

HABITAT FOR HUMANITY CALIFORNIA

Streamlining approvals for affordable housing in California

Habitat California helped pass breakthrough legislation in 2017 that streamlines the approvals process for affordable housing developments statewide, significantly reducing the time, expense and risk of the development process. Though overshadowed by major funding victories that year, the legislation known as SB 35 is already reducing zoning barriers to affordable housing in accessible, job-rich neighborhoods. Since taking effect in 2018, the law has helped more than 1,300 affordable apartments receive preliminary, streamlined approval, with final approvals expected by fall 2018.

Background

Housing affordability has reached crisis levels in California, particularly in coastal towns and cities. A third of renters pay more than half their income on rent. Homelessness has skyrocketed. The homeownership rate is at its lowest level since the 1940s.

Limited new supply is contributing significantly to the housing crisis. The state is building less than half the number of homes it did during most of the 20th century, and less than half of its annual projected need. The gap between supply and demand is most dramatic in areas where job growth is greatest.

A major barrier to development in California is the prevalence of highly discretionary and politicized land use approvals. Most larger housing developments must go through public hearings and win approval from local elected officials before they can be built, even if they conform with local zoning regulations and design standards.

This system of land use approvals increases the time, cost and risk involved in building housing, giving neighbors multiple opportunities to stall or stop new developments altogether. In California, discretionary review also typically triggers the need for environmental review under the state's California Environmental Quality Act, or CEQA. Housing opponents often use this law to sue developers and stop developments even after local governments have granted approvals. This happens disproportionately in whiter, wealthier and healthier communities, according to a recent analysis by Holland and Knight.

For example, in 2017, Habitat of Greater San Francisco proposed a condominium development in downtown Redwood City. The City Council approved a 20-unit development that was half the size of Habitat's original proposal. But a year later, the transit-accessible site in the heart of job-rich Silicon Valley remains vacant because of a lawsuit filed by a neighbor under CEQA. As Habitat of Greater San Francisco Executive Director Maureen Sedonaen recently told KCBX Public Radio, "The delay in this process has cost us several million dollars ... that we could be putting toward another housing development."

Streamlining approvals

Newly passed SB 35 requires a streamlined approval process for infill housing developments that include affordable housing in localities that have failed historically to meet their share of their region's projected housing need. The law entitles these developments to an administrative, "by-right" approvals process. Under such a process, land use approval is determined by city or county planning officials based on an assessment of consistency with the general plan, zoning regulations and the building code. This is distinct from "conditional" approvals that require a vote by elected officials and typically involve public hearings and extensive negotiations. Cities and towns are still allowed to zone, but SB-35-eligible

developments cannot be subjected to a vote by the public or by local elected officials, nor can design review be used to extract additional concessions based on subjective criteria. Additionally, by-right approvals are typically not subject to CEQA review, removing an extra opportunity for opponents to slow developments through lawsuits.

To qualify for streamlined approval, a development must be:

- At least 10 percent affordable to lower-income households if the locality has underproduced its share of the regional need for above-moderate-income housing.
- At least 50 percent affordable if the locality has underproduced low- or very-low-income housing but produced its share of the regional need for above-moderate-income housing.

Also, eligible developments must be:

- Built in an “infill” location (adjacent to urban uses).
- Zoned or designated in the General Plan for residential use or residential mixed-use.
- Consistent with objective zoning standards and objective design review standards.
- Built away from environmentally sensitive areas.
- Increasing the stock of affordable or rental housing, not replacing existing units.
- Built without demolishing a historic building.
- Paying construction workers the prevailing wage (unless they have fewer than 10 units).

Zoning and design review must be completed within 90 to 180 days of a development’s application. Homes must remain affordable for 55 years (rental) or 45 years (ownership).

Advocacy

Habitat California’s advocacy for SB 35 was closely linked to its push for increased state funding resources, which began in 2011. Governor Jerry Brown had just eliminated the state’s Redevelopment Agencies, along with \$1 billion annually in funding for affordable housing, to fill a budget deficit. Proceeds from the most recent statewide housing bond had dried up. A handful of local affiliates formed Housing California to forge a bold response.

After three efforts failed to place a housing bond on the statewide ballot, Governor Jerry Brown indicated in 2017 that he would support a dedicated funding source and back a housing bond, on the condition that local governments streamline approvals to reduce the cost of housing development.

State Senator Scott Wiener modified the governor’s streamlining proposal to include affordable housing and prevailing wage components, securing needed support from affordable housing, labor and equity-minded advocates. The resulting bill, SB 35, was aligned with bills for a dedicated funding source (SB 2) and a housing bond (SB 3), forming the nucleus of what became known as the “housing package.” Each bill needed to be approved separately but was understood to be part of a package deal. Other bills were added later.

