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Housing Law Roundup 2021

A slew of new laws related to housing will be going into effect on January 1, 2022 in Sacramento's continued effort to improve the State's persistent housing production and affordability crisis. The bills range from clean-up amendments clarifying existing housing laws to major changes in local control over housing density.

SB 9

The most talked about housing bill from this Legislative session, SB 9 requires ministerial approval of an application to develop up to two units on nearly all lots zoned for single-family housing (including via partial or full teardown of an existing unit). SB 9 also requires ministerial approval of an application to split a lot in order to create not more than 2 new parcels, which must be of approximately equal size. Under SB 9, an existing single-family residential lot can be split and then two units built on each lot, for a total of 4 dwelling units with no discretionary review even if this would exceed the permissible density for the property under the city or county's general plan and zoning.

Once a lot has been split under SB 9 it cannot be split again under SB 9. Additionally, a lot can't be split under SB 9 if the owner or someone acting in concert with the owner previously split an adjacent parcel under SB 9. If a lot has been subject to both a ministerial lot split and a ministerial two-unit development approval under SB 9, the city or county is not required to permit an accessory dwelling unit on the property.

SB 9 allows cities and counties to impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with SB 9.

SB 8

SB 8 makes several changes to the Housing Crisis Act of 2019 (SB 330), including extending the sunset date to January 1, 2030. It also clarifies the "no net loss" requirement in the Act, which requires cities and counties to make sure that any loss of residential development capacity on a site due to a general plan or specific plan amendment or zoning change is offset through a "concurrent" action of the legislative body. SB 8 clarifies that the offsetting action can occur within 180 days and still be considered "concurrent." The definition of "housing

development project" is expanded to include single unit developments and developments that are ministerially approved.

SB 10

This bill allows, but does not require, local jurisdictions to adopt an ordinance authorizing housing development projects of up to 10 residential units per parcel in transit-rich areas or urban infill sites, subject to limited exceptions, until January 1, 2029. Ordinances adopted pursuant to SB 10 are exempt from the California Environmental Quality Act (CEQA). However, subsequent projects that propose more than 10 units on a parcel up-zoned under SB 10 are prohibited from ministerial or by right approval and are ineligible for any CEQA exemptions.

SB 10 allows a two-thirds vote of the legislative body to supersede any zoning restriction established by local initiative, excluding certain open-space and parkland restrictions. It also cannot be used to implement downzoning and, once parcels have been up-zoned under SB 10, the local government is prohibited from later reducing the density of those parcels.

SB 478

SB 478 imposes maximum floor area ratios that a city or county can apply to a housing development projects of between 3 and 10 units located in multifamily or mixed use zones and not within a historic district or on a historic property. Cities and counties will be prohibited from imposing a floor area ratio standard that is less than 1.0 on a housing development project that consists of 3 to 7 units, or less than 1.25 on a housing development project that consists of 8 to 10 units. This law also prohibits a local agency from imposing a lot coverage requirement that would physically preclude a housing development project from achieving the aforementioned floor area ratios. Further, the new law prohibits cities and counties from denying a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency's requirements for minimum lot size. These provisions only apply to cities that have an urbanized area or urban cluster within its boundaries, or in unincorporated areas the subject parcel is wholly within the boundaries of an urbanized area or urban cluster.

AB 1174

AB 1174 is an urgency measure that went into effect immediately upon the Governor's signature. It amends SB 35 (Government Code section 65913.4), which requires streamlined, ministerial approval of qualifying affordable housing projects. The changes to SB 35 made by AB 1174 primarily impact the provisions pertaining to the life of project approvals and the ability to apply new objective standards to a

previously approved project.

AB 215

AB 215 changes the procedures applicable to the adoption and amendment of a Housing Element. It requires cities and counties to make the first draft revision of a housing element available for public comment for at least 30 days and, if any comments are received, take at least 10 additional business days to consider and incorporate public comments into the draft revision before submitting it to the Department of Housing and Community Development. The bill would require agencies to post any subsequent draft revision on its website and to email a link to individuals and organizations that have requested notices relating to the local government's housing element. The Department of Housing and Community Development is prohibited from reviewing a draft housing element revision until this public review process has been completed.

AB 571

AB 571 adds Section 65915.1 to the Government Code, consisting of a single sentence, related to density bonuses. It provides that affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, shall not be imposed on the affordable units provided under the Density Bonus Law (Government Code section 65915).

AB 634

Similar to AB 571, AB 634 adds a new one sentence section to the Government Code pertaining to density bonuses. It provides that the Density Bonus Law, if permitted by local ordinance, shall not be construed to prohibit an agency from requiring an affordability period longer than 55 years.