

MINUTES  
CITY COUNCIL & PLANNING COMMISSION  
BANNING, CALIFORNIA

02/27/18  
SPECIAL JOINT MEETING

A special joint meeting of the Banning City Council, Planning Commission, and Parks & Recreation Commission was called to order by Mayor Moyer on February 27, 2018, at 3:00 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Council Member Andrade  
Council Member Franklin  
Council Member Peterson  
Council Member Welch  
Mayor Moyer

PLANNING COMMISSIONERS PRESENT: Commissioner Ellis  
Commissioner Krick  
Commissioner Price  
Commissioner Schuler (arrived at 3:04 p.m.)  
Chairman Shaw

OTHERS PRESENT: Rochelle Clayton, Deputy City Manager  
Kevin Ennis, City Attorney  
Patty Nevins, Community Development Director  
Art Vela, Public Works Director  
Ted Shove, Economic Development Manager  
Sonia Pierce, Senior Planner  
Sandra Calderon, Community Development Project Coordinator  
Sonja De La Fuente, Deputy City Clerk

PUBLIC COMMENTS

None

WORKSHOP

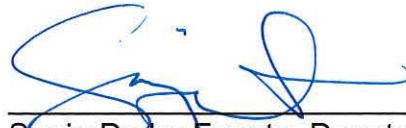
City Attorney Ennis introduced Diana Varat, Esq. with Richards, Watson & Gershon. She shared a PowerPoint presentation (Exhibit "A") regarding 2017 legislation related to housing.

There were some questions and answers related to the topics of discussion as outlined on the agenda.

ADJOURNMENT

By common consent the meeting adjourned at 4:09 p.m.

Minutes Prepared by:



Sonja De La Fuente, Deputy City Clerk

**The entire discussion of this meeting can be found by visiting the following website link: <https://banninglive.viebit.com/player.php?hash=eI7gAiiURDgn> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.**

# EXHIBIT A



## Goals of the 2017 Housing Package

- To increase the supply and affordability of housing in California
- To strengthen planning for, and production of, housing for people at all income levels, especially lower income households
- To create tools for local agencies to plan and encourage the production of more dwelling units, and more affordable housing
- To reduce barriers to the development of new housing
- To strengthen enforcement mechanisms to ensure local agencies plan and approve housing to reduce the State's housing shortage

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## Many, Many Laws ...

- Housing Element Law, Gov't Code § 65583
- No Net Loss, Gov't Code § 65863
- Housing Accountability Act, Gov't Code § 65589.5
- Housing Element Annual Reports, Gov't Code § 65400
- Streamlined Housing Approval ("SB 35"), Gov't Code § 65913.4
- Inclusionary Housing, Gov't Code § 65850
- Density Bonus Law, Gov't Code § 65915
- Accessory Dwelling Units, Gov't Code § 65852.2
- Workforce Housing Opportunity Zones, Gov't Code §§ 65620 to 65625
- Housing Sustainability Districts, Gov't Code §§ 66200 to 66210



## Planning for Housing

- Each city must adopt a General Plan, which must include a Housing Element
  - Analyze local demographic trends and housing needs
  - Analyze governmental and nongovernmental constraints that prevent the development of housing
  - Prepare a "Site Inventory" that identifies parcels in the City where housing can be developed to meet RHNA allocation
    - RHNA Allocation = projection of the number of units needed for the City to meet its projected household growth, with a total RHNA number and specific numbers for various income levels



## Housing Element – Site Inventory

- List of properties showing the number of units that can be accommodated on each site
  - The Site Inventory must demonstrate that the zoning (i.e., the allowable density) can accommodate the number of units needed at various income levels
- Identify sites where the maximum allowed density is "deemed appropriate" for lower income households – known as the "default density"
  - "Default density" for Banning = 30 dwelling units / acre

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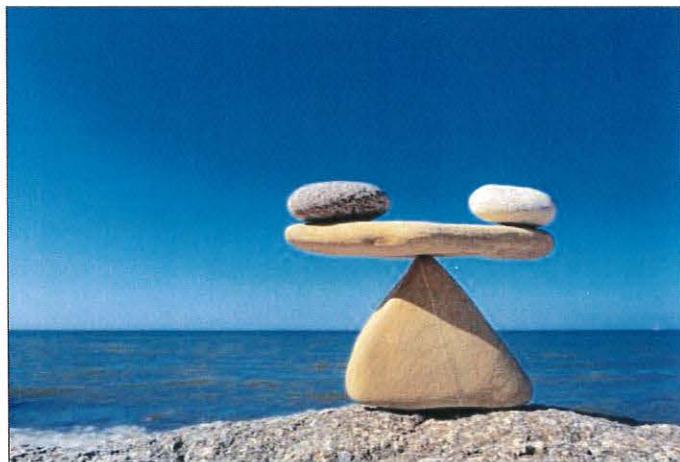
## Housing Element Law

