



# California's Housing Laws

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April 25, 2023

# Presentation Overview

- **The Major State Housing Laws:**
  - **The Housing Accountability Act: Hard to Deny Housing Projects**
  - **Replacing Local Planning with State Planning (Housing Elements, AB 2097, AB 2011/SB 6, Density Bonus Law)**
  - **Ministerial and ‘By Right’ Approvals (SB 35, AB 2011, ADUs, SB 9)**
- **Consequences of Non-Compliance**

# Major Housing Laws

## The Housing Accountability Act

# Making It Hard to Deny Housing Projects

“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.”

# Key Provisions

Applies to a “housing development project” which is:

- Two or more residential units
- Mixed use with 2/3 of square footage residential
- Transitional or supportive housing

# Key Provisions

“Preliminary application” freezes development standards

- But project must meet these timelines:
  - Project application must be filed within 180 days
  - Must complete application within 90 days of receiving incomplete letter
- Can change project by up to 20% of square footage or number of units or invoking density bonus and still rely on initial preliminary application

# Key Provisions

- Once complete, staff must notify applicant in short time (30 to 60 days) if there are any “inconsistencies” - or “deemed consistent”
- Assumed to be consistent if “substantial evidence would allow a reasonable person to assume consistency”
- No rezoning required if general plan is “inconsistent” with zoning

# Key Provisions

Denial only if:

- Project doesn't comply with “objective standards” OR
- Results in “specific adverse impact” on public health & safety
  - A “significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards” that can't be mitigated



# Key Provisions

## Additional finding to deny project with 20% lower income units:

1. City meeting RHNA numbers
2. Specific adverse impact to public health and safety
3. Deny to comply with state or federal law
4. Proposed on agricultural land or water/sewer inadequate
5. Inconsistent with Zoning Ordinance & GP land use designation; must have a housing element in substantial conformance with state law, and not on a housing element site

# What Is an “Objective Standard”?

Involves **no personal or subjective judgment** by a public official and verifiable by referring to an **external benchmark**.

OBJECTIVE	SUBJECTIVE
DENSITY REQUIREMENTS	REFLECT THE <b>LOOK AND FEEL</b> OF THE COMMUNITY
HEIGHT LIMITS	SITE IS NOT <b>PHYSICALLY SUITABLE</b> FOR THE PROPOSED USE
LOT COVERAGE	MUST BE <b>COMPATIBLE</b> WITH ADJACENT USES
SETBACKS	
FAR REQUIREMENTS	

# What Is NOT an “Objective Standard”?

- “If height varies by more than one story between buildings, a transition or step in height is necessary.”



# Why Isn't This Standard “Objective”?

- Could be a “transition” of trees and a trellis instead of a setback
- Not clear how far upper floors must step back
- Not clear how far along building the setback must run
- Not clear how many floors must step back

# The “Reasonable Person” Standard

- Staff and consultant concluded that the project conformed to the standard, whereas Planning Commission and City Council found it did not.
- Both interpretations “reasonable“ which court construed as proof positive that it is not objective
- Under “reasonable person standard” either interpretation works, so it must be approved.
- Burden of proof on city.

# Implications for Folsom

- Tight timelines and penalties for errors
- Strict standard for “objective”
- Subjective standards adopted before 1-1-20 can be used to apply conditions but cannot:
  - Reduce density
  - Make affordable project infeasible
  - Effectively deny project.
- **CEQA applies**

# Q & A

# Major Housing Laws

## State Planning for Cities: Loss of Local Control



# What Cities Must Approve

- Housing Elements: more sites must be zoned at 30 units/acre
- Housing Crisis Act: cannot reduce existing housing capacity
- AB 2097: no parking required within ½ mile of major transit stop
- AB 2011/SB 6: housing may be built in commercial zones
- Accessory Dwelling Units and SB 9: more units may be built on single-family lots
- Density Bonus Law: projects with affordable housing entitled to increased density and waiver of development standards

