



# 2020 Legislative Update

American Planning Association  
Orange County Section

April 15, 2021

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# Outline of Today's Update

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## ■ Housing

- Density Bonus Law
- ADUs
- SB 35
- Housing Elements
- Entitlement Extensions
- Religious Institution Housing Projects

## ■ CEQA

- SB 288

## ■ Backup Generators for Wireless Cell Towers

- AB 2421

## ■ Joshua Trees

## ■ Preparing for More Housing Bills ...

# HCD Guidance Documents

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- ADU Handbook (December 2020)
- Housing Element Completeness Checklist (January 2021)
- SB 35 Guidelines (April 2021)
- Surplus Land Act Guidelines (April 2021)
- HCD memos
  - Housing Accountability Act (HAA)
  - Housing Element Req'ts & Sites Inventory Guide

# Density Bonus Law: An Overview

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- **Qualifying projects entitled to receive:**
  - A density bonus;
  - Specific number of “incentives & concessions” based on housing type;
  - Waivers or reductions of development standards (if they would “physically preclude” the construction of the development); and
  - Reductions in minimum parking requirements

# DBL – Qualifying Projects

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- 10 percent Lower Income HHs (or 20 percent for Lower Income Students)
- 5 percent Very Low Income HHs
- Senior Citizen Housing Development
- 10 percent Moderate Income (Condos)
- 10 percent Transitional Foster Youth, Disabled Veterans, or Homeless Persons
- 100 % Affordable (at least 80 % LI, 20 % Mod)

# DBL – Changes under AB 2345

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- **Increase in Maximum Density Bonus**
  - Sliding scale, but now up to **50 Percent** above base density
- **Incentives for Lower Income Projects**
  - To qualify for 2 and 3 incentives, applicant must now reserve **17 %** and **24 %** for Lower Income households, respectively

# DBL – Parking Ratios under AB 2345

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Number of Bedrooms	Parking Requirement (Per Unit)
Studio / 1 Bedroom	1 onsite space
2 and 3 Bedrooms	1.5 onsite spaces
4 + Bedrooms	2.5 onsite spaces

# Overview of ADU Requirements

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- **Two-pronged approval process:**
  - **“Building Permit Only” Process**
    - State standards only
    - Residential or Mixed-Use Zone
      - Gov. Code § 65852.2, subd. (e)
  - **Local Ordinance Process**
    - Local ADU Standards
      - But must comply with standards in Gov. Code § 65852.2, subd. (a)

# “Building Permit Only” Categories

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## ■ Single Family Homes

- One ADU **and** one JADU
- One detached ADU (800 sq. ft.) + JADU

## ■ Existing Multi-Family Structures

- Two detached ADUs
- Conversion of non-livable spaces (garages, storage rooms, basements...)

# “Building Permit Only” Process

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- **One ADU and one JADU per lot**
  - Within proposed single-family dwelling (SFD)
  - Within existing space of SFD
  - Within existing space of accessory structure (including expansion of up to 150 square feet for ingress / egress)
    - Exterior access required
    - Side and rear setbacks for fire and safety
    - JADU must comply with 65852.22

## SB 35: Clarifications & Tribal Consultation

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- Streamlined, ministerial approval process for multi-family residential developments
- Substantially limits City's ability to impose parking and other requirements on developments applying under SB 35 process
- No CUP, Planned Development, or other discretionary review may be imposed
- Projects are statutorily exempt from CEQA review (ministerial)

# SB 35 – Eligible Projects

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- Multi-family projects with at least 2 units
  - If mixed-use, at least 2/3 of the proposed development's square footage must be designated for residential use
- Project must be consistent with the “objective zoning standards and objective design review standards” established before the application is submitted

# SB 35 – Tribal Consultation

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- Applicant submits “Notice of Intent”
  - “Preliminary Application” (GC § 65941.1)
- Tribal Consultation Process
- Local Agency accepts SB 35 application only if:
  - No tribe engaged in scoping consultation;
  - Tribe and local agency agree that no resource will be affected by the project; or
  - Tribe and local agency enter into agreement

