improving the balance b/t low-wage jobs and affordable units;
 - 2) Meeting regional GHG goals;
 - 3) Overcoming patterns of segregation and creating inclusive communities (i.e., “furthering fair housing”)

Changes to RHNA Allocation Process

- RHNA allocation is now partially based on the rate of overcrowding, any units lost during emergencies, and region's GHG targets
- RHNA allocation is no longer based on prior underproduction of housing or stable population numbers

Affirmatively Furthering Fair Housing

- **New State law obligations under AB 686 to “affirmatively further fair housing”**
 - Combat discrimination
 - Take **meaningful actions** that overcome patterns of segregation and foster inclusive communities
 - Identify and address significant disparities in housing needs and access to opportunity
 - Foster and maintain compliance with civil rights and fair housing laws

Housing Element – Fair Housing

- **Must include a housing program to “affirmatively furthering fair housing”**
 - Analyze fair housing issues, identify segregation patterns, set fair housing priorities, and devise strategies to implement those priorities
- **Must identify adequate sites for housing development in the Site Inventory “throughout the community”**

HAA – Basic Standard

- If a proposed housing development project **complies with “objective”** general plan, zoning, and subdivision standards and criteria, including design review standards, ... the City can only **lower the density** or **deny the project** if there is “**specific, adverse impact**” to public health and safety that cannot be mitigated in any other way.
 - Government Code § 65589.5(j)

HAA – General Plan Prevails

- General Plan standards prevail over inconsistent Zoning Code standards
- Practice Tip: Review the General Plan and Zoning Code to ensure consistency – otherwise, GP standards will prevail

HAA Applicability

- All “housing development projects”:
 - Residential units only; or
 - Mixed use developments, with at least 2/3 of the square footage designated for residential use; or
- Both affordable **and** market-rate projects
- Transitional housing or supportive housing
- Emergency shelters

Complying with HAA

- Review the General Plan, Specific Plans, Zoning Code, and Subdivision standards to determine which standards are “objective”
- Consider adopting objective design standards that apply to all projects
- Prepare to respond quickly with “letters of inconsistency” (if needed)

SB 35 – Streamlined Multi-Family

- Established a streamlined, ministerial approval process **for multi-family residential developments** that an applicant can request if the project meets certain criteria
- No CUP, Planned Development, or other discretionary review may be imposed
 - Apply only objective design review standards
- Statutorily exempt from CEQA review

SB 35 – Eligible Projects

- Must be a **multi-family residence or qualifying mixed-use residential development** with at least two units
- Project must be **consistent with the “objective zoning standards and objective design review standards”** established before the application is submitted
- Developer must dedicate **at least 10 or 50 %** of the proposed units for households making below 80 % of AMI, unless the City’s inclusionary ordinance has a higher affordable (inclusionary) requirement
- Labor Requirements for projects of > 10 units

Complying with SB 35

- Determine what areas of the City may (and may not) be subject to SB 35 (given exclusions)
 - New floodway rules from 2018
- Create a checklist for SB 35 projects
- Review zoning / design review standards to determine whether those standards are “objective”
- **Consider adopting or refining objective zoning and especially, design review, standards for all projects**

AB 2162 – Streamlined Supportive

- **Purpose**: To streamline the development of “supportive housing” projects
- **Result**: Proposed “Supportive Housing” projects that meet the statutory criteria must be a “use by right” in zones where multifamily or mixed uses are otherwise permitted
 - City may **not** require discretionary review
 - CEQA does not apply to qualifying projects

AB 2162 – Definitions

- **Supportive Housing**: Housing with no limit on the length of stay, occupied by the “target population” and housing is linked to onsite or offsite services to assist residents in retaining housing, improving health, and maximizing the ability to live and work in the community
- **Target population**: Persons with disabilities, homeless families, and homeless youth
 - Health & Safety Code § 50675.14

AB 2162 – Applicability of Streamlining

- For cities with less than 200,000 people and that have a population of $\leq 1,500$ persons experiencing homelessness (based on the most recent homeless point-in-time count):
 - The streamlined approval process is only available to supportive housing projects proposing \leq 50 units

AB 2162 – Qualifying Projects

- **Zone must allow multifamily or mixed uses**
- **Every unit must be dedicated to lower income households ($\leq 80\%$ AMI), except manager's unit**
 - Project must receive public funding to ensure affordability
 - Project subject to 55-year recorded affordability covenant
- **Either 12 units or 25 % of all units must be reserved as units for “supportive housing” residents**
- **Minimum square footage of supportive services onsite**
- **Details regarding supportive services to be provided**
- **Minimum bathroom / kitchen requirements**

