

# ***EVOLVING STATE AND LOCAL ROLES IN PLANNING: RECENT LEGISLATION AND SOME PREDICTIONS FOR THE FUTURE***

February 1, 2020

## **Goldfarb & Lipman LLP**

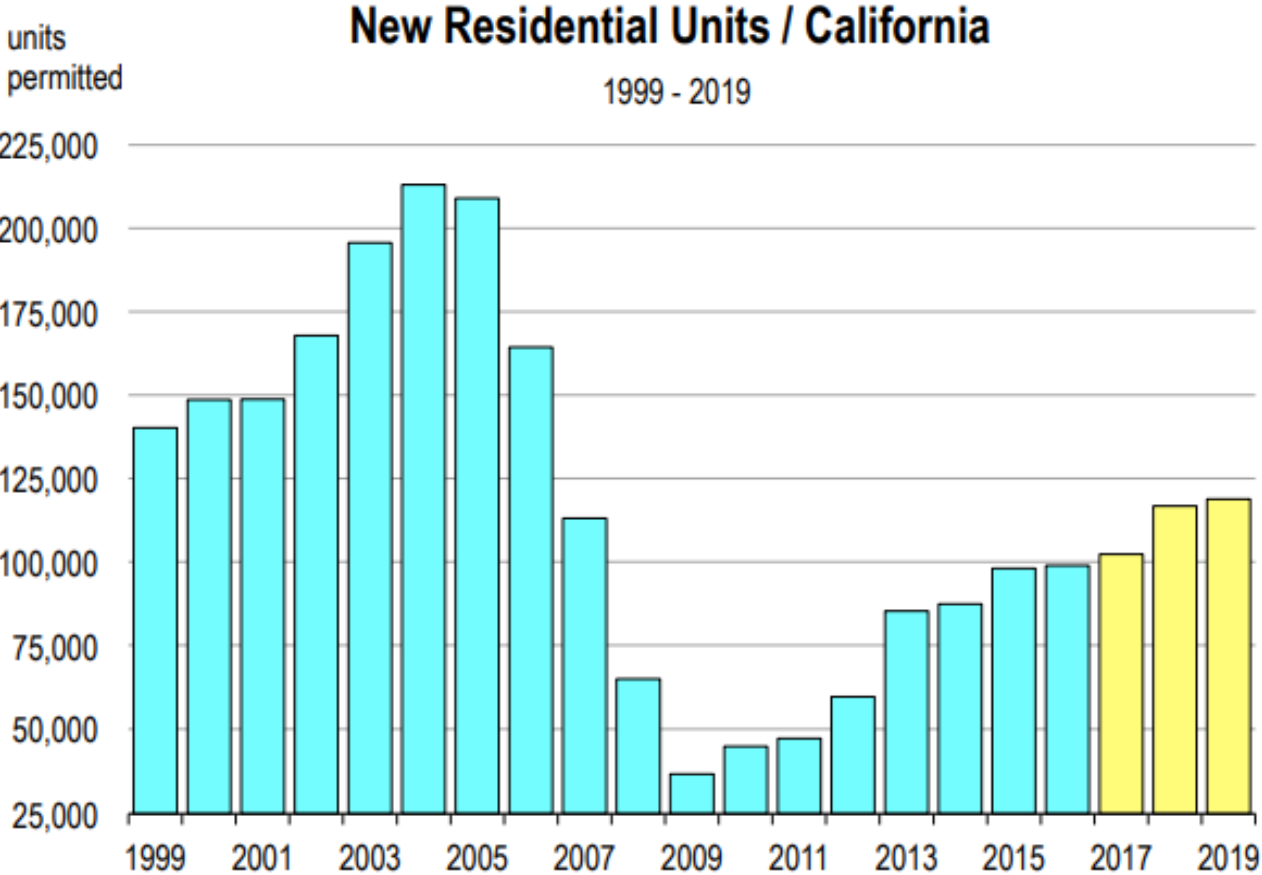
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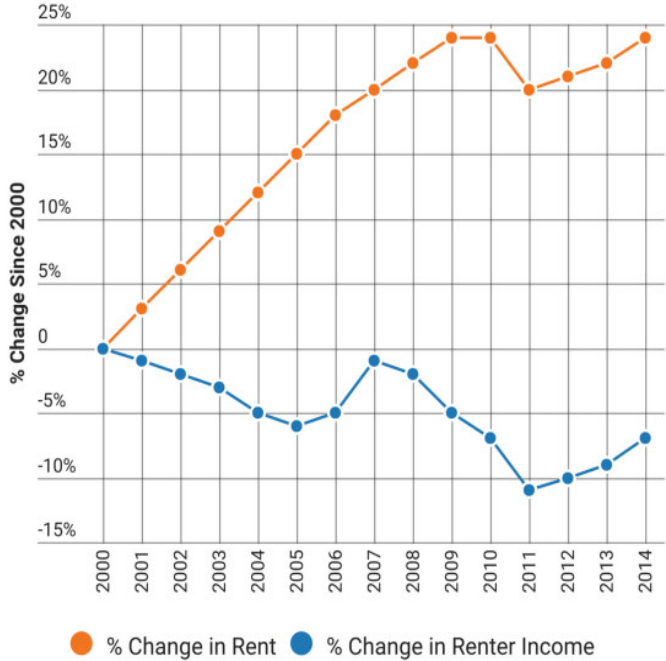
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# THE CALIFORNIA HOUSING CRISIS



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## Rents vs. renter income



Source: California Department of Housing and Community Development, California Housing Partnership. All figures in 2000 dollars.



# WHAT IS THE CAUSE????

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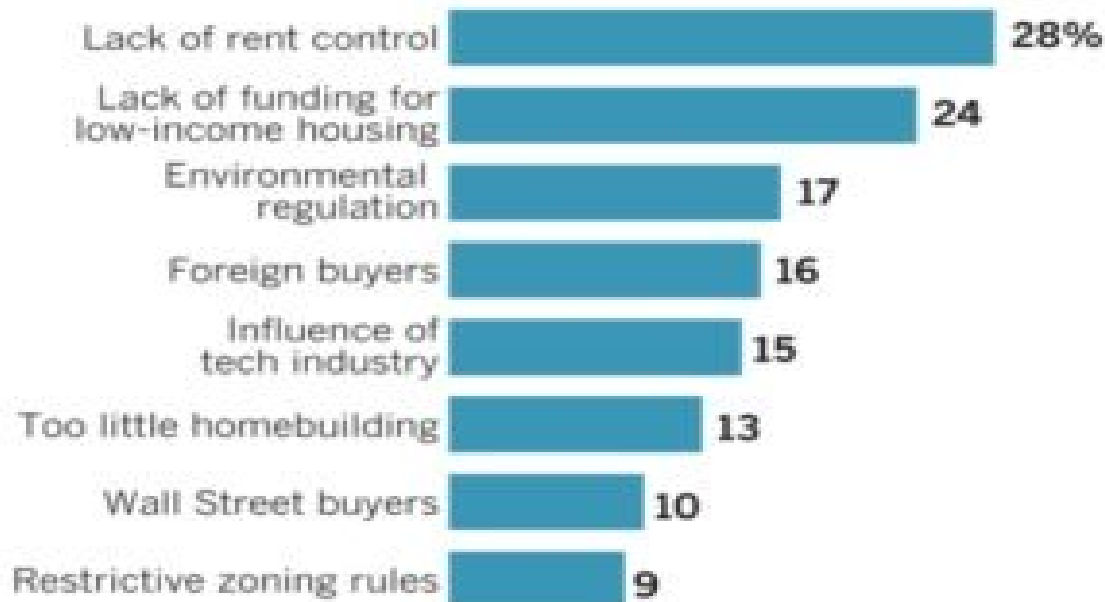


# WHAT DOES THE PUBLIC THINK?

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## Why is California housing unaffordable?

The lack of rent control and too little funding for low-income housing are the top reasons, according to those surveyed.



Source: USC Dornsife, L.A. Times poll. Percentages do not add up to 100% due to multiple responses. Margin of error for single voters is plus or minus 3 percentage points. (Kyle Finn / Los Angeles Times.)

# WHAT DO THE 'EXPERTS' THINK?

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## □ McKinsey Report:

- ▣ *“Shortening the land use approval process...could save Californians \$1.4B a year.*

## □ Bay Area Council Report:

- ▣ *Governor’s streamline proposal would make housing affordable to 15,763 households in San Francisco*

## □ 2017 Governor’s Budget Message:

- ▣ *“Local decisions drive per-unit costs”*

# THE LEGISLATURE'S CONCLUSION

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“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.”

# THE RESULT: MORE STATE CONTROL OVER LOCAL LAND USE

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- ***Zone for More Housing at Higher Densities***
- ***Allow More Housing in Single-Family Zones***
- ***Decisions Limited to Compliance with Objective Standards***
- ***More Ministerial Approvals***
  - ▣ CEQA workaround



# 1. ZONE FOR MORE HOUSING AT HIGHER DENSITIES

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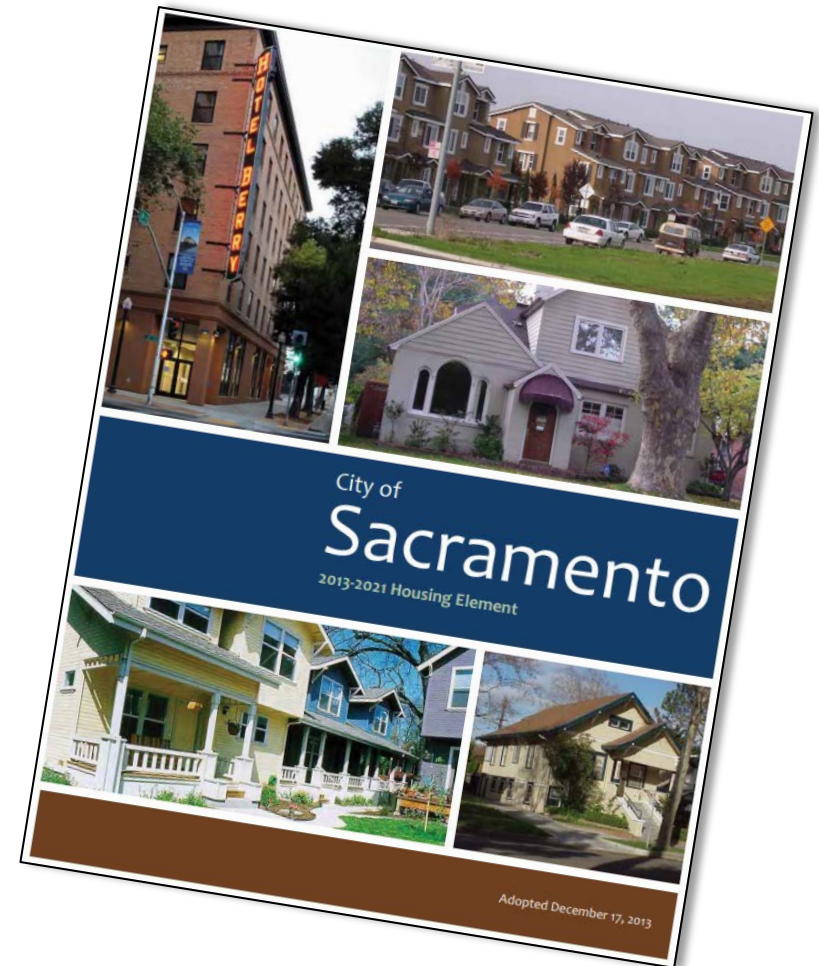
## HOUSING ELEMENTS (December 2022)

- **RHNA will at least double**
- Harder to identify acceptable sites
- “Affirmatively Furthering Fair Housing”

# THE KEY HOUSING ELEMENT CONCEPT

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- Cities and counties must show adequate land zoned for housing to accommodate Regional Housing Need Allocation (RHNA)



# WHAT IS RHNA?

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- **Regional Housing Needs Assessment (RHNA)**
  - The number of units needed to meet anticipated household growth, at various income levels
  - Each city and county receives a “RHNA allocation”

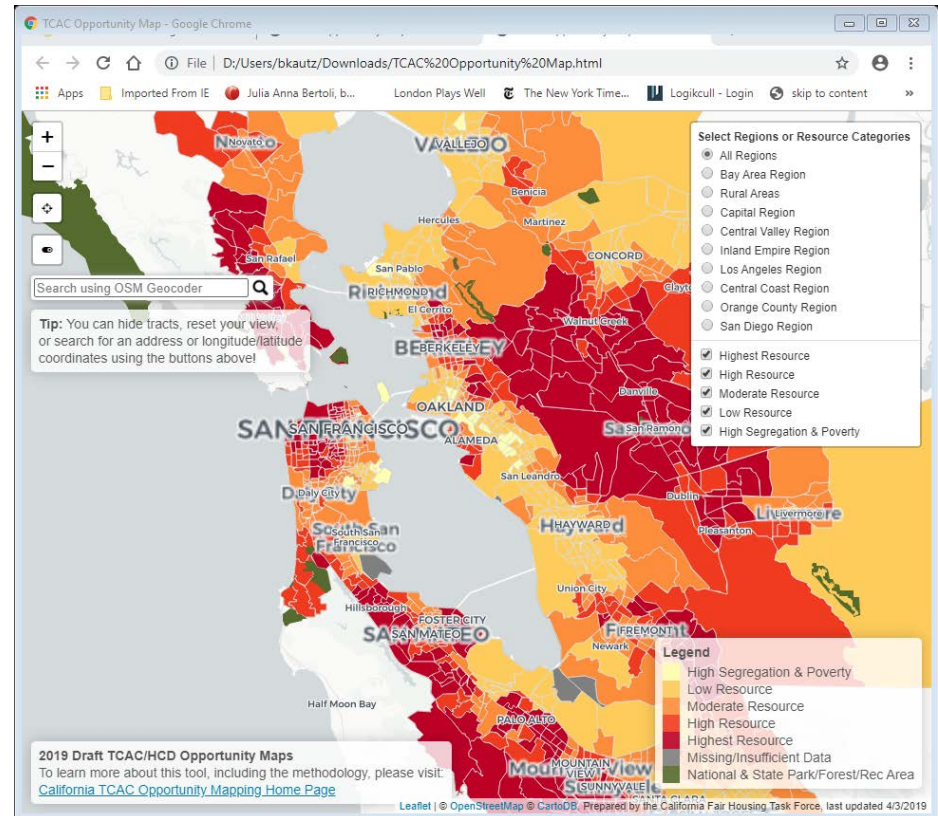
## Model City

Lower Income (Very Low and Low)	Moderate Income	Above Moderate Income	TOTAL RHNA
400 units	200 units	400 units	1,000 units

# AFFH OBLIGATION

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- RHNA distribution and each local housing element must affirmatively further fair housing
- Encourage affordable housing in areas of opportunity
- Decrease segregation



# SITE INVENTORY

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- Must designate specific sites that can “accommodate” the RHNA at each income level during the planning period (65583.2)
- Sites “accommodating” lower income housing must be at “default densities” of 20 – 30 du/A in metro areas

APN	Zone	DU/A	Acres	Units	Use	Income Category
041-0042-002	R-3	20-30 du/ac	2.0	40	Vacant	Lower
037-0400-027	R-2	10-20 du/ac	0.75	7	Duplex	Moderate
038-0100-040	R-1	5-10 du/ac	4.5	22	Vacant	Above Moderate
039-1100-039	CMU	20 du/ac	1.5	25	Parking	Moderate

# MUCH HARDER TO FIND ACCEPTABLE LOWER INCOME SITES

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- **Rules Favor Vacant Sites. If More Than 50% Non-Vacant:**
  - ▣ Existing Use Presumed to Impede Development
- **Can't Use Sites Smaller than 0.5A or Larger than 10A Without Substantial Evidence**
- **More Scrutiny on Site Capacity**

# THIS IS NON-VACANT



# THIS IS NON-VACANT

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# 2. MORE HOUSING IN SINGLE-FAMILY ZONES

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## ACCESSORY DWELLING UNITS (ADUs)



# 3 & 4. OBJECTIVE STANDARDS AND MINISTERIAL APPROVALS

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For projects that do not require legislative approvals (general plan, specific plan, zoning changes)

- *Housing Accountability Act*
- *'By Right' Zoning*
- *SB 35*

# HOUSING ACCOUNTABILITY ACT

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## Eligible Projects

- Affects **all** residential projects and mixed-use projects 2/3 residences
- Stricter standards for affordable projects
- G.C. Sec. 65589.5
- Coastal Act applies

## Characteristics

- **Only objective standards** may be used to deny or reduce the density of projects [except in rare cases]
- No limits on required discretionary approvals
- **CEQA applies**

# IF PROJECT COMPLIES WITH OBJECTIVE STANDARDS

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- If housing development project complies with “**objective**” general plan, zoning, & subdivision standards, the County can only **reduce density** or **deny** if it finds:
  - ▣ A specific adverse impact to public health & safety;  
AND
  - ▣ The impact can’t be mitigated in any other way.
  
- Also must make CEQA findings under HAA

# WHAT IS AN OBJECTIVE STANDARD?

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- “Standards that involve **no personal or subjective judgment** by a public official and are **uniformly verifiable** by reference to an external and uniform benchmark or criterion available and **knowable** by both the development applicant and the public official **prior to submittal.**”
- Examples: Height, setbacks, lot coverage, % open space, density, FAR, parking, etc.

# CASES: NOT OBJECTIVE STANDARDS



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# CASES: NOT OBJECTIVE STANDARDS



# NOT OBJECTIVE STANDARDS

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Standards found not to be “objective:”

- “Address unmet need for senior housing.”
- “Special care shall be taken to avoid obstructing views to the surrounding hills.”
- “Produce high quality authentic design.”
- “Reflect look and feel of the community.”

*Honchariw*: SMA finding that “the site is not physically suitable for the proposed development.”



# OBJECTIVE STANDARDS EXAMPLES

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- ❑ Controlled entrances to parking facilities shall be located a minimum of 18 feet from the back of sidewalk.
- ❑ Structured parking shall not be visible from the street. The public-facing elevations of parking structures shall be lined with residential or commercial uses on all levels.
- ❑ For each personal outdoor space provided, a minimum dimension of 5 feet is required in any one direction.
- ❑ Mirrored glass is prohibited.

Result: **predictability** favored over **flexibility**

# BY-RIGHT ZONING

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## Eligible Projects

- Supportive housing (G.C. 65650 *et seq.*) and navigation centers
- Rezoned or reused Housing Element sites with 20 percent lower income (G.C. 65583.2)
- Coastal Act applies

## Characteristics

- **Only objective standards** may be used to deny or reduce the density of projects
- **Only design review** [unless a subdivision]
- **NO CEQA** [unless a subdivision]

# BY-RIGHT ZONING

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2007-2014 Housing Element  
created R-4-S and AHO

CEQA: Non-discretionary/ministerial  
processes are exempt

Specific development regulations  
and design standards

Multi-family units are not subject to  
discretionary review

Planning Commission advisory  
design review

Community Development Director  
determines final compliance

Not appealable to City Council

# SB 35

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## Eligible Projects

- Residential or mixed-use projects in urban areas with 50 percent lower income
- Strict labor requirements
- No housing last 10 years
- Not in coastal zone

## Characteristics

- **Only objective standards** may be used to review projects
- **NO discretionary approvals**
- **NO CEQA**
- G.C. 65913.4

# PREDICTIONS FOR THE FUTURE

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- ***Zone for More Housing at Higher Densities***
  - ▣ SB 50: higher density zoning near transit
  - ▣ 'No Net Loss' and others
  - ▣ Continued housing element pressures
- ***Allow More Housing in Single-Family Zones***
  - ▣ SB 50 and others: 4-plexes in single-family areas

# PREDICTIONS FOR THE FUTURE

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- ***More Ministerial Approvals***
  - ▣ Expanded SB 35 eligibility
- ***Decisions Limited to Compliance with Objective Standards***
  - ▣ ***Development and design standards need to be objective*** to maintain control over the design and character of projects
- ***This Year: Attack on Impact Fees***

# PREDICTIONS FOR THE FUTURE

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- BUT:
- Will all of this be stopped by a VOTER REVOLT?



# QUESTIONS FOR THE FUTURE

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- *Will the Legislature provide more CEQA exemptions?*
- *Will the Legislature/Governor bring back RDA-lite for housing?*
- *Can the tax structure ever be redone to incentivize housing?*
- *Will there be federal and state funding for infrastructure and schools?*



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