

APA CALIFORNIA LEGISLATIVE UPDATE

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Lots of Legislative Action in 2017

The 2017 Legislative Session ended on September 15th after a very busy year! APA California tracked over 250 planning-related bills and lobbied on many important bills, including the 15 measures in the Governor's Housing Package and the "small cells" by right permitting bill. Many of these bills were reviewed in the Legislative Update session at the recent APA California Conference in Sacramento. It's important to note that many bills that APA California opposed earlier in the year became two-year bills but we expect them to move again next year.

Housing Package Implementation Webinar – Save the Date for November 9th

APA California will be offering a webinar to assist members in implementing the bills included in the Governor's Housing Package. All the housing package bills were signed by the Governor - see housing package bills in red below for more information on these measures. The webinar has been scheduled from 10 am to noon on Thursday, November 9th. Speakers will include: John Terell, VP of Policy and Legislation for APA California, Barb Kautz, Goldfarb and Lipman LLP, Eric Phillips, Goldfarb and Lipman LLP and Sande George, APA California Executive Director and Lobbyist. Stay tuned for an e-blast announcement for more details.

How You Can Get Involved

As bills are making their way through hearings and floor votes, APA California has been sending letters to the authors and other members in support of or opposition to their measures. As always, we would appreciate letters from members or their employers that are consistent with those positions. To review the letters, and for an alert on APA's position on all of the major planning-related bills, please go to the legislative tab on APA's website at www.apacalifornia.com. All position letters will be posted on the APA California website "Legislation" page, which can be found here: <https://www.apacalifornia.org/legislation/legislative-review-teams/position-letters/>. Position letters will continue to be posted here as they are written and updated – APA encourages you to use these as templates for your own jurisdiction/company letters.

UPDATES ON MAJOR HOT BILLS

Note: The 15 bills in the Housing Package are highlighted in red.

AB 72 – Housing Law Enforcement and Finding of Noncompliance by HCD

Position: Support if Amended – Part of the Housing Package

Location: Signed by the Governor

This bill provides the Attorney General with the authority to enforce housing statutes, and allows HCD to find a jurisdiction in non-compliance with Housing Element Law after initially finding the housing element in compliance. APA supports increased enforcement of housing element laws and other targeted housing statutes, and many of APA's amendments were inserted into the bill. But, the bill still needs amendments to allow more time to cure and to apply due process and curing requirements to AG enforcement actions similar to those added for HCD at APA's request.

AB 686 – CA Affirmatively Further Fair Housing Law

Position: Support if Amended to Mirror Federal Regs – Two-Year Bill

Location: Senate Transportation & Housing Committee

This bill would have required a public agency, including cities, counties and regional agencies, to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and to not take any action that is inconsistent with this obligation. Unfortunately, the requirements in the bill went way beyond federal regulations though that was the goal of the bill in case federal law in this area is eliminated. APA submitted amendments to pare back the bill to include only the federal regulations in California law. The bill is now a two-year bill, and will move again in January.

AB 678/SB 167 – New Housing Accountability Act Enforcement Provisions

Position: Neutral on HAA portions of bills/Oppose amendments inserted as part of the Governor's Housing Package

Location: Signed by the Governor

These bills make a number of changes to the Housing Accountability Act (HAA). Originally, both bills (which are identical) included requirements that local governments would not have been able to meet and would have imposed automatic fines for HAA violations without the ability to cure those violations. As signed into law, the bill is in better shape. Due to all of the amendments taken by the authors, APA was ready to remove its opposition to the HAA portion of these bills. Unfortunately, as part of the Governor's Housing Package, new amendments were inserted that APA opposes and need amendment to clarify a new definition of "lower density", and to remove new authority given to the judge to increase fines if a city or county fails to make "progress in meeting its target RHNA" since that is not a legal requirement.

AB 879 – New Housing Element Mandates

Position: Oppose Unless Amended – Part of the Governor's Housing Package

Location: Signed by the Governor

Late amendments to AB 879 moved APA's position from support to oppose. The amendments: require mitigation fees to be substantially reduced through a new HCD review without providing other funding for services and infrastructure to serve new development; add substantial analysis to the housing element by requiring the analysis of governmental constraints in the housing element to include any ordinances that directly impact the cost and supply of residential development; and impose an unfunded mandate to be paid by fees imposed on new housing projects.

AB 1397 – Restrictions on Adequate Sites in Housing Element

Position: Oppose Unless Amended – Part of the Governor's Housing Package

Location: Signed by the Governor

This bill places restrictions on the ability of cities and counties to designate non-vacant sites as suitable for housing development and would require all designated sites to have water, sewer, and utilities available and accessible to support housing development during the planning period. Many of the most onerous requirements for these sites in the original versions of the bill were removed. However, many remain and would make finding adequate sites extremely difficult in future planning periods particularly for built-out cities. Late amendments also require cities and counties to demonstrate local efforts to remove "non-governmental constraints" over which they have no control, including the cost of land or rental rates.