AB 2162 – Parking Requirements

- **Limitation on local parking requirements for the “supportive housing” units:**
 - If the proposed supportive housing development is located within ½ mile of a **public transit stop**, the City may not impose any minimum parking requirements **on the supportive housing units** that will be occupied by the target population
 - Okay to impose minimum parking standards on the remaining low-income units

AB 2162 – Timeline for Review

- Notify the developer of the application's completeness **within 30 days of receipt**
- Approve or deny the proposed supportive housing project:
 - **Within 60 days** after application is **deemed complete** (for projects of ≤ 50 units)
 - Within 120 days after application is deemed complete, (for projects of > 50 units)

Density Bonus (Gov't Code § 65915)

- Must provide a density bonus to qualifying projects for Transitional Foster Youth, Disabled Veterans, and Homeless Persons
 - Now, also to qualifying student housing
- Still must grant incentives/concessions, waivers, and parking ratios

2018 Updates to Density Bonus Law

- New Procedural Requirements
- Harmonizing Density Bonus with Coastal Act
- **Optional** FAR Density Bonus
 - Gov. Code § 65917.2

SB 1333 – Charter Cities

- **Additional Planning & Zoning Law provisions now apply to charter cities**
 - **General Plan Consistency**
 - **No Net Loss**
 - **Housing Element Law**

SB 1035 – Safety Elements

- New schedule to incorporate the following info into Safety Element:
 - Climate Adaptation / Resiliency Strategies
 - Flood / Fire Hazards
- Revise Safety Element upon each revision of Housing Element or upon revision of Local Hazard Mitigation Plan
 - At a minimum, once every 8 years

CEQA – AB 2782

- Adds new section 21082.4 to CEQA authorizing consideration of:
 - **Benefits** of a project, including
 - Economic
 - Legal
 - Social
 - Technological
 - Regional or statewide environmental benefits
 - **Negative Impacts** of project
- **Must be based on substantial evidence!**

Sidewalk Vendors - SB 946

- **Sidewalk Vendors defined:**
 - any person who sells food or merchandise from a pushcart, wagon, or other non-motorized conveyance, or from his or her person, while on a public sidewalk or other pedestrian path

- **Can be:**
 - Stationary – Fixed Location
 - Roaming – Moving from place to place, stopping only to complete a transaction

SB 946 – General Prohibitions

- **Prohibits local authorities from adopting regulations that:**
 - Restrict the number of sidewalk vendors, except if directly related to objective health, safety, or welfare concerns
 - Require sidewalk vendors to obtain the consent or approval of any nongovernmental entity or individual before selling goods or merchandise
 - Require sidewalk vendors to operate within specific parts of the public right-of-way, except if directly related to objective health, safety, or welfare concerns
 - Require sidewalk vendors to operate only in designated neighborhoods or areas, except if directly related to objective health, safety, or welfare concerns

SB 946 – Permissible Regulation

Local authorities may impose time, place, and manner regulations, IF regulations are directly related to objective health, safety, or welfare concerns.

Examples include:

- Limits on hours of operation, provided they are not unduly restrictive. In nonresidential areas, limitations cannot be more restrictive than the hours of operation imposed on other businesses on the same street.
- Requirements to maintain sanitary conditions.
- Requirements to ensure compliance with the ADA and other disability access standards.

SB 946 – Permissible Regulation

- **Requiring a sidewalk vending permit, business license, California Department of Tax and Fee Administration seller's permit, and/or other licenses from other state or local agencies.**
- **Requiring compliance with other generally applicable laws.**

SB 946 – Motivation for Regulation

- Perceived community animus or economic competition are not valid “objective health, safety, or welfare concerns” to justify the imposition of time, place, or manner restrictions

SB 946 – Parks

- **Local authorities may not prohibit sidewalk vendors in public parks**
 - Limited exception allowed when a concessionaire has been granted an exclusive concession for the sale of food or merchandise. There, the local authority can **prohibit stationary** sidewalk vendors **but must allow roaming** sidewalk vendors

SB 946 – Parks

- **Local authorities may apply time, place, and manner restrictions to sidewalk vending in public parks, so long as the restrictions are:**
 - Directly related to health, safety, welfare
 - Necessary to ensure the public's use and enjoyment of the park's natural resources / recreational opportunities
 - Necessary to prevent an undue concentration of commercial activity that would unreasonably interfere with the park's scenic / natural character

SB 946 – Residential Neighborhoods

- In areas that are zoned exclusively residential, cities must allow “roaming” sidewalk vendors, but may prohibit “stationary” sidewalk vendors.