The three bills drew a diverse coalition of supporters in addition to Habitat California. The California Association of Realtors and the California Building Industry Association applauded SB 35’s supply-based approach to the state’s housing crisis. Business councils and local chambers of commerce also provided crucial support after California CEOs identified workforce housing as the number one problem affecting employee recruitment and retention. California YIMBY (“Yes In My Backyard”) added a new, media-savvy constituency supporting more housing of all types, particularly in job centers. The California League of Conservation Voters endorsed the bill as well, out of recognition that facilitating infill housing development would reduce pressure on green spaces at the fringes. Crucially, the California Labor Federation endorsed all three bills after securing requirements that streamlined housing developments would pay construction workers prevailing regional wages.

Surprisingly, affordable housing advocates were somewhat split by SB 35. The Non-Profit Housing Association of Northern California, or NPH, was an active supporter. But the two largest housing coalitions in the state, Housing California and the California Housing Consortium, stayed neutral on SB 35. Some of their members wanted stricter

affordable housing standards for streamlined developments. Others were concerned about losing opportunities to use conditional zoning to negotiate with market-rate developers for greater affordability and other community benefits.

Opposition to SB 35 included small cities and towns that have historically limited new development. Also, many Republican legislators had a hard time endorsing the prevailing wage component of SB 35.

In light of this opposition and the neutral positions taken by the two leading state housing coalitions, Habitat California played a crucial role in SB 35's passage. Habitat California's lobbyist Holly Fraumedi-De Jesus lobbied state legislators intensively, while local Habitat representatives met with local legislators. Habitat representatives were also part of small teams that made legislative visits along with representatives from the homebuilders, the Realtors, and local chambers of commerce.

Habitat's involvement provided cover for moderate legislators who did not want to appear to be only helping their "crony builder friends," Fraumedi-De Jesus says. Also, Habitat's support made it clearer whom the bill was designed to help.

One persuasive argument used by Habitat California and its allies was that increased funding for affordable housing needs to be accompanied by measures that reduce inefficiencies — and inequities — in how that money gets spent. Says Fraumeni-De Jesus, "You can't keep allocating funding while local governments block that funding from getting to the most needy." Another core argument, in the words of NPH's policy director, Michael Lane, was: "Let's make local planning count even more, because you do it once and then honor it." Strong community involvement in local land use decision-making is a very positive thing, Lane says, but the time for that involvement is when a locality updates its zoning code or general plan, and when it develops objective design standards.

In late 2017, SB 35 passed with support from 23 of 40 state senators and 47 of 80 assembly members. SB 2 and SB 3 passed with stronger majorities. All three bills and the rest of the housing package were signed by the governor later that month.

Impact

According to Fraumedi-De Jesus, 12 developments are already using SB 35 to streamline approvals for new housing. One is the redevelopment of a failing mall in Cupertino, located near the Apple campus in job-rich Silicon Valley. The developer had sought approvals for a mixed-use development in 2015 but was rejected by the city. In 2018, the developer submitted a revised mixed-use proposal under SB 35, including 2,402 housing units, 50 percent of which would be affordable to low-income residents. The city granted preliminary approval in June.

In May, San Francisco gave preliminary approvals to a 100 percent affordable housing development in the city's Mission District. For years, the neighborhood has been ground zero for the city's battle over gentrification and displacement. The new property offers 130 family-sized affordable apartments, a community arts center, and social services for residents, 30 percent of whom are formerly homeless. Karoleen Feng of the Mission Economic Development Agency, or MEDA, says that SB 35 will cut their development's entitlement process by six months to a year.

SB 35 helps chip away at the inordinate amount of control that NIMBYs have over the housing development process, says Fraumeni-De Jesus. "It is the first step in going after the root of California's housing crisis — but we still need to do more."

Lessons

1. **Start with large-concept legislation.** "Don't start out negotiating with yourself," says NPH's Michael Lane. "You'll have to take amendments. Have an understanding about where you will fall back, what you're willing to concede, and what is necessary for the legislation to be useful." Lane points out this was essentially the governor's process before his initial streamlining proposal was modified into SB 35.
2. **It might be helpful to combine streamlining with increased affordable housing funding.** Both Lane and Fraumedi-De Jesus believe that neither SB 35 nor the two funding bills would have passed on their own.

3. **Streamlining can draw a lot of allies.** Businesses, Realtors, and even market-rate homebuilders were willing to support SB 35 in spite of its affordable housing and prevailing wage components. Housing advocates also brought in environmental allies by limiting streamlining to infill locations.
4. **Habitat can help make the difference.** Habitat provided important support during the tight vote for SB 35. In addition to providing “cover” for moderate legislators who did not want to appear to be aligned only with market-rate for-profit developers, Habitat clarified who loses out when needed housing is blocked by heavily politicized, discretionary land use decisions.

Resources

- Holly Fraumeni-De Jesus, Lobbyist for Habitat California, Lighthouse Public Affairs, (916) 318-8866, ext. 118.
- Michael Lane, Policy Director, Non-Profit Housing Association of Northern California, michael@nonprofithousing.org; (415) 989-8160, ext. 22.
- SB 35 text and analysis: leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB35.



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