

**PLANNING COMMISSION MEETING
THURSDAY, JUNE 13, 2019**

PRESENTATIONS

**WORK SESSION
PRESENTATION
BY
ERIC PHILLIPS OF
GOLDFARB & LIPMAN**

HOUSING LEGISLATION UPDATE

HOUSING LEGISLATION OVERVIEW

City of Hayward Planning Commission



June 13, 2019

Goldfarb & Lipman LLP

1300 Clay Street, 11th Floor
Oakland, California 94612
(510) 836-6336

goldfarb lipman attorneys

OVERVIEW

2

- Legislature substantially changed housing and planning laws in 2017 and 2018
 - ▣ Increased Emphasis on Objective Standards
 - ▣ New Streamlining Tools
 - ▣ Continued Changes to Density Bonus Law
 - ▣ Modified RHNA Requirements

HAA AND SB 35

3

Housing Accountability Act

- Government Code Sec. 65589.5
- Affects all residential projects

SB 35

- Government Code Sec. 65913.4
- “Streamlining” for some residential projects

Both laws focus on “objective standards” and favor predictability over flexibility.

What Is An “Objective” Standard?

4

Gov’t Code Sec. 65913.4:

- “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.**”

What Is Not “Objective”?

5

Objective

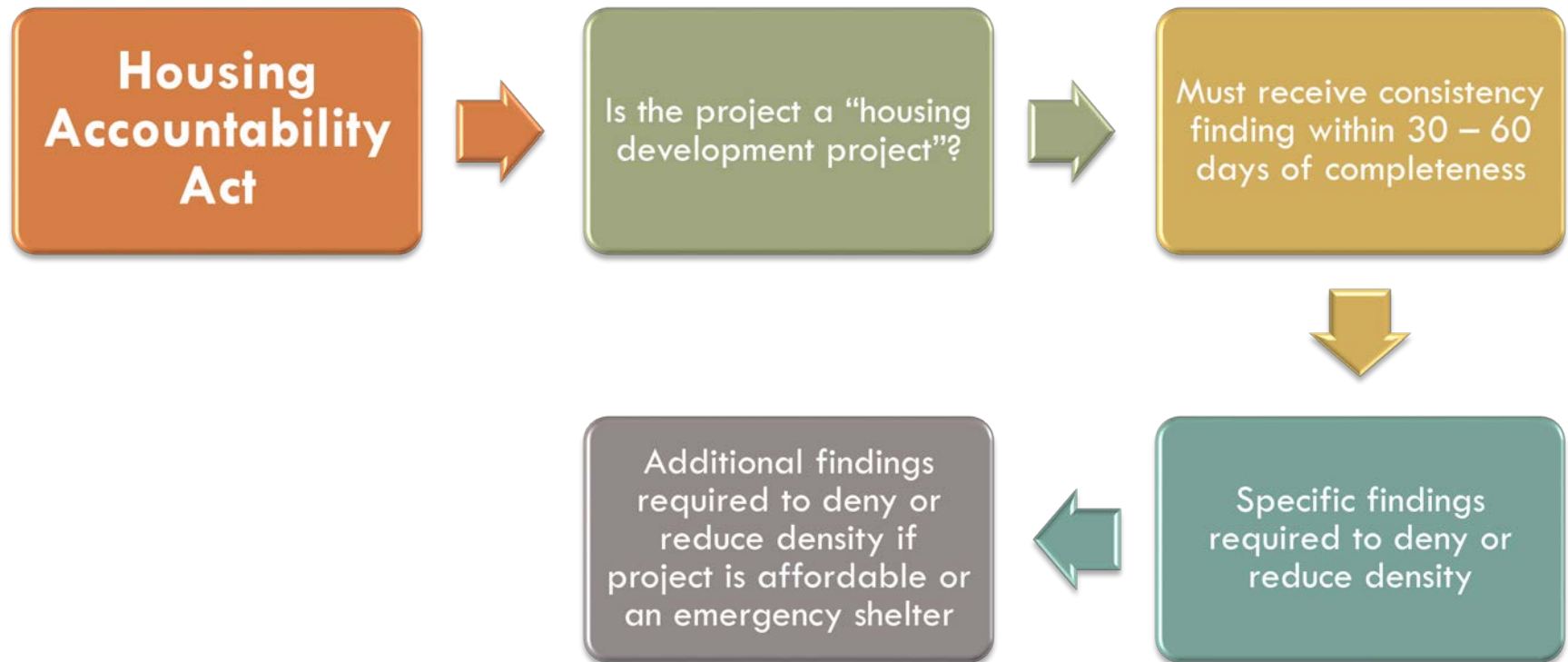
- ☐ Density requirements
- ☐ Height limitations
- ☐ Lot coverage
- ☐ Setbacks
- ☐ FAR requirements
- ☐ List of materials

Not Objective

- ☐ Must be compatible with adjacent uses
- ☐ Produce high quality design
- ☐ Reflect community character
- ☐ Site is not physically suitable for the use

Gov. Code Sec. 65589.5 At A Glance

6



HAA Criteria for Project Review

7

- If housing development project complies with “**objective**” standards, the City 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.
- Additional protections for affordable projects
 - ▣ Must make specific findings to deny, reduce density, or add condition making project infeasible
- Standards include general plan, zoning, and subdivision requirements
 - ▣ Strict consistency with zoning not necessarily required if consistent with objective general plan standards

HAA Processing Requirements

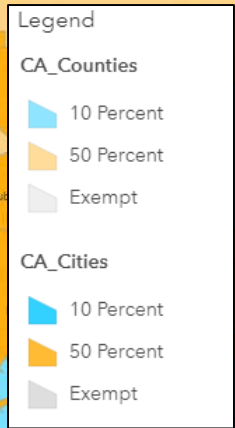
8

- Also “deemed consistent” if:
 - “substantial evidence that would allow a reasonable person to conclude” is consistent
 - ▣ Developer may submit own evidence re: consistency
- City findings must be based on ‘preponderance of the evidence,’ not merely ‘substantial evidence’



9

- 100% affordable projects



SB 35 Key Benefits

10

- Ministerial review if consistent with “objective” standards – no CEQA review!
 - ▣ A project that receives a density bonus and other regulatory incentives under density bonus law is considered consistent
 - ▣ Any 'maximum unit allocation' (e.g., growth control measures) must be ignored
 - ▣ Maximum density is the maximum shown in the general plan. Under SB 35, general plan standards trump other standards if inconsistent
- No more than 1 parking space/unit; many projects exempt from any parking requirements
- Extended life for project approvals; some may never expire

HAA and SB 35 Strategies

11

- Be prepared to provide consistency letters based on all objective standards
 - ▣ Review applicable “plans, programs, policies, ordinances, standards, requirements”
- Continue to apply CEQA for HAA projects
- Understand SB 35 processing timelines
- Consider HAA findings carefully

STATE DENSITY BONUS LAW

12

Government Code Section 65915 – 65918

- You've Got to Give. . .
 - ▣ Affordable Housing
 - ▣ Senior Housing
 - ▣ Land for Affordable Housing
 - ▣ Condo Conversions with Affordable Housing
 - ▣ Child Care Facilities
- To Get. . .
 - ▣ Bonus Units
 - ▣ Reduced Parking Standards
 - ▣ Incentives/Concessions
 - ▣ Waivers
 - ▣ Commercial Density Bonus

DENSITY BONUS AVAILABLE

13

Category	Minimum Percent	Minimum Bonus	Additional Bonus for 1% Increase	Percent Required for Maximum 35% Bonus
Very-low income	5%	20%	2.5%	11%
Lower income	10%	20%	1.5%	20%
Moderate income (ownership units only)	10%	5%	1%	40%

BASIC REDUCED PARKING RATIOS

14

- Applicable if project qualifies for a DB because it is a senior project or provides affordable housing
- Reduced Ratios:
 - ▣ 0-1 bedroom unit: 1 on-site parking space
 - ▣ 2-3 bedroom unit: 2 on-site parking spaces
 - ▣ 4-more bedroom unit: 2½ on-site parking spaces
- Reduced ratios apply to market rate units as well as density bonus units

TRANSIT STOP PARKING RATIOS

15

Rental or ownership housing development with: <ol style="list-style-type: none">1. At least 11% very low income or 20% low income units; and2. Within one-half mile of a major transit stop; and3. Unobstructed access to the major transit stop.	0.5 space per bedroom
Rental housing development with: <ol style="list-style-type: none">1. All units affordable to lower income households except manager's unit(s); and2. Within one-half mile of a major transit stop; and3. Unobstructed access to the major transit stop.	0.5 space per unit
Rental housing development with: <ol style="list-style-type: none">1. All units affordable to lower income households except manager's unit(s); and2. A senior citizen housing development; and either3. Has paratransit service; or4. Is within one-half mile of fixed bus route service that operates 8 times per day, with unobstructed access to that service.	0.5 space per unit
Rental housing development with: <ol style="list-style-type: none">1. All units affordable to lower income households except manager's unit(s); and2. A special needs housing development; and either3. Has paratransit service; or4. Is within one-half mile of fixed bus route service that operates 8 times per day, with unobstructed access to that service.	0.3 space per unit

OVERVIEW OF STANDARDS OF REVIEW

16

- Almost No Local Agency Discretion:
 - ▣ Density Bonus
 - ▣ Parking Reductions
- Some Local Agency Discretion:
 - ▣ “Incentives & Concessions” (cost reductions)
 - ▣ Waivers (physical infeasibility)

DENSITY BONUS “SHOT CLOCK”

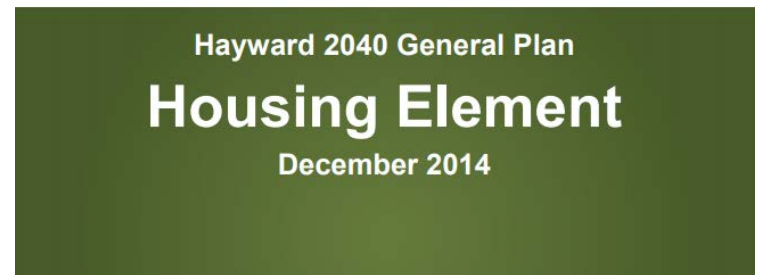
17

- Agency must determine if Density Bonus Application is complete within 30 days
- If complete, determination notice must include:
 - ▣ Amount of density bonus
 - ▣ Applicable parking ratio
 - ▣ If application has adequate information to evaluate incentive/concession and waiver requests
- Determinations shall be adjusted if project changes during entitlement process

RHNA Allocation Process

18

- Revised by AB 1771 and SB 828
- RHNA likely to be higher because **existing** overcrowding and cost burdens of existing households are added to need
 - No longer limited to **projected** household growth
- **HCD approval required** for final determination of regional need
 - HCD may attend COG meetings
 - HCD can appeal individual allocations



RHNA Distribution Methodology

19

New Factors Must Be Considered

- ▣ GHG reductions
- ▣ Low-wage jobs and affordable housing balance
- ▣ 'Affirmatively further fair housing'

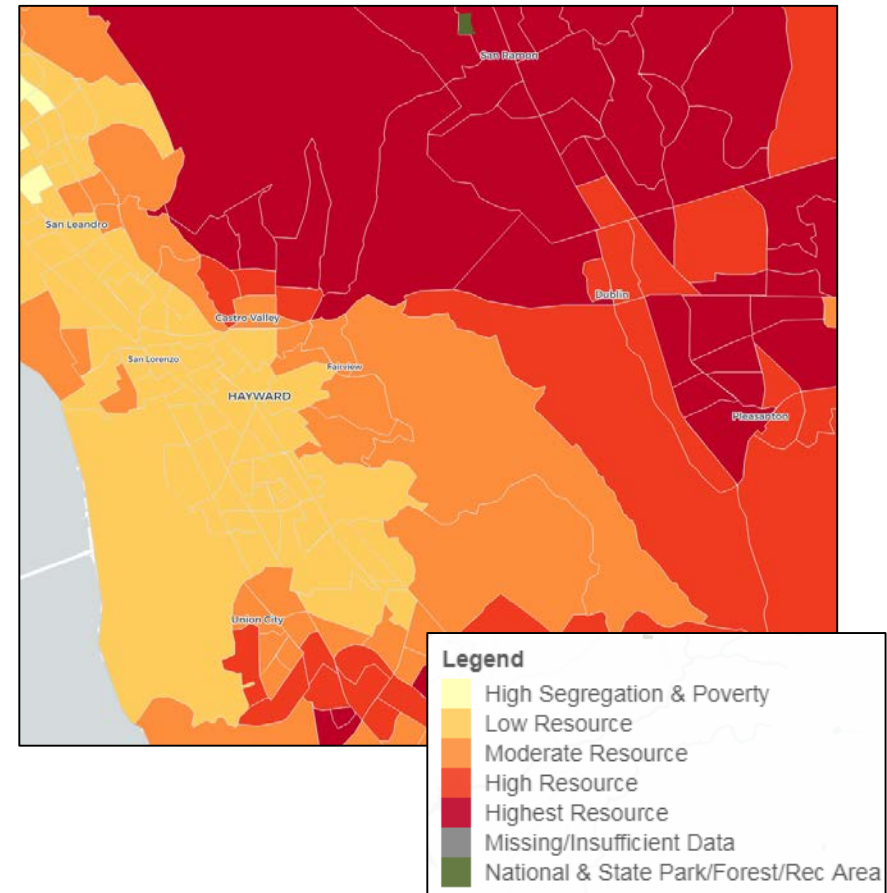
Some Factors Can't Be Considered

- ▣ Existing zoning & growth limits [except ag preservation]
- ▣ Past failure to meet RHNA
- ▣ Stable population

Affirmatively Furthering Fair Housing

20

- RHNA distribution and each local housing element must **affirmatively further fair housing**
 - ▣ AFFH means “taking meaningful actions...that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunities”



Sites Analysis

21



- Development potential of sites under increased scrutiny
- Can't Use Sites Smaller than 0.5A or Larger than 10A Without Substantial Evidence
- Can't 'Reuse' Sites Unless Provide 'By Right' Zoning

“No Net Loss” Provisions (G.C. section 65863)

22

- Applies when:
 - ▣ Any site in inventory either downzoned to reduce density; or approved at lower density than shown; OR
 - ▣ Site approved with fewer units at the income level shown in the inventory.
- Now applicable to all jurisdictions, including general law cities (SB 1333)

NO NET LOSS EXAMPLE

23

**TABLE B-3
SOUTH HAYWARD BART AREA SITES INVENTORY**

City of Hayward
January 1, 2014

APN	General Plan	Density (units/ acre)	Acres	Zoning	ILR	Maximum Capacity (units)	Realistic Capacity (units)	Existing Use
Lower Income Sites								
078C-0436-010-04	Sustainable Mixed Use	17.5-35.0	0.43	ST-4	n/a	15	5	Vacant
078C-0455-001-03	Sustainable Mixed Use	17.5-35.0	0.32	ST-4	n/a	338	125	Vacant
078C-0455-001-04			4.66		0.23			Junk yard, unpaved parking space for small single-story
078C-0455-001-05			0.15		0.76			One SF home
078C-0455-001-07			0.39		n/a			Marginal commercial use
078C-0455-001-08			4.15		0.41			Marginal commercial use
Total:			9.67					
452-0020-007-06			Sustainable Mixed Use		17.5-35.0			0.98
452-0020-008-00	0.68	0.4						
Total:	1.66							
078C-0455-005-01	Sustainable Mixed Use	17.5-35.0	2.45	ST-4	n/a	154	58	Vacant
078C-0455-005-02			0.58					Vacant
078C-0455-004-00			0.94					Vacant
078C-0455-003-00			0.47					Vacant
Total:			4.44					
Subtotal ST-4 Zoned Sites			16.20			565	209	
078C-0461-006-04	Sustainable Mixed Use	35.0-55.0	1.33	ST-5	n/a	73	54	Vacant
078C-0438-011-02	Sustainable Mixed Use	35.0-55.0	1.34	ST-5	n/an/a	451	171	Vacant
078C-0438-019-01			5.85					Vacant
078C-0438-011-01			1.04					Vacant

Options for Findings

24

- Remaining sites in Element adequate to meet the RHNA at all income levels; or
- City approved more units on some site than shown in inventory or has other units at that income category; or
- Other sites NOT in Element can make up difference; or
- Another site “identified and made available.” Time limit of 180 days for income category only.

HOUSING LEGISLATION OVERVIEW

City of Hayward Planning Commission



June 13, 2019

Goldfarb & Lipman LLP

1300 Clay Street, 11th Floor
Oakland, California 94612
(510) 836-6336

goldfarb lipman attorneys