SB 946 – Farmers’ Markets, Temporary Uses, and Swap Meets

- Okay to prohibit sidewalk vendors within the immediate vicinity of permitted certified farmers’ markets and permitted swap meets, during those events’ operating hours
- Okay to restrict or prohibit sidewalk vendors within the immediate vicinity of an area for which the city has issued a temporary use permit (e.g., an encroachment permit or special event permit for filming, a parade, or an outdoor concert)
 - Definitions all in State law

SB 946 - Penalties

- **No criminal penalties for violating vending regulations**
- **No prosecution for laws inconsistent with SB 946, even if prior to effective date (Pending prosecutions must be dismissed)**

SB 946 - Penalties

- **Administrative fines only; progressive for violations within a year, but no additional penalties for failure to pay administrative fines.**
 - With permit: \$ 100, \$200, \$500; 4th violation = permit revocation.
 - No permit: \$250, \$500, \$1,000, reduced if permit obtained.
 - Means testing for ability to pay. If 125% of federal poverty level or below, 20% of fines must be accepted.
 - Community service must be considered in lieu of paying.

Sidewalks – Scooters

- **Electric Scooter Deployments:**
 - Mobility / last mile solution?

OR

- Public nuisance / health risk?

- **Local Agency Reactions:**
 - Bans
 - Permit Systems
 - Pilot programs

Sidewalks – Issues with Scooters

- **Safety**
 - Helmets
 - Maximum Speeds
 - Operation on Sidewalks / Pedestrian conflicts
- **Abandoned scooters**
 - Blocking sidewalks
 - On private properties
- **Injuries and Liability on Public Property**

Sidewalks – Scooters

- Insurance requirements?
- Impounding pursuant to Vehicle Code
- Permit programs / fees
- Sharing of operator data with local agencies
 - Relationship to Vehicle Code
 - CEQA as to any regulations / prohibitions
- Stay tuned to the latest in the struggle between local agencies and the shared economy / "disruptive" businesses

Small Cell Installations

- **FCC Report and Order – effective January 14, 2019**
- **Preempts Local Aesthetic Regulations as of April 15, 2019**
 - New Small Wireless Facility category of installations
 - Shot Clock rules
 - Preemption of certain local aesthetic regulations
 - Limitations on Fees that can be charged

Small Cell Installations

- **Establishes a New Category of Small Wireless Facilities**
 - Antennas that are no more than **3** cubic feet in volume, excluding antenna equipment (as defined)
 - Equipment associated with the antenna totaling not more than **28** cubic feet in volume
 - Mounted on either structures in the right of way that are **50** feet or less in height or more than 10 % taller than other adjacent structures
 - The facilities do not expose people to radio frequency (RF) radiation in excess of FCC standards

Preemption of Local Aesthetic Regulations

- **Local regulations of facilities within right of way:**
 - Must be reasonable - i.e., technically feasible and reasonably related to the harms created by unsightly or out of character deployments
 - No more burdensome than regulations applied to other types of infrastructure deployments
 - Subject only to objective (not subjective) standards; no discretionary approvals
 - Published in advance

Preemption of Local Aesthetic Regulations

- Any local standards that do not meet these requirements are unenforceable as of April 15, 2019
- If the City wants to regulate small wireless facilities in the public right of way, cities must adopt new standards compliant with the FCC's Report and Order

New “Shot Clock” Deadlines for Processing Applications

- **Cities must act on all small wireless facility applications before the following deadlines**
 - 60 days after submittal for collocation on an existing structure
 - 90 days after submittal for new small wireless facilities on a new structure
 - 10 days to determine whether application is complete; action deadlines tolled if deemed incomplete more than once

- **These deadlines apply comprehensively**
 - All applications, regardless of whether they are submitted in large batches
 - All permits, including building permits, planning permits, encroachment permits and license agreements
 - Failure to act within these deadlines is a violation of law
 - No Deemed Approved Remedy, but expedited judicial review

New Limits on Local Fees

- **Previously, cities could negotiate lease rates based on market conditions as a term and condition of a wireless provider attaching to City infrastructure in the public right of way**
- **The FCC's Report and Order now limits fees to**
 - A reasonable approximation of the City's costs to process applications
 - Can be no higher than fees charged to similarly-situated competitors
 - Establishes presumptively reasonable "safe harbor" fees
 - \$500 for non-recurring fees for up to five small wireless facilities, with an additional \$100 for each application beyond five
 - \$1,000 for a non-recurring fee for a new pole intended to support one Small Wireless Facility
 - \$270 per Small Wireless Facility per year for all recurring fees