- Previously, the State required cities / counties to zone at densities that would allow for the development of housing to meet RHNA
- With 2017 Housing Package, the State seeks to address failure to build enough housing – both affordable and market-rate
- Now, the State wants cities / counties to demonstrate that they're actually producing housing to meet RHNA at all income levels

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## No Net Loss (SB 166)



## No Net Loss

- Cities must maintain, at all times during the planning period, adequate sites to meet their unmet share of the RHNA
- Cities may not take any action that would allow or cause the sites identified in its Site Inventory to be insufficient to meet its remaining unmet share of the City's RHNA **for lower and moderate-income households**
  - Government Code § 65863



## No Net Loss – When to be Concerned

- Downzoning – i.e., reducing allowed density – for any site in the Site Inventory
- Approving a specific project on a site included in the Site Inventory, either:
  - With fewer units than were indicated in the Site Inventory, or
  - With fewer units at the income level than were indicated in the Site Inventory, or
  - At a “lower residential density” (as defined by statute)



## Maintaining Unit Capacity

- A city may reduce the density, or approve the development of a parcel at a “lower residential density,” only if it makes the following findings:
  - Reduction in density is consistent with General Plan and Housing Element; and
  - Remaining sites in the Site Inventory are adequate to meet the City’s RHNA share at all income levels
    - Must quantify the unmet RHNA need and the remaining capacity of sites identified in the Site Inventory to accommodate the City’s RHNA at each income level



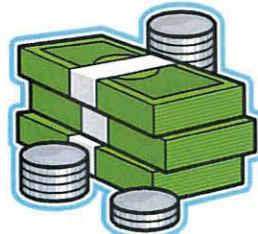
## Duty to "Up-Zone" Other Sites

- If the remaining sites are **not** adequate, the City must identify "additional, adequate, and available sites" so there is no net loss in unit capacity
  - Rezoning must occur **within 180 days** of the initial project approval
- City **cannot** disapprove a project simply because it would result in the need to up-zone other sites to comply with No Net Loss provisions



## No Net Loss – CEQA Review

- CEQA analysis for the initial project will not consider any subsequent rezoning of other sites that may be necessary to comply with the no net loss requirements
- Subsequent rezoning subject to CEQA as a **separate** project
- The **City** must cover the cost of any rezoning required, including CEQA review process



## Housing Accountability Act (AB 1515)



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## Housing Accountability Act (HAA)

- "The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of the local governments to deny, reduce the density of, or render infeasible housing development projects. This intent has not been fulfilled."
  - Government Code § 65589.5(a)(2)(K)

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## HAA Applicability

- All “housing development projects”:
  - Residential units only; or
  - Mixed use developments, with at least 2/3 of the square footage designated for residential use; or
- Both affordable and market-rate projects
- Transitional housing or supportive housing
- Emergency shelters

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## Basic Standard under the HAA

- If a housing development project complies with “objective” general plan, zoning, and subdivision standards and criteria, including design review standards, ... the City can only lower the density or deny the project if there is “specific, adverse impact” to public health and safety that cannot be mitigated in any other way.
  - Government Code § 65589.5(j)

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## Specific, Adverse Impact

- A significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health and safety standards, policies, or conditions as they existed on the date the application was deemed complete.
  - Very hard standard to meet!



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## Letter of Inconsistency

- **Significant, new** burden on City staff:
  - To analyze the project and **send written documentation** explaining if / how a proposed project does not conform to "objective" general plan, zoning, and subdivision standards / criteria, including design review standards
- Letter must be sent:
  - Within 30 days of project being deemed complete (for projects of  $\leq 150$  units)
  - Within 60 days of project being deemed complete (for projects of  $> 150$  units)

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## Failure to Send Adequate Letter

- If the City does not provide an adequate letter, the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement or other similar provision
  - Result → City can only deny, or approve project at lower density, if the "specific, adverse impact" finding can be made



## HAA – Burden on the City

- City findings are evaluated based on a "preponderance of the evidence," not merely "substantial evidence"
- **Majority** of the evidence in the record must support the City's findings under the HAA



## HAA – Who Can Sue?

- An applicant (developer), an individual who is a potentially eligible resident, and a housing organization
- Includes housing advocacy groups, and trade / industry groups “whose local members are primarily engaged in the construction or management of housing units”
  - Government Code § 65589.5(k)