# SB 35 – Other Clarifications

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- **Modifications to Approved SB 35 Projects**
  - Request before Building Permit
  - Must Be Approved within 60 (or 90) days if Consistent with Pre-Existing Objective Planning Standards
  - Limited Opportunity for the Agency to Apply New Objective Planning Standards
- **Subsequent Permits related to Public Infrastructure**

# AB 1561 – Tribal Consultation

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- Slightly (and temporarily) extends CEQA tribal consultation process for housing projects requiring discretionary permits
  - Allows tribes **60 days** instead of 30 days to respond
- Applies to housing development applications determined to be complete between March 4, 2020 and December 31, 2021

# Housing Elements – Quick Tips

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## ■ Site Inventory

- Be mindful of “No Net Loss” - “Buffer”
- AB 725 (N/A to SCAG in 6<sup>th</sup> Cycle)

## ■ Housing Programs

- Be mindful of SB 330 Limitations
- Requirements for “up-zoning”

## ■ Affirmatively Further Fair Housing

# Housing Entitlement Extensions (AB1561)

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- Adopted in response to COVID-19 pandemic
- Automatically extends deadlines for **HOUSING ENTITLEMENTS** for 18 months
  - Tentative and vesting tentative maps,
  - Parcel maps
  - “Residential development” (which is not further defined)
  - Mixed- use with at least 2/3 of the square footage dedicated to residential
    - See Govt. Code Sec. 65914(d)(3)(C)(i and ii) for formulas

# Housing Entitlement Extensions (AB1561)

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- **Applies to:**

- Approvals/ permits / entitlements issued by state or local agencies
- Local ministerial approvals and entitlements required as prerequisite for issuance of building permits
- Local requirement to submit building permit application within a set period of time
- Exercise of a vested right related to approvals or permits

# Housing Entitlement Extensions (AB1561)

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- **Does NOT apply to:**
  - Development Agreements
  - Tentative Map approval that was or is extended for a minimum of 18 months after March 4, 2020
  - Preliminary Applications per 65941.1
  - Application for development / permits for SB 35 multi-family housing projects
- **Does not apply if, between March 4 and December 31, 2020, the agency extends the deadline by 18 months**
  - Less clear if extension is for less than 18 months
  - 18 months from the original expiration date?

# Housing Entitlement Extensions (AB1561)

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- Some confusion because AB 1561 was not urgency legislation taking immediate effect, and instead became effective January 1, 2021
- Language says extension should be given to all housing entitlements “issued prior to ... and in effect on March 4, 2020” and “will expire prior to December 31, 2021”
  - So, if an approval expired in April 2020, was it invalid until January 1, 2021, when the bill “revived” it?
- Overall intent suggests that it is to broadly extend housing development approvals.

# AB 1851 – Religious Institution Housing Projects – Parking

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- **“Religious Institution Affiliated Housing Development Project”**
  - Housing project located on one or more contiguous parcels each owned entirely by a religious institution
  - Project “near” collocated religious-use parking, or within one-tenth of a mile of a parcel containing the parking
  - Projects qualify for density bonuses
- **Local Agencies can’t require:**
  - Replacement of religious-use parking spaces that would be eliminated by the project
  - Cure any preexisting parking deficit

# AB 1851 – Religious Institution Housing Projects – Parking

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- **Local Agencies can't :**
  - Deny based on parking reductions, provided that the total reduction does not exceed 50% of existing spaces
- **Local agencies don't have to approve a parking ratio of less than 1 space per residential unit, **UNLESS** the project is within ½ mile walking distance of public transit or within one block of a car share vehicle.**
- **Local agencies must allow the number of religious-use parking spaces available after the housing project to count toward the number of parking space required for the housing project.**
- **Housing shortage = Statewide Concern; thus applicable to charter cities.**

# CEQA - SB 288 (PRC §21080.25)

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- **New Exemption for Sustainable Transportation Projects**
- **Intent to:**
  - Spur investment in Transit / Sustainable Transportation
  - Further State environmental goals
  - Create Jobs in light of COVID-19
- **Valid for two years - 1/1/23**

