



METROPOLITAN
TRANSPORTATION
COMMISSION

Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105
415.778.6700



Association of
Bay Area Governments

Bay Area Metro Center
375 Beale Street, Suite 700
San Francisco, CA 94105
415.820.7900

Summary of Significant Housing Bills Passed by Legislature in 2017

On September 15, 2017, the California Legislature sent to the Governor's desk a suite of housing bills intended to begin addressing the state's chronic housing shortage. The bills include new ongoing revenue, a one-time jolt of new money and various proposals designed to expedite new housing construction. The Governor has until October 15th to sign or veto these bills, which are summarized below.

SB 2 (Atkins): The Building Homes and Jobs Act

SB 2 would create a permanent revenue stream for affordable housing funded through a new \$75 document recording fee on certain real estate transactions, excluding home sales. The fee is capped at \$225 per transaction. It is estimated to generate \$200 million - \$300 million annually on a statewide basis to be appropriated for housing-related purposes.

In the first year, 50 percent of the funds would be reserved for local agencies to assist in planning to accelerate housing production. The Department of Housing and Community Development (HCD) would be required to allocate the other 50 percent to assist persons experiencing or at risk of homelessness.

Beginning in 2019, 70 percent of fee proceeds would be available to local governments, distributed primarily via formula to cities and counties. Though not identical, the specified formulas are related to the federal Community Development Block Grant (CDBG) distributions. Staff anticipates Bay Area jurisdictions would receive approximately 20 percent of these formula dollars, based on fiscal year 2016 CDBG allocation data from the U.S. Department of Housing and Urban Development. HCD would also allocate a portion of the proceeds to small cities and counties. Funds could support a range of activities, including preservation and creation of low- to moderate-income housing, combatting homelessness, and homeownership support. In order to receive allocations, local governments would be required to develop an expenditure plan and comply with other applicable HCD reporting requirements. HCD would administer the remaining 30 percent of revenues to fund farmworker and mixed-income housing and fiscal incentives or matching funds for local agencies to support more affordable housing. Additionally, 20 percent of total program funds must be expended for affordable owner-occupied workforce housing.

Of note, a related bill, AB 166 (Salas), would exempt low-income homeowners from paying the SB 2 document recording fee, if they meet certain "hardship" requirements. The bill was under consideration as part of the larger housing package, but did not pass the Assembly by the September 15th deadline. According to the author's office, an agreement was reached with legislative leadership and the Governor's office to take up the bill early next year.

ABAG has no position on SB 2. MTC has a support position on SB 2.

SB 3 (Beall): The Affordable Housing Bond Act of 2018

SB 3 would authorize a \$4 billion general obligation bond for housing, subject to voter approval. Similar to Proposition 46 (2002) and Proposition 1C (2006), bond proceeds would fund a range of affordable housing preservation and construction activities, including park and infrastructure investments to facilitate transit-oriented development and infill development. It would also subsidize home loans for California veterans. Funds would be allocated to existing programs as follows:

ABAG/MTC Summary of Significant Housing Bills Passed by Legislature in 2017

Page 2

- Multifamily Housing Program (\$1.5 billion)
- Cal-Vet Home Loan Program (\$1 billion)
- Local Housing Trust Fund Matching Grant Program (\$300 million)
- Infill Incentive Grant Program (\$300 million)
- Joe Serna, Jr. Farmworker Housing Grant Fund (\$300 million)
- CalHome Program (\$300 million)
- Transit-Oriented Development Implementation Program (\$150 million)
- Home Purchase Assistance Program (\$150 million)

The Local Housing Trust Fund Matching Grant (LHTF), Infill Incentive Grant (IIG) and Transit-Oriented Development Implementation (TOD Housing) programs were established more than a decade ago and funded by Proposition 1C bond proceeds. HCD administers these programs and awards funds on a competitive basis. The LHTF Program provides matching grants (dollar for dollar) to local housing trust funds that are funded on an ongoing basis from private contributions or public sources that are not otherwise restricted in use for housing programs. The IIG Program provides gap funding to developers and/or local governments for infrastructure improvements necessary to facilitate new infill housing development. Project examples include development or rehabilitation of parks or open space; water, sewer or other utility service improvements; and transportation infrastructure improvements required as a condition of, or approved in connection with, certain infill housing developments. Similarly, the TOD Housing Program provides grants to local governments, as well as other eligible applicants, for infrastructure improvements necessary for the development of specified housing projects. The program may also directly fund transit-oriented affordable housing development and homeownership assistance.

The Bay Area grant share ranged between 37 percent to 53 percent of total program funding in each of the program's most recent award years (2014 for the LHTF and IGG Programs and 2015 for the TOD Housing Program).

ABAG and MTC have a "support" position on SB 3.

SB 35 (Wiener): Housing for a Growing California

SB 35 would expedite approval of qualified zoning-compliant projects in a local jurisdiction that falls short of its Regional Housing Needs Allocation (RHNA) target until their RHNA goals are met. Specifically, the bill would allow a qualified multifamily housing development project to be approved on the basis of a ministerial approval, rather than a conditional use permit if it satisfies a detailed list of objective planning standards, as described below. The bill would also ease parking minimums for eligible developments and make updates to HCD's annual housing reporting requirements for cities and counties, which would bring the rest of the state more in line with Bay Area reporting practices.

Applicability of Streamlining Provisions and RHNA

Jurisdictions that are on track to meet RHNA housing goals within a given income category would continue to retain full control of project approvals for projects in that category, in contrast to Governor Brown's 2016 "by-right" proposal, which would have applied regardless of how a jurisdiction was performing with respect to its RHNA goals. As a region, the Bay Area permitted 57 percent of the total units needed to meet housing targets for the 2007-2014 RHNA cycle, but only 26 percent of the needed low-income units. Notably, there was significant variation within local jurisdictions and between income categories with countywide averages ranging from 9 percent in the "very low-income" category to 109 percent in the "above moderate-income" category.

Project Eligibility – Objective Planning Standards

In order to qualify for a ministerial permit review, a project would be required to meet a long list of conditions and objective planning standards. The project must be located in one of the following:

- 1) A jurisdiction HCD has deemed eligible because the locality issued less building permits than the number required to meet its RNHA targets for a four-year reporting period; or
- 2) A jurisdiction that has not submitted the annual housing element report for two consecutive years before the development submitted an application for streamlined ministerial approval.

In addition, the project must be a multifamily development, the developer of the project must certify that a prevailing wage requirement is included in all contracts for the performance of the work, and the project must be:

- 1) located on a parcel that is zoned for residential or residential mixed-use development, with at least two-thirds of the square footage of the development designated for residential use;
- 2) located in an urban area or urban cluster on a site in which at least 75 percent of the perimeter adjoins parcels that are developed with urban uses;
- 3) located outside all of the 11 environmentally-sensitive areas listed in the bill, including the California coastal zone, wetlands, prime farmland, protected lands, and designated hazard areas;
- 4) a development that does not require the demolition of a national, state or local historic structure, affordable housing, or rental units; and
- 5) consistent with objective zoning standards and objective design review standards in effect at the time of the application's submittal.

Developments that meet the above requirements and are in jurisdictions not meeting RHNA goals for low-income housing would be required to make at least 50 percent of new units affordable for households earning below 80 percent area median income (AMI). Projects built in jurisdictions not meeting market-rate RNHA development goals would be required to, at a minimum, dedicate 10 percent of the total number of units to housing affordable to households earning below 80 percent AMI. To address concerns by affordable housing advocates that the bill could weaken inclusionary zoning or density bonus requirements in effect today, the bill conditions eligibility for streamlining on minimum affordability standards for housing developments in localities that do not already have such policies, but would not preempt stronger local policies in any jurisdiction that has adopted them.

ABAG and MTC have no position on SB 35.

SB 166 (Skinner): Residential density and affordability

SB 166 would modify the No Net Loss Zoning law to require a local government to ensure that its housing element inventory or housing element program make sites available that can accommodate, at all times through the planning period, its unmet regional housing need at all income levels, with certain exceptions.

ABAG and MTC have no position on SB 166.

SB 167 (Skinner)/AB 678 (Bocanegra): Housing Accountability Act

SB 167 and AB 678 are identical bills which would each amend the Housing Accountability Act (HAA) by increasing the legal standard of proof required for a local agency to justify a denial of an affordable housing development project from "substantial evidence" to "preponderance of evidence" and imposing a minimum \$10,000 per unit fine if the court finds a violation of the HAA, among other changes.

ABAG has an "oppose" position on SB 167. MTC has no position on SB 167.

SB 540 (Roth): Workforce Opportunity Zone

SB 540 (Roth) would authorize local governments to establish “workforce housing opportunity zones” by adopting a specific plan for the area covered by the zone. Environmental review and public engagement would occur up front during the establishment of the workforce housing opportunity zone. After specific plan adoption, a local agency would be prohibited from denying a development proposal meeting certain criteria within the area, including affordability and prevailing wage requirements. The bill would also authorize the state to provide financial assistance, upon appropriation by the Legislature, to local governments to support the creation of specific plans. SB 540 is sponsored by the League of California Cities.

ABAG and MTC have no position on SB 540.

AB 72 (Santiago)

AB 72 would provide HCD new authority to review any action by a city, county, or city and county that it determines is inconsistent with an adopted housing element, allows HCD to find a housing element out of substantial compliance, and permits HCD to notify the Attorney General of violations of the law.

ABAG and MTC have no position on AB 72.

AB 73 (Chiu): Housing Sustainability District

AB 73 would provide incentive funding to local governments that voluntarily establish "housing sustainability districts" (HSD) in which housing projects are subject to a ministerial, or “by-right” approval process and subject to prevailing wage requirements. Specifically, the bill would authorize a city or county to adopt an ordinance establishing an HSD, upon approval from HCD and after conducting upfront zoning and environmental review. The HSD must meet minimum density, affordability, and relocation assistance requirements and be located in an area well-suited for residential or mixed-use development. Incentive payments would be issued in two stages: first, following the creation of a new district and second, once the city permits new housing units.

ABAG and MTC have no position on AB 73.

AB 571 (E. Garcia): Farmworker housing tax credits

AB 571 would make changes to the farmworker housing set-aside from the state low-income housing tax credit (LIHTC) program, the state’s complement to the federal LIHTC program. Since 1996, \$500,000 in LIHTC allocations have been reserved for farmworker housing. According to the Assembly Housing and Community Development Committee bill analysis, the farmworker housing set-aside has been underutilized in recent years; there is currently \$5.5 million available, yet since 2008 only one applicant has successfully sought the credit. AB 571 would make several changes intended to make projects more feasible and increase the supply of farmworker housing, including increased flexibility related to occupancy requirements and expanded eligibility for state credits.

ABAG and MTC have no position on AB 571.

AB 879 (Grayson): Planning and zoning – housing element

AB 879 would make changes to housing element law to require a city, in its analysis of governmental constraints, to include an analysis of any currently-authorized, locally-adopted ordinances that directly impact the cost and supply of residential development. Additionally, the bill would provide HCD new authority to evaluate the reasonableness of local fees charged to new developments. The League of California Cities is the bill sponsor.

ABAG and MTC have no position on AB 879.

AB 1397 (Low): Inventory of land for residential development

AB 1397 would make a number of changes to housing element law by revising what may be included in a jurisdiction's inventory of land suitable for residential development. The changes would require parcels on a jurisdiction's Housing Element site list to have "realistic and demonstrated potential" for development during the planning period. For example, parcels in the inventory would be required to have sufficient water, sewer, and dry utilities infrastructure to support housing development or be included in a jurisdiction's existing general plan program or other mandatory plan – including a public or private utility provider's plan – to secure sufficient infrastructure to support housing development.

ABAG and MTC have no position on AB 1397.

AB 1505 (Bloom): Palmer Fix

Assembly Bill 1505 would affirm the right of a local jurisdiction to establish, as a condition of development, inclusionary housing ordinances. According to the ABAG regional housing policy inventory, 78 Bay Area jurisdictions utilize an inclusionary or below market rate housing policy as an affordable housing production strategy. However, the ability of Bay Area jurisdictions to implement inclusionary requirements specifically for rental housing was adversely impacted in 2009 with the California Appellate Court ruling in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (Palmer), which found that rental inclusionary requirements conflict with state rent control regulations. AB 1505, known as the "Palmer Fix," would clarify that local jurisdictions may require, as a condition of approval, inclusion of affordable units in a multi-family residential rental development.

Recent amendments to AB 1505 would authorize HCD to assess certain new inclusionary policies for their impact. In short, jurisdictions would need to demonstrate that the policies will not limit new market rate development. HCD's review authority would be triggered if both the proposed inclusionary rate is above 15% affordable and the policy is in a jurisdiction that is not making progress toward meeting at least 75% of the jurisdictions' market rate (above moderate-income) RHNA. If HCD determines the policy would inhibit market rate housing development, the policy would need to be revised to require no more than 15% of new rental units in a new development meet affordability restrictions.

ABAG has a "support" position on AB 1505. MTC has no position on AB 1505.

AB 1515 (Daly): Planning and zoning - housing

AB 1515 would make changes to the Housing Accountability Act to require that a housing development or emergency shelter be deemed consistent, compliant, and in conformity with an applicable plan if there is substantial evidence that would allow a reasonable person to conclude that to be the case.

ABAG and MTC have no position on AB 1515.

AB 1521 (Bloom): Land use: notice of proposed change: assisted housing developments

AB 1521 would make changes to the state's Affordable Housing Preservation Law by requiring owners of certain expiring affordable rental properties to accept any market-rate purchase offer from a qualified preservation entity that intends to maintain the property's affordability restrictions. Current state law provides preservation purchasers limited priority to purchase affordable rental properties, if the owner intends to sell. AB 1521 would go further by establishing a right of first refusal for qualified housing agencies or organizations intending to purchase the housing developments at fair market value and maintain affordability. The bill additionally requires HCD to monitor compliance with the law and allows affected tenants and local governments the right to enforce the law.

ABAG and MTC have no position on AB 1521.