

California's Critical Housing Shortage:

The Housing Accountability Act

By Alicia Bartley

THE NUMBER OF THOSE UNHOUSED IN LOS Angeles County is up for the third time in four years, according to the County's annual survey that was released in June of last year.¹

This significant increase comes, say County officials, despite hundreds of millions of dollars spent and new programs that are housing a record number of people.

At the same time, California's overall homeownership rate is at the lowest level since the 1940s.^{2,3}

Currently, the state ranks 49th out of the 50 states in homeownership rates and in the supply of housing per capita with only one-half of California households able to afford the cost of housing in their local regions.^{4,5}

A Critical Driver

It is widely recognized that local land-use policies and

regulations are a critical driver in the inability of Los Angeles County, and other local jurisdictions in the state, to combat homelessness and housing affordability as communities have traditionally resisted affordable housing and new housing in general, while complicated discretionary approval processes for housing development projects have prevented or delayed development of much-needed housing units.

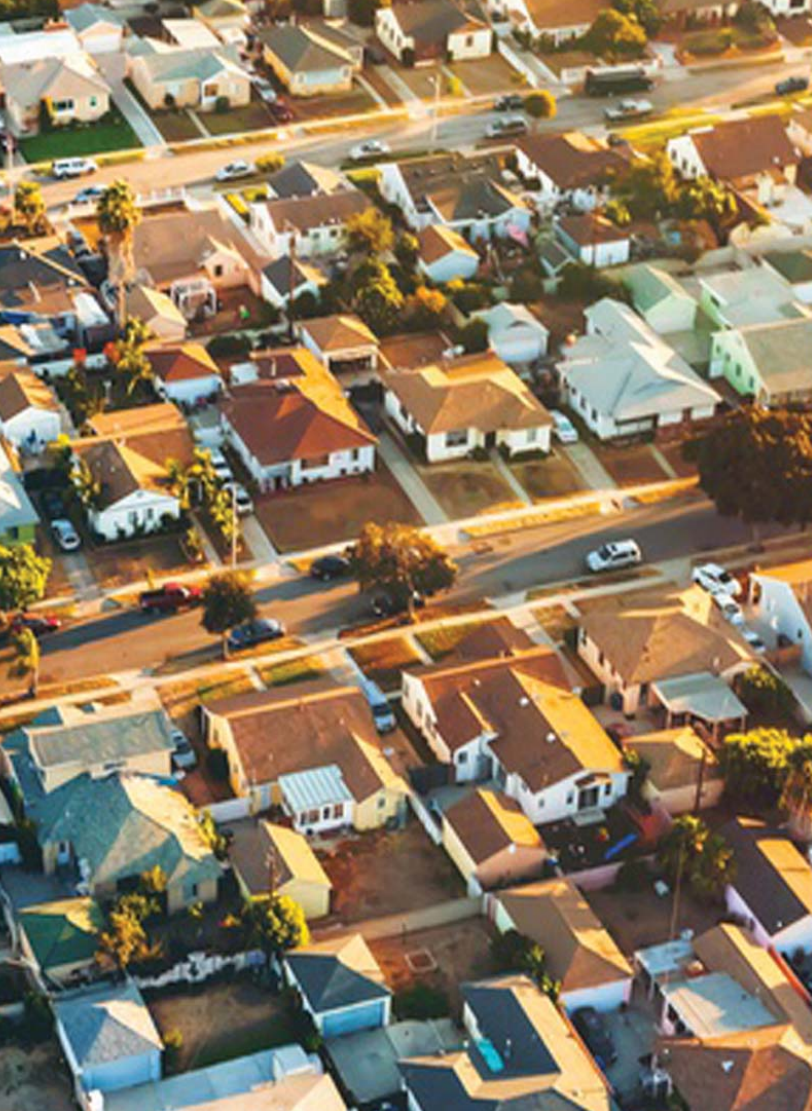
California now has an accumulated unmet housing backlog of nearly 2,000,000 housing units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.⁶

Recognizing that housing supply has not kept up with population and job growth statewide, the California State Legislature has made recent amendments to a law originally enacted in 1982 in an effort to address local opposition to housing growth.

The law—the Housing Accountability Act (HAA)—establishes that, as the overarching policy of the state, a local



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The law provides that “[w]hen a proposed housing development project complies with applicable, objective general plan, zoning, and subdivisions standards and criteria, including design review standards, in effect at the time the housing development project’s application is determined to be complete,” a local jurisdiction may disapprove the project under only very limited circumstances.⁹

Specifically, to disapprove a housing development project, or to condition it in a manner that results in a reduction of density or otherwise renders it infeasible, the local jurisdiction must base its decision “upon written findings supported by a preponderance of the evidence on the record” that both of the following conditions exist:

- The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used here, a specific, adverse impact is defined as a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete; and,
- There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.¹⁰

Moreover, to give developers greater certainty in what standards, policies, and conditions apply, the HAA provides that those standards, policies and conditions must meet the following criteria and must:

- Be consistent with meeting the local jurisdiction’s share of its Regional Housing Needs Allocation (RHNA), which is the total number of new housing units the local jurisdiction must plan for in a certain planning period as assigned by the California Department of Housing and Community Development;
- Be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development; and,
- Meet the definition of *objective*, which are those standards that involve no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform

government may not deny, reduce the density of, or make infeasible housing development projects that are consistent with local development standards.

In recent recognition of the state’s critically low housing stock, the HAA has been amended seven times since 2017 to augment and reinforce its provisions.⁷

The HAA as Amended

Under the HAA, a housing development project is defined as:

- A use consisting of residential units only;
- A mixed-use development consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use; or,
- Transitional or supportive housing.

In addition, the development must consist of more than one residential unit. However, according to the HAA, the development can consist of attached or detached units and can occupy more than one parcel of property so long as the development is included in the same development application.⁸

benchmark or criterion available and knowable by both the developer and the public official.¹¹

The HAA provides additional protections for projects that contain housing units—including emergency shelters—that are affordable to very low-, low-, or moderate-income households.

A Project Denied

In addition to the findings described above that apply to all housing development projects, to deny a housing development project that includes affordable units, a local jurisdiction must also make specific findings based upon the preponderance of the evidence of one of the following:

- The jurisdiction has adopted a housing element in substantial compliance with California's Housing Element Law and has met or exceeded development of its share of the RHNA in all income categories proposed in the housing development project;¹²
- As proposed, the housing development project would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households;
- The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households;
- The housing development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project; or,
- The housing development project meets both of the following conditions: it is inconsistent with both the local jurisdiction's zoning ordinance and the general plan land use designation on the date the application was deemed complete; and is in a jurisdiction where the local agency has an adopted housing element in substantial compliance with state Housing Element Law.¹³

To qualify for these additional protections, the housing development project, must include either 20 percent of the total units set aside for lower-income households, or 100 percent of the units for moderate- or middle-income families.¹⁴

Finally, the HAA provides for a private right of enforcement.

In any action to enforce the HAA, should a court finds that a local agency disapproved a housing development project in violation of the Act, it must issue an order or judgment compelling compliance within sixty (60) days, and will retain jurisdiction to ensure that its order or judgment is carried out.¹⁵

If the court finds that the local jurisdiction acted in bad faith in denying the project, the HAA empowers the court to issue an order or judgment specifically compelling the local jurisdiction to approve the proposed project.¹⁶

In addition, the HAA specifically provides that a successful plaintiff will be awarded its reasonable attorneys' fees and costs.¹⁷

The Response of Local Jurisdictions

As detailed above, local jurisdictions have no real power to deny or make substantive changes to any housing development project that complies with the jurisdiction's general plan and zoning regulations under the amendments to the HAA.

Local agency responses to the changes in the law have varied.

On one end of the spectrum are jurisdictions that have wholly embraced the state law.

In March 2020, for example, the City of Santa Monica adopted an emergency ordinance that provides for an administrative approval process for all affordable housing projects and market-rate housing projects that are consistent with the requirements laid out in the HAA.¹⁸

Recognizing that a discretionary review process requirement for housing development projects that must be approved under state law adds time and expense to housing production without providing any benefit to the community, the City of Santa Monica acted to eliminate such discretionary review.¹⁹

On the other end of the spectrum are jurisdictions such as the City of Los Angeles, which, to date, has not taken any action to eliminate discretionary approval processes for projects that are consistent with the HAA.

Moreover, the City's discretionary decision-making bodies continue to disapprove projects despite their obligations under the HAA.

In one example that has recently worked its way through the judicial process, a developer proposed a housing development project consisting of 577 housing units that was consistent with all of the City's applicable development regulations.²⁰

After approval by the Director of Planning, the project was appealed to an area planning commission (APC), which, over the objections of its planning staff and the advice of the City Attorney, ignored the mandate of the HAA and denied the project.

In doing so, the APC failed to make any of the required findings for disapproval of the project under the HAA.

The developer then filed a lawsuit challenging the project denial and the Los Angeles Superior Court ruled in the developer's favor, finding that the APC had "clearly acted in bad faith and acted on its own frolic and detour...to impose its own view of appropriate public policy..."²¹

The court further found that the City's bad faith actions in the case justified an "order or judgment directing the local agency to approve the housing development project" under the HAA, and awarded the developer its reasonable attorneys' fees and costs.²²

While the court ultimately ruled in the developer's favor, the frivolous appeal and illegal action of the APC resulted in the project being delayed by more than fifteen months.


The Los Angeles City Attorney will likely characterize the case as an example of the need for additional training and education on the HAA for its land-use decision-makers.

Perhaps, though, a better solution would be for the City to amend its zoning ordinances to eliminate discretionary approval processes for projects for which approval is mandated under state law.

Confronting NIMBY

The recent amendments to the HAA are an important step in addressing the critical housing shortage, not only in Los Angeles County, but state-wide, as well.

By removing arbitrary discretion away from local decision-makers, who are often swayed by NIMBY project opponents, housing development projects that are entirely consistent with local zoning ordinances and regulations can be approved and constructed without unnecessary cost and delay.

This added certainty ultimately serves to reduce the cost of housing units and results in housing becoming more available and affordable for more Californians. 

¹ <https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results>.

² *Id.*

³ California Department of Housing and Community Development, *Housing Accountability Act Technical Assistance Advisory (Government Code Section 65589.5)* (September 15, 2020).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Government Code Section 65589.5.

⁸ *Id.* § 65589.5(h)(2).

⁹ *Id.* § 65589.5(j).

¹⁰ *Id.* § 65589.5(j)(1)(A), (B).

¹¹ *Id.* § 65589.5(f).

¹² Government Code § 65588, et seq.

¹³ Government Code § 65589.5(d), (i).

¹⁴ *Id.* § 65589.5(h)(3).

¹⁵ Government Code § 65589(k)(1)(A).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ City of Santa Monica Interim Ordinance No. 2633.

¹⁹ *Id.*

²⁰ *District Square, LLC v. City of Los Angeles*, Los Angeles Superior Court Case No. 20STCP00654, Statement of Decision dated September 24, 2020.

²¹ *Id.*

²² *Id.*



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