Federal Law preempts City's ability to consider health effects

- **Existing federal law provides:**
 - “No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC's] regulations concerning such emissions.”
- **But cities can require applications to include an RF Compliance Report that certifies that the facility complies with federal RF exposure standards and exposure limits**
- **Cities can also deny applications if the City finds the facility does not comply with FCC regulations and guidelines on human exposure to RF emissions**

Pending Legal Challenge to Report and Order

- **Numerous cities have filed legal challenges to the Report and Order**
 - Principal argument is that the FCC has exceeded its statutory authority and abused its authority by acting in an arbitrary and capricious manner
 - Cases have been consolidated into the case entitled *City of San Jose v. FCC* and transferred to the Ninth Circuit Court of Appeals
 - The Cities' motion to stay the effect of the Report and Order pending their legal challenge was denied
- **Report and Order, including the preemption on local regulations not compliant with its standards, is still in effect**

Microenterprise Home Kitchen Operations – AB 626

- A new category of food facility
- Regulated under California Retail Food Code
- Microenterprise Home Kitchens (MHKs) are:
 - food facilities
 - operated by a resident in their own private home
 - where food is
 - stored,
 - handled,
 - prepared for,
 - And may be served to consumers

MHK Criteria

- No more than one full-time equivalent food employee, not including family members of the household
- Food prepared, cooked and served on the same day
- Food is consumed at the MHK or offsite if picked up or delivered within a safe time period
- Preparation does not involve process requiring an HACCP Plan (re: microbiological criteria), or raw milk or raw milk products
- No oyster sales or service
- Maximum of 30 meals per day and 60 per week
- Maximum of \$50,000 in gross annual sales
- Sales directly to consumers (not wholesalers or retailers)

MHKs

- MHKs generally subject to health and sanitation standards, but exempt from certain standards:
 - Plumbing, waste, ventilation, handwashing facilities, consumer access, outdoor sales
- MHK operators must pass an accredited food safety certification examination

MHKs – Regulatory Authority

- Cities have full discretion to authorize MHKs
- HOWEVER, if the **County** authorizes MHKs and issues a permit, the county permit would be valid in any city in the county **regardless** of any city ordinance
- Local agency zoning must allow MHKs in any residential dwelling, so long as the MHK
 - Does not post signs or other outdoor advertising
 - Complies with local noise ordinances
- General nuisance principles apply

Quick Hits

- **Outdoor Advertising – AB 3168**
- **Disability Access - AB 3002**
- **Building Permit Expirations – AB 2913**
- **Required Parking – Designated Historical Resources – AB 2263**
- **Fire Safety – AB 2911**

Conflict of Interest Regulations

- **New “Real Property” Materiality Standard**
 - Regulation 18702.2
 - Most changes relate to ownership interests
 - Staff should inform decision-makers when decisions will involve property w/i 500 feet **and** w/i 1,000 feet of properties in which they have ownership interests
- **New Gift Limit = \$500**

Anticipated 2019 Legislation

- More By-Right Multi-Family Developments?
- Updates to Accessory Dwelling Unit Laws?
- Constitutional Amendment to remove voter requirement for public housing?
- Rent Controls?
- New Redevelopment?
- AB 377 – Cottage Food?



QUESTIONS?

THANK YOU!



David Snow, AICP, Esq.
 dsnow@rwglaw.com

Diana Varat, Esq.
 dvarat@rwglaw.com

LOS ANGELES

355 South Grand Avenue, 40th Floor
 Los Angeles, California 90071-3101
 Telephone: 213.626.8484
 Facsimile: 213.626.0078
 e-mail: la@rwglaw.com

SAN FRANCISCO

44 Montgomery Street, Suite 3800
 San Francisco, California 94104-4811
 Telephone: 415.421.8484
 Facsimile: 415.421.8486
 e-mail: sf@rwglaw.com

ORANGE COUNTY

1 Civic Center Circle, PO Box 1059
 Brea, California 92822-1059
 Telephone: 714.990.0901
 Facsimile: 714.990.6230
 e-mail: oc@rwglaw.com

CENTRAL COAST

847 Monterey Street, Suite 201
 San Luis Obispo, California 93401
 Telephone: 805.439.3515
 Facsimile: 800.552.0078
 e-mail : cc@rwglaw.com

TEMECULA

41000 Main Street, Suite 309
 Temecula, California 92590-2764
 Telephone: 951.695.2373
 Facsimile: 951.695.2372
 e-mail: tem@rwglaw.com

April 18, 2019