AB 1505 – Restoration of Inclusionary Housing Authority for Rental Units

Position: Support – Part of the Governor's Housing Package

Location: Signed by the Governor

These bills clarify the Legislature's intent to supersede the holding in the *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* decision, to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances on rental projects. As inclusionary requirements are one of the few options cities and counties have to increase affordable rental housing, this is an important clarification. The Governor also added provisions specifying that the Department of Housing and Community Development (HCD) has the authority to review an ordinance adopted or amended by a city or county after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15% of the total number of units rented in a development be affordable to, and occupied by, households at 80% or less of the

area median income if either of the following apply: a) The city or county has failed to meet at least 75% of its share of the regional housing need, as applicable for the above-moderate income category, prorated based on the length of time within the planning period pursuant to existing law, over at least a five-year period. This determination shall be made based on the annual housing element report submitted to HCD, as specified; or, b) HCD finds that the jurisdiction has not submitted the annual housing report for at least two consecutive years.

AB 1515 – Deemed Consistent Standard for General Plan and Zoning Determinations in HAA

Position: Oppose – Part of the Governor’s Housing Package

Location: Signed by the Governor

This bill specifies that a housing development project or emergency shelter is “deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision” if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity, pursuant to the HAA. APA has no problem with the “reasonable person” portion of this new standard. However, the “deemed consistent” automatic approval should have been deleted - it goes too far and upends the accountability for local land use decision-making. AB 1515 will allow the applicant, rather than the local agency or a judge, to determine consistency of a development with the General Plan and zoning by allowing the applicant to provide contrary reasons why the project is consistent. As a result, the issue will be whether a “reasonable person” could conclude that the project is consistent – not whether the city or county had substantial evidence to back up its conclusion.

SB 2 – Permanent Source of Affordable Housing Funding and Funding for Planning through Document Fee on Non-Housing Real Estate

Position: Support – Part of the Funding Portion of the Governor’s Housing Package

Location: Signed by the Governor

This bill provides a permanent source of funding of about \$250 million per year for affordable housing, a portion of which will be available to use for local planning to accelerate housing production.

SB 3 – Housing Bond for Affordable Housing

Position: Support – Part of the Funding Portion of the Governor’s Housing Package

Location: Signed by the Governor

This measure authorizes a \$4 billion general obligation bond for housing, which would go to voters for approval in 2018.

SB 35 – Developer Option for Ministerial Streamlining of Some Housing Projects

Position: Support if Amended - Part of the Governor’s Housing Package

Location: Signed by Governor

This bill requires cities and counties to offer to developers of some housing projects a new ministerial approval process if the projects meet a long list of conditions, including meeting “objective” planning standards. It applies if a local agency does not “meet” its RHNA by income level. It is triggered based on building permits issued, not entitled projects. It does allow the developer to choose any locally-adopted ministerial process, instead of the SB 35 process and requirements. To be eligible for streamlined approval, the project must be in an urban area; be zoned or have a general plan designation for residential use; not have contained housing occupied by tenants within 10 years; meet a long list of other physical specifications; provide specified levels of affordable housing and commit to paying prevailing wages or use a “skilled and trained workforce”. SB 35 also speeds up design review and other approval determination timelines for streamlined projects under the bill. Late amendments added to the bill before it was signed, that will need clean up next year, appear to override local zoning.

SB 166 – Expansion of No-Net Loss to Loss of Affordability

Position: Support if Amended - Part of the Governor’s Housing Package

Location: Signed by the Governor

This bill would mandate that cities and counties implement a rolling adequate sites and rezoning requirement by income level, rather than total units, by changing the existing “no net loss” provisions in state law. “No net loss” currently does not allow cities or counties to downzone sites or approve projects at less DENSITY than shown in the housing element unless enough sites remain to meet the regional housing need. SB 166 requires similar findings be made if sites are not developed for the INCOME category shown in the housing element. If there are not enough sites, the bill requires new sites to be rezoned within 180 days. It also extends the mandate to charter cities. Although APA agrees that no jurisdiction should be left with only a few or no sites that can accommodate affordable housing by the end of the housing element planning period, the remedy of numerous re-zonings is an extremely onerous requirement for cities and counties -- there aren't enough subsidies to build on 100% of sites designated for affordable housing and the HAA prevents jurisdictions from denying a market-rate housing project proposed on a site that is designated for affordable housing – a Catch 22. Additionally, the bill does not allow adequate time should a rezoning require CEQA.

SB 649 – By Right Small Cell Wireless Infrastructure Permitting and Mandatory Leasing

Position: Oppose

Location: Vetoed by the Governor

This bill would have eliminated public input and full local environmental and design review of small cells, mandated the leasing of publicly owned property for small cell infrastructure, and eliminated the ability for local governments to negotiate leases or any public benefits for the installation of small cell equipment on taxpayer funded property. Specifics of the vetoed bill are as follows:

- Discretionary approval of small cell permits would have only been allowed in the coastal zone and in historic districts. All other areas would have had to process these permits through either a building or encroachment permit.
- The bill would have provided extremely limited authority to apply design standards for property in the right of way, and those provisions in the bill were conflicting and difficult to interpret.
- Small cell dimensions were defined in the bill but the definitions would have allowed very large cell infrastructure, and didn't include all associated equipment needed to support the small cells.
- Cities and counties would have been mandated to lease public property at prescribed fees to private small cell companies. Fees for leasing of public property would have been set by using a formula for attachments to PUC poles, plus an additional \$250 for the time to set up the fee structure. After applying the formula, those fees would likely have barely covered maintenance costs.

APA California also believes SB 649 would have set a dangerous precedent for other private industries to seek similar treatment. APA California, along with the League of California Cities, the California Association of Counties, the Rural County Representatives of California, the Urban Counties of California, as well as many individual cities/counties and associations strongly opposed this measure and worked very hard to ensure the Governor vetoed the bill. The Department of Finance also took an oppose position and the bill was heavily covered by the press, with nearly every major editorial board coming out in opposition to the bill.

The Governor's veto message can be found here: https://www.gov.ca.gov/docs/Sb_649_Veto_Message_2017.pdf

Though the bill was vetoed, there is a strong chance the industry will try again. Similar bills have been signed or introduced in many other states throughout the country and this issue is also being considered at the Federal level. And while the Governor's veto message doesn't shut the door on a chance to bring back more “balanced” legislation, based on their actions this year it is unlikely that a “balanced” approach would achieve industry's goals. It is possible the wireless companies may wait to introduce a bill similar to SB 649 until after Governor Brown's term ends next year. As a result, APA California would advise jurisdictions to either adopt or update ordinances on

permitting for wireless technology beyond macro towers and be prepared for these types of small cell permit applications. Given the industry's claim that the newer small cells require denser and closer proximity to their customers, cities and counties can expect to see a major change in how communities will permit this new infrastructure. It will be important to be prepared for this change if or when similar one-sided legislation returns.

But for now, APA California views the veto as a major victory for local government!

Other Important Hot Bills:

AB 73 – New Housing Sustainability Districts

Position: Support - Part of the Governor's Housing Package

Location: Signed by the Governor

AB 352 – Efficiency unit requirements

Position: Support

Location: Signed by the Governor

AB 494 – Accessory dwelling unit clean up

Position: Watching for substantive amendments

Location: Signed by the Governor

AB 565 – Alternative building standards for artists

Position: Watch

Location: Two-Year Bill

AB 571 – Tax Credits for Farmworker Housing

Position: Support - Part of the Governor's Housing Package

Location: Signed by Governor

AB 865 – Amnesty for non-compliant live/work buildings

Position: Oppose

Location: Two-Year Bill

AB 1250 – County Personal Services Contracts Restrictions

Position: Oppose

Location: Two-Year Bill

AB 1404 – CEQA infill exemption

Position: Support

Location: Two-Year Bill

AB 1414 - Solar energy system permitting

Position: Oppose

Location: Signed by the Governor

AB 1521- Notice of Loss of Assisted Housing Developments

Position: Support - Part of the Governor's Housing Package

Location: Signed by the Governor

AB 1568 – New sales tax option and streamlining for Enhanced Infrastructure Financing Districts

Position: Support

Location: Signed by the Governor

SB 80 – CEQA Notices

Position: Watch

Location: Vetoed by the Governor

SB 229 – Accessory dwelling unit clean up

Position: Watching for substantive amendments

Location: Signed by the Governor

SB 431 – Accessory dwelling code compliance for permitting

Position: Concerns

Location: Two-Year Bill

SB 540 – Workforce Housing Opportunity Zones

Position: Support - Part of the Governor's Housing Package

Location: Signed by the Governor

SB 697 – Development impact fee reporting and restrictions

Position: Opposed
Location: Two-Year Bill

All Hot Bills

To view the full list of hot planning bills, copies of the measures, up-to-the minute status and APA California letters and positions, please continue to visit the legislative page on APA California's website at www.apacalifornia.org.