# CEQA - SB 288 (PRC §21080.25)

## Nine Project Types

- Pedestrian and Bicycle Facilities
- Improving transit, bicycle and pedestrian information and wayfinding
- Transit prioritization projects (signal coordination, timing, and phasing; ramp metering; dedicated transit /very high occupancy lanes, etc.)
- City/County projects to reduce parking requirements

## Statutory Exemptions

- Designating/Converting General purpose lanes to Bus Only lanes
- Institute or Increase bus rapid transit, bus or light rail – including transit stations
- Utility infrastructure maintenance/repair, etc., associated with exempt activities
- Any combination of these

# CEQA - SB 288 (PRC §21080.25)

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- **Parking Reductions – Automatically exempt**
- **Requirements for other activities:**
  - In an Urbanized area (100,000 population for either incorporated city or combination with two contiguous incorporated cities)
  - On or within existing public right-of-way
  - Can't increase automobile capacity
  - Can't involve demolition of affordable housing
  - Commitment to use skilled and trained construction workforce ( e.g., PLA)

# CEQA - SB 288 (PRC §21080.25)

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- **If project cost exceeds \$100 million, must also meet the following:**
  - Incorporated in Regional Transportation Plan or other planning document that underwent programmatic environmental review within 10 years of project approval.
  - Construction impacts must be fully mitigated
  - Lead agency must consider “project business case”
  - Lead Agency must consider “racial equity analysis”
  - Must hold at least 3 noticed public meetings prior to exemption determination
  - Must hold at least 2 meetings annually during construction , subject to specific notice requirements.
- **Notice of Exemption REQUIRED**

# CEQA - SB 288 (PRC 21080.20)

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- **Bicycle Transportation Plan Exemption Modified**
- **Extended from 1/1/2021 to 1/1/2030**
- **Plans for urbanized areas to:**
  - Restripe
  - Bicycle parking/ storage
  - Intersection signal timing
  - Signage
- **Must hold hearings before using exemption**
- **Notice of Exemption **REQUIRED****
- **Vehicular traffic, bicycle, and pedestrian safety assessment / mitigation no longer required**

# AB 2421 – Cell Tower Standby Generators (GC §65850.75)

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- **Requires streamlined process for permitting emergency standby generators for EXISTING permitted macro cell sites**
  - Does NOT include rooftop, small cell, or indoor/outdoor distributed antenna system sites
- **Ministerial Review – Must meet criteria set forth in the law**
- **Maximum 60-day review period or deemed approved**
- **10 days to deem incomplete – need to provide list of outstanding items**
- **Can't require information beyond what is required for other backup generators**

# AB 2421 – Cell Tower Standby Generators (GC §65850.75)

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- **Can't require property owner consent as part of application, but can require it prior to installation of generator**
- **California Public Utilities Commission Decision 20-07-011**
  - New rule regarding wireless resiliency in high fire threat areas
  - Plans required to describe how service will be maintained in event of power outage for emergency communications
  - These areas may see a rush of applications to meet a July 2021 requirement for 72-hour backup power.

# Western Joshua Tree – Potential State Listing

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- **Petition filed in 2019 seeking listing of Western Joshua Tree**
- **September 24, 2020 California Fish and Game Commission issued notice of findings**
  - “substantial possibility that the requested listing could occur”
  - Western Joshua Tree is a “candidate species” and thus protected like endangered / threatened species. (Cal. Fish and Game Code Sec. 2085)
- **Department of Fish and Game must issue report within a year of the notice**

# Housing Laws – Preparing for More

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- SB 6 / AB 115 (Housing in Commercial Zones)
- SB 9 (Ministerial Approval of Duplexes and Lot Splits)
- SB 12 (Planning and Wildfire Risk)
- AB 1398 / AB 1486 (RHNA and Planning)
- SB 778 (ADU Law and Conversion of Commercial Space in Mixed-Use Structures)
- AB 571 / SB 728 / SB 55 / SB 290 + (Density Bonus)



**Thank you! Questions?**

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