
Expanding Housing Supply in California: A New Framework for State Land Use Regulation

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KEY TAKEAWAYS

- The impasse between the need to expand supply and local resistance to new development should be resolved through state action. While zoning and land use regulations have long fallen under local control, the California Legislature has repeatedly stipulated – and the courts have confirmed – that housing is an issue of statewide policy concern, and that there are reasons to limit local authority to meet public needs.
- Gov. Jerry Brown's Streamlining Affordable Housing Approvals (SAHA) proposal would address what is often cited as the primary roadblock to affordable housing developments in California: the use of the California Environmental Quality Act (CEQA) process to delay, create uneconomic approval conditions, or entirely reject multi-family infill developments.
- The state could consider adopting legislation similar to Chapter 40B in Massachusetts, which establishes a state-level appeals court for qualified projects. It uses state authority to ensure that local governments don't shirk their duty to provide housing for their workforce.

Case Study Abstract

State action is required to resolve the impasse between the need to expand supply and local resistance to new development; therefore, it is time for California to adopt a state-level framework that facilitates the production of housing in areas that align with economic, environmental, and equity goals. Under the status quo, both NIMBYs (Not In My Back Yard) and special interests use the entitlement process to prevent housing development – particularly infill, multi-family, and subsidized housing – from being built. Arguably, these are precisely the types of development we should be promoting to achieve environmental and equity goals. Improving the certainty and cost efficiency of development projects will show the state is serious about expanding supply, and "by right" legislation in particular offers a compelling approach to expanding California's supply of affordable housing. A second, complementary approach is to establish a state-level appeals process for qualified development projects.

Case Presentation

California is facing a housing affordability crisis, particularly in its coastal cities. Median rents across the state have increased 24 percent since 2000, and at the same time, median renter household incomes have declined 7 percent.¹ While there are multiple contributing factors to rising rents, it is clear that supply matters, and there is an urgent need to expand supply in equitable and environmentally sustainable ways. Over the past three decades, California has added about half the number of units needed to keep housing costs in line with the rest of the U.S., and California cities are failing to meet their Regional Housing Needs Allocation (RHNA) targets.² This gap between supply and demand has significant negative repercussions: Recent research has shown that a lack of affordable housing in cities leads to lost wages and productivity, and contributes to rising residential segregation and inequality.³

If we're serious about expanding supply, we also need to get serious about the influence local land use controls have on development. Local land use regulations and discretionary zoning fundamentally shape how much housing gets built, and at what cost.⁴ For example, in the Bay Area, each additional layer of review during the entitlement process is associated with a 4 percent increase in home prices.⁵ The current application of California Environmental Quality Act (CEQA) is also to blame; CEQA gives development opponents significant opportunities to challenge housing projects after

local governments have approved them, and can stop housing from being built or require it to be built at lower densities.⁶ Under the status quo, both NIMBYs and special interests use the entitlement process to prevent housing development – particularly infill, multi-family, and subsidized housing – from being built. Arguably, these are precisely the types of development we should be promoting to achieve environmental and equity goals.

The impasse between the need to expand supply and local resistance to new development should be resolved through state action. While zoning and land use regulations have long fallen under local control, the California Legislature has repeatedly stipulated – and the courts have confirmed – that housing is an issue of statewide policy concern, and that there are reasons to limit local authority to meet public needs. There have been numerous attempts over the years to “nip and tuck” at California’s complex legal framework of land regulations (e.g. the density bonus law, the housing element law, and CEQA reform), but by the time these revisions pass, they often lack teeth or have so many restