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Three New California Laws to Facilitate Housing Production

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The California Legislature and Governor approved three key housing bills in 2021 to facilitate housing production in California. SB 8 (Senator Skinner) extends and expands the Housing Crisis Act of 2019 (SB 330). SB 9 (Senator Atkins) allows for the approval of duplexes and two-lot subdivisions on qualifying properties without environmental review under the California Environmental Quality Act (CEQA). SB 10 (Senator Wiener) allows cities and counties to up-zone qualifying properties in an urban infill or transit-rich area for up to 14 dwelling units (including accessory dwelling units) without CEQA review.

Senate Bill 8: Extension of the Housing Crisis Act (Senate Bill 330) Effective January 1, 2022, the Housing Crisis Act of 2019, more commonly known as SB 330, which, under existing law, would have expired on January 1, 2025, is now extended until January 1, 2030, with the passage of SB 8. SB 8 also clarifies that the protections under SB 330, summarized below, apply to ministerial projects, projects proposing a single dwelling unit, and density bonus projects.

The SB 8 extension is critical because SB 330 made several important amendments to the long-standing Housing Accountability Act (HAA) and created procedural and substantive protections for qualifying “housing development projects” with at least twothirds of their square footage dedicated to residential use. Since SB 330 became effective on January 1, 2020, we are increasingly seeing SB 330/SB 8 applications filed across the state. With each application, we are learning something new about the many benefits developers can gain from this key legislation, as well as the different ways in which local jurisdictions are applying it, and more recently, the ways in which courts also are applying and upholding the law. As it is a developing field, we wanted to take this opportunity to remind readers of some of the key features of SB 330/SB 8. The now-extended SB 330 protections include, but are not limited to, statutory vested rights, tightened local approval procedures, and restrictions on the adoption of new regulations that would impede new housing development. More specifically:

- Subject to limited exceptions, SB 330 provides that a qualifying housing development project is only subject to the ordinances, policies, and standards adopted and in effect when a

"preliminary application" is submitted, which occurs at the outset of the entitlements process. Development impact fees, charges, or other monetary exactions are also vested at that same time, and the only changes allowed relate to increases resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.

- In addition to creating new timing requirements under the Permit Streamlining Act, SB 330 provides that no more than five public hearings, including continued hearings and appeals, may be held on a project after an application for a qualified housing development project is deemed complete.

- Subject to limited exceptions, SB 330 provides that any determination as to whether a project site is historic must be made at the time the application for the qualifying housing development project is deemed complete, as defined therein.

- Local agencies cannot impose or enforce non-objective design standards established on or after January 1, 2020. Recent case law clarifies the meaning of "objective" design standards, albeit in the context of the HAA, by explaining that a design standard is not "objective" if reasonable people could reach different conclusions as to how to comply with the design standard. See our recent legal alert for more information about that case: California Renters Legal Advocacy and Education Fund (CARLA) v. City of San Mateo (Case Nos. A159320, A159658, September 10, 2021).

- With limited exceptions, local agencies, including the electorate pursuant to its local initiative or referendum power, cannot impose growth caps or moratoriums on new housing development.

- Local agencies cannot reduce permitted housing density to below that allowed under the applicable specific or general plan in effect on January 1, 2018.

Senate Bill 9: Ministerial Duplex and Lot Split Approval

- SB 9 aims to incrementally expand the supply of small-scale housing developments by providing for ministerial approval (i.e., no mandatory public hearing, no CEQA review) of duplexes and lot splits (up to a maximum of two parcels and four units) if the following criteria are met:

- The parcel must be zoned single-family residential;

- The parcel must be located in an urbanized area (population of 50,000 people or more), as designated by the U.S. Census Bureau;

- The project must not result in demolition or alteration of affordable housing (including rent-controlled units) or recently rented units;

- If the parcel is located in a sensitive area (i.e., the coastal zone, farmland, wetland, or hazard area), the project must meet any related restrictions regarding demolition and siting;

- The existing building(s) on the parcel must not have been subject to the Ellis Act (withdrawal

of residential units from the rental market) within the past 15 years;

- The project must not demolish more than 25 percent of the exterior of any existing building(s) on the parcel;
- The parcel must not be located within a historic district, as defined in SB 9, including local landmarks and historic districts; and
- The parcel must not have been previously subdivided under SB 9.

Additionally, qualifying lot splits can only result in two parcels that are nearly equal (at most a 60/40 split), both resulting parcels must be at least 1,200 square feet, any rentals must be for more than 30 days, and the applicant must sign an affidavit that it will use one of the units as a primary residence for at least three years (unless the applicant is a community land trust or qualified nonprofit).

Senate Bill 10: Streamlined Up-Zoning

SB 10 allows, but does not require, local jurisdictions (cities and counties) to adopt ordinances through January 1, 2029, up-zoning qualifying parcels for up to 14 dwelling units (up to 10 standard dwelling units, plus up to two accessory dwelling units and two junior accessory dwelling units) without CEQA review for either the zoning ordinance or a qualifying project, the latter of which may thereafter be approved ministerially. More specifically:

- The parcel(s) must be an “urban infill” site, as defined in SB 10 (i.e., surrounded by urban uses on at least 75 percent of the parcel perimeter and meeting other specified requirements) and/or in a “transit-rich” area (i.e., located within one-half mile of a major transit stop and/or on a “high quality” bus corridor, as defined therein);
- The parcel(s) must be zoned for residential or mixed-use development, in which case at least two-thirds of the project’s square footage must be allocated for residential use;
- The parcel(s) must not be located in a high or very high fire severity zone, unless certain applicable fire hazard mitigation measures have been adopted;
- The parcel(s) must not be publicly-owned land designated as open space or for park and recreational purposes, if that designation was approved by a local initiative;
- The zoning ordinance must, among other specified requirements, establish a maximum building height for the applicable parcel(s); and
- The zoning ordinance must be adopted by a two-thirds majority of the legislative body if it would override any voter-imposed restrictive land use initiative. On this last point, the AIDS Healthcare Foundation has filed suit in Los Angeles seeking to invalidate SB 10 on the basis that a local government cannot constitutionally amend or override local land use ordinances previously enacted by local voters without a vote of the people. The litigation is currently scheduled to be heard in Los Angeles Superior Court on May 12, 2022.

Additionally, the local general plan, specific plan, or other local and use regulation adopted to be

consistent with the zoning ordinance may be amended without CEQA review and a zoning ordinance adopted pursuant to SB 10 may have an operative date that extends beyond the legislation's January 1, 2029 deadline. It should also be noted that any subsequently adopted zoning ordinance that would up-zone the parcel(s) beyond the SB 10 maximum would not be exempt from CEQA under SB 10 and must assume the pre-SB 10 upzoning as the "existing condition" for CEQA analysis purposes.

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