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## HAA – Penalties

- If the City acted in bad faith, the court shall direct the City to approve the project and award reasonable attorney's fees and costs to the plaintiff
- Failure to comply within 60 days →
  - Minimum \$10,000 fine per dwelling unit
  - Court can multiply by 5 → up to \$50,000 per unit!
  - Money from fines must be put in a local housing trust fund and used within 5 years to finance construction of new affordable housing – otherwise, funds revert to the State



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## Annual Housing Reports

- Each city must submit a report to the Department of Housing & Community Development (HCD), showing progress in meeting local share of RHNA
  - Reporting requirement now applies to charter cities
- Report describes progress towards programs identified in Housing Element
- Report is due to HCD each year on April 1
  - Gov't Code § 65400

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## New Housing Report Requirements

For the prior year, Housing Report must now include:

- The number of housing development applications received
- The number of units included in all development applications
- The number of units approved and disapproved
- List of sites rezoned because the City's share of RHNA could not be accommodated on land identified in the Site Inventory (listed for each income level)
- List of any additional sites that were rezoned pursuant to the No Net Loss provisions

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## New Housing Report Req'ts (Cont.)

- List of, and the number of, net new housing units (both rental and for-sale) that have been issued a "completed-entitlement, a building permit, or a certificate of occupancy" during the relevant housing element cycle, and identifying the income category designated for each unit
- The number of applications submitted for consideration under SB 35, as well as the total number of developments approved, building permits issued, and housing units constructed pursuant to the SB 35 process

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## Increased Enforcement – HCD Review

- HCD shall review any city's action or failure to act that HCD determines to be inconsistent with adopted the Housing Element or State Housing Element Law
- HCD shall notify a city if HCD finds that:
  - The City's housing element or an amendment to its housing element does not substantially comply with State law;
  - The City's action or failure to act is inconsistent with an adopted housing element;
  - The City has taken an action in violation of HAA, No Net Loss provisions, Density Bonus Law, or housing discrimination laws

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## Consequences of HCD Review



- HCD may revoke a finding that the City's housing element "substantially complies" with State law
- HCD may notify the Office of the Attorney General that the City has violated State law

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## How to Produce Housing (and More Affordable Housing)

- Streamlined Housing Approval Process (Gov't Code § 65913.4)
- Density Bonus Ordinance (Gov't Code § 65915)
- Commercial Development Bonus (Gov't Code § 65915.7)
- Inclusionary Housing Ordinance (Gov't Code § 65850 et seq.)
- Accessory Dwelling Units (Gov't Code § 65852.2)
- Workforce Housing Opportunity Zones (Gov't Code § 65620 et seq.)
- Housing Sustainability Districts (Gov't Code § 66200 et seq.)

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## Streamlined Housing Approval (SB 35)



## Developer-Initiated Streamlining (SB 35)

- HCD has identified cities that are subject to SB 35 streamlined housing approval process (and applicable affordability levels)
  - Banning is now subject to SB 35 streamlining
- Creates a streamlined, ministerial approval process for multi-family residential developments that an applicant can request if the project meets certain criteria
- Substantially limits City's ability to impose parking and other requirements on developments applying under SB 35 process
- No CUP or other discretionary review may be imposed
  - Projects are exempt from CEQA review under ministerial exemption



## SB 35 – Eligible Projects

- Multi-family residence containing at least two units
- Residential or Mixed Use (at least 2/3 must be residential)
- Prevailing wage and skilled/trained workforce required for projects exceeding 10 units
- Site must be surrounded by current / former urban land uses
- Limited application to subdivision (condo) projects
- The project must be consistent with the "objective zoning standards and objective design review standards" established before the application is submitted

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## SB 35 – Parking Requirements

- At most, one space per dwelling unit
- No parking required if:
  - Located within ½-mile of public transit;
  - Within an architecturally or historically significant district;
  - Within one block of a car share vehicle; or
  - In areas where street parking permits are required but not offered to the project's occupants



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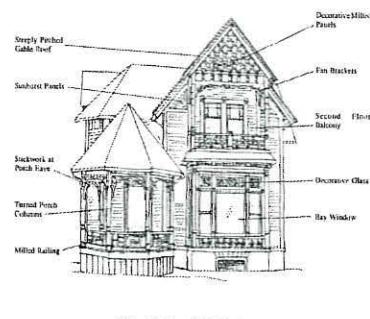
## SB 35 – Affordability Requirements

- HCD Determination (February 2018):
  - For the City of Banning, a developer must dedicate at least 10 % of the proposed units for households making below 80 % of AMI
  - BUT, if the City's inclusionary ordinance has a higher inclusionary requirement, then the City's inclusionary requirement will apply

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## SB 35 – Objective Zoning / Design Review Standards



Stick-style dwelling at 110 E. Chicago Street.

- City may apply "objective" zoning and design review standards
- What is "objective"?
- Applicable objective design standards must be established and published prior to the date of the project's application to be applied to the project

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## SB 35 – Design Standard Review

- Planning Commission or Design Review Committee may review the project's design, but review is limited to assessing whether the project conforms to the "reasonable objective design standards"
- If the City chooses to allow for design review, the review must be completed:
  - within 90 days of a project's submission for approval (for projects containing  $\leq$  150 units), or
  - within 180 days of a project's submission for approval (for projects  $>$  150 units)

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## SB 35 – Limited Review Period

- If an SB 35 application is submitted, the City must review it to determine if the project meets the statutory criteria:
  - Within 60 days for projects of  $\leq$  150 units, or
  - Within 90 days for projects of  $>$  150 units
- If the project does not meet the criteria, the City must provide written explanation within these timeframes – otherwise, the project will be deemed to satisfy the objective planning standards

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## No Streamlining under SB 35 if ...

With limited exceptions, SB 35 projects cannot be located in:

- Coastal zone
- High or very high fire hazard severity zone
- Hazardous waste site
- Earthquake fault zone
- FEMA flood plain
- FEMA floodway
- Protected species habitat
- Protected agricultural, farmland or wetlands

Projects cannot be subject to:

- Mobilehome Residency Law
- RV Park Occupancy Law
- Mobilehome Parks Act
- Special Occupancy Parks Act
- Conservation easement
- Conservation plan

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## Complying with SB 35

- Determine what areas of the City may be subject to SB 35 (given exclusions)
- Review zoning / design review standards to determine whether those standards are "objective" and may be applied to SB 35 project
- Consider adopting or refining objective design review standards for all projects in the City

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## Building Affordable Housing

- Inclusionary Housing
  - Gov't Code § 65850(g)
  - Expressly gives cities authority to apply inclusionary housing requirements to rental housing projects (AB 1505)
- Density Bonus Law
  - Gov't Code § 65915
- Commercial Development Bonus
  - Gov't Code § 65915.7



## Accessory Dwelling Units

- 2017 Legislative Changes (AB 494 / SB 229)
  - City may require a maximum of one parking space per ADU
  - May not prohibit tandem parking unless specific topographical / safety findings
  - Applicable to ADUs on lots with proposed dwellings (not just existing single-family dwellings)



## (Optional) Tools to Develop Housing

### ▪ **Workforce Housing Opportunity Zones (SB 540)**

- City may prepare a Specific Plan (and an EIR) for an area of the City that includes parcels identified on the City's Housing Element Site Inventory
- Minimum densities; affordability requirements; prevailing wages
- Streamlined project approval once the WHOZ is created

### ▪ **Housing Sustainability Districts (AB 73)**

- City may establish HSDs to establish regulations for housing projects in areas located within ½-mile of public transit **or** "highly suitable for a residential or mixed-use" district due to existing infrastructure (or underutilized utilities), transportation access, or location
- Minimum densities; affordability requirements; prevailing wages
- Streamlined project approval once the District is created

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## Financial Incentives

### ▪ **Building Homes and Jobs Act (SB 2)**

- Imposes a \$75 real estate transaction fee
  - In 2018, 50 % of the money will be available for local agencies to update planning and zoning documents (to streamline housing production)
    - Local gov'ts must request funds
  - In 2019, 70 % will go to local planning efforts

### ▪ **Veteran's and Affordable Housing Bond Act (SB 3)**

- November 2018 ballot measure that would establish a \$4-billion fund for housing and veteran's assistance programs

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## Additional Legislation

- **Farmworker Housing (AB 571)**

- Amends requirements for Farmworker Housing Tax Credit to make it easier to develop farmworker housing

- **Preservation Notice Law (AB 1521)**

- Amends rules related to the preservation of assisted (subsidized) housing developments
  - Requires owner to give tenants 3-year notice when affordability covenants will be expiring
  - Requires owners to accept a qualified offer to purchase from an entity that would continue to rent to low-income residents
  - Amends requirements for entities seeking to purchase assisted housing developments

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## Housing Strategies

- "Up-zone" to allow higher densities to ensure the City maintains available unit capacity (to comply with No Net Loss provisions)
- Adopt an inclusionary housing ordinance to ensure the development of at least some lower-income units
- Monitor "natural" affordability of market-rate units (especially ADUs)
- Consider reviewing City codes and adopting objective design review standards

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## Anticipated 2018 Housing Legislation

- Transit-Oriented Housing?
  - Senate Bill 827
- By-Right Supportive Housing?
- More Streamlined Housing Procedures?
- Accessory Dwelling Units?
- Density Bonus?
- Rent Control and Eviction Restrictions?

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**QUESTIONS?**

**THANK YOU!**

February 27, 2018

Kevin Ennis, City Attorney  
Diana Varat, Esq.