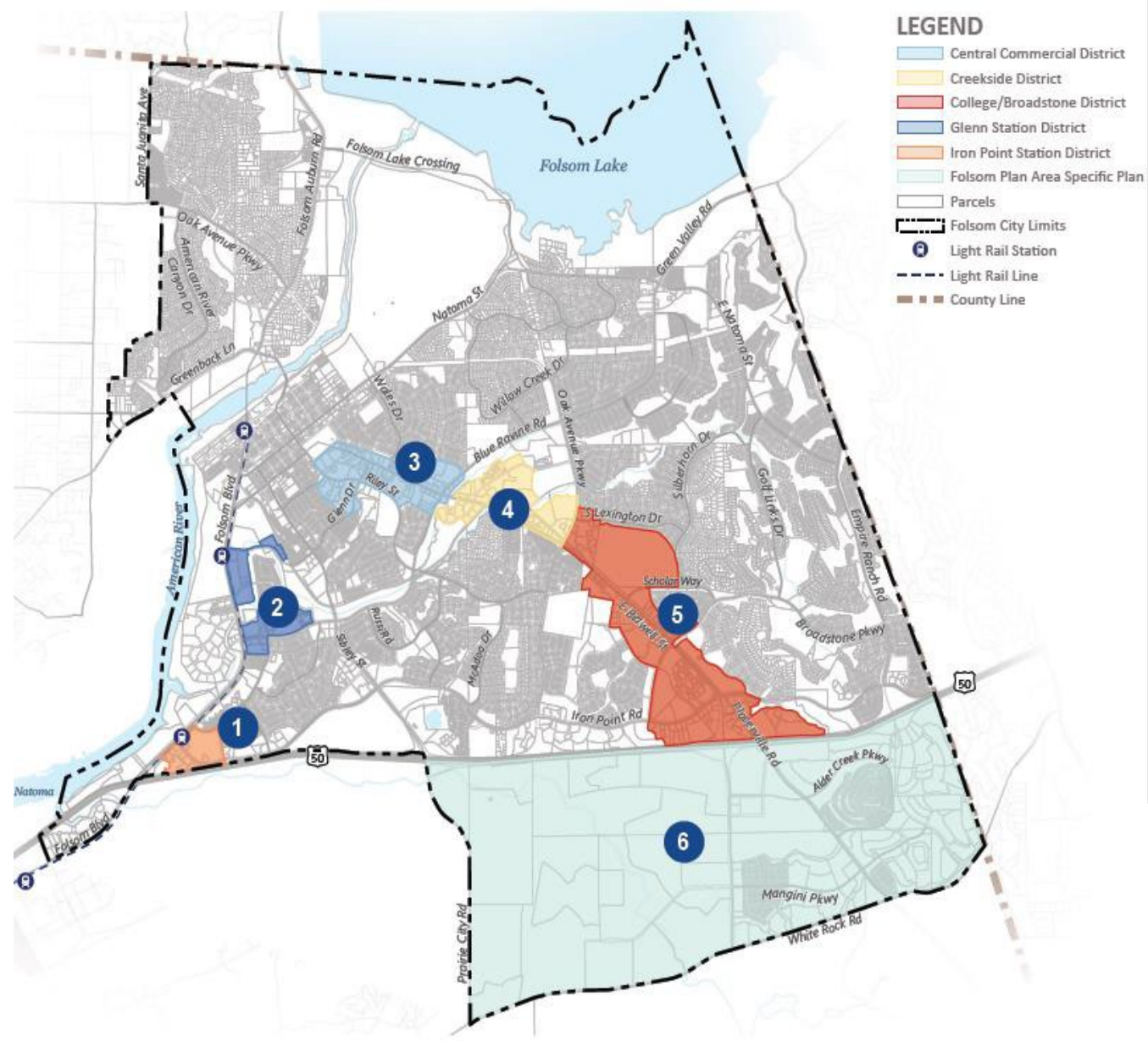
# FOLSOM RHNA

- 2013 -2021 (5<sup>th</sup> Cycle):
- **4,633 units**
  
- 2021-2028 (6<sup>th</sup> Cycle):
- **6,363 units**



# NO NET LOSS

- Lower income RHNA = **3,567 units**
- Must maintain capacity at all times (30 du/acre)
- Only sufficient state \$\$ for 20,000 units/year



# Housing Crisis Act of 2019

- **Cannot reduce density** below that existing on January 1, 2018
  - Unless “concurrent” density increases
  - Includes reductions in height, FAR, increased setbacks
- No moratorium without HCD consent

# Parking Requirements - AB 2097

- Projects within ½ mile of an existing or planned major transit stop = cannot require or enforce parking requirements
  - **UNLESS** study shows “substantially negative impact” on low or very low RHNA, housing needs of elderly or disabled, or residential/commercial parking within ½ mile
- Even if findings are made no parking requirements for housing development projects with a minimum of 20% affordable or fewer than 20 units

# Residential Development in Commercial Zones

AB 2011 and SB 6 allow multi-family residential development where it may not have been permitted previously:





- Applies in zones where commercial, retail or parking are principally permitted uses
- AB 2011: ministerial approval without CEQA
- Effective July 1, 2023

# Site & Project Criteria (All Projects)

- Multi-family housing development projects only
- Sites in a neighborhood area plan must permit multi-family housing (if either adopted by 1/1/22; or NOP issued by 1/1/22 & plan adopted by Jan 1, 2024)
- **Prevailing wages**; SB 6 also requires union labor
- Affordable housing required by AB 2011
- No parking can be required except disabled, EV, & for bikes


# Mixed-Income Minimum Housing Density

DENSITY SHALL MEET OR EXCEED THE FOLLOWING:

	 <p>Site Site size less than 1 acre</p>	 <p>Commercial Corridor ROW &lt;100'</p> <p>Site Site size 1 acre or more</p>	 <p>Commercial Corridor ROW &gt;100'</p> <p>Site Site size 1 acre or more</p>	 <p>w/in 1/2 mile of major transit stop</p> <p>Site</p>
Density Metropolitan Jurisdictions	<b>30</b> du/acre	<b>40</b> du/acre	<b>60</b> du/acre	<b>80</b> du/acre



# Mixed-Income Housing Height Limits

		Commercial Corridor ROW <100'	Commercial Corridor ROW >100'	pop > 100k & w/in 1/2 mi. of major transit stop 
	Site	Site	Site	Site
<b>HEIGHT LIMIT SHALL BE THE GREATER OF THE FOLLOWING:</b>	Currently permitted height	35'	45'	65'

# Density Bonus Law

- Eligible project: 5% to 100% affordable housing
- Eligible projects entitled to receive:
  - A **density bonus** [20 - 80%, or unlimited];
  - 1 - 4 “**incentives / concessions**” [based on affordability]
  - **Unlimited waivers** of development standards
  - Reduced **parking** requirements.
- Density Bonus project = consistent with City standards

# Density Bonus Law

- Inclusionary units can qualify project for density bonus (*Latino Unidos v. County of Napa*)
- Example:
  - City requires 3% very low and 7% low income housing for for-sale projects; or in-lieu fee
  - If units provided: project qualifies for 20 percent bonus (plus parking reductions, one concession, unlimited waivers)





# Implications for Folsom

- City is required to accept and approve plans that conform with state law
  - Even if inconsistent with City's adopted policies
  - Regardless of City or community concerns

# Q & A

# Major Housing Laws

## Ministerial and 'By Right' Approvals



# What Is a Ministerial Approval?

- A governmental decision involving little or no personal judgment by the public official.
- Involves only the use of fixed standards and objective requirements.
- **Exempt from CEQA.**
- State has imposed strict timelines for approval.

# Projects that Must Be Approved Ministerially

- Accessory Dwelling Units
- SB 9 projects: Two-unit developments and urban lot splits
- SB 35: Streamlined Ministerial Review
- AB 2011: Housing projects in commercial zones

# ADUs: Housing in Residential Zones

- Allows for construction of ADUs and JADUs within all residential zones.
- Requires ministerial approval.
- Overrides City standards that would physically preclude ADUs.
- **New** state-mandated development standards include: increased height limits, building in front yard setback, lesser fire sprinkler requirements, restrictions on code enforcement.



# SB 9: Housing in Single-Family Zones

- Allows for construction of up to four units on single-family zoned lots (either on one existing lot or after divided into two lots).
- Requires that two-unit housing development projects be approved ministerially and overrides City standards that would physically preclude this type of development.
- SB 9 standards include: minimum setbacks, minimum parking standards, and minimum unit sizes that must be approved.

# SB 35 Projects (“Streamlined Review Process”)

## Qualifying Projects:

- Multifamily residential with **50% lower income** in Folsom
- 2/3 residential square footage
- General plan or zoning allows residential or mixed use
- No housing occupied by tenants within last 10 years
- More than 10 units = prevailing wages
- Consistent with objective standards; but can request density bonus waivers if not
- **Prevailing wages required**

## SB 35 Projects (“Streamlined Review Process”)

- Consistency review in 60 - 90 days after submittal
- Design review and decision in 90 - 180 Days
- AB 2011 prescribes identical process
- SB 6 allows SB 35 to be used on sites zoned commercial, with only 50% residential
- Can only apply standard conditions

# ‘By Right’ Approvals

- No CEQA review
- Only objective design review; may impose conditions
- Applies to:
  - Certain **housing element sites** designated for lower income housing if project has 20% lower income units and no subdivision is needed.
  - Certain supportive housing developments.
  - Low barrier navigation centers.
- No accelerated timelines

# Implications for Folsom

- Very fast timelines = big demands on staff
- Limited community input
- Scope of public hearings limited
- Decision-makers have very limited discretion



# Q & A

# Major Housing Laws

## Consequences of Non-Compliance

# HCD and Attorney General Enforcement

- HCD Housing Accountability Unit with at least 25 staff
- Broader and broader authority
- Letters of Technical Advice
- Notices of Violation
- Referral to Attorney General
- Attorney General has 12-person strike force that acts independently

# Active Third-Party Litigants

- Have sued at least 10 SoCal cities and 12 Bay Area cities (Californians for Homeownership, YIMBY, California Housing Defense Fund) on housing elements
- Often join in, or are plaintiffs, in litigation related to denials of housing development

# Housing Cases in General

- Courts:
  - Generally very pro-housing
  - Uphold housing approvals
  - Overturn denials
- City risks:
  - Significant attorneys fees exposure
  - High defense costs
  - Possible damages

# Q & A

**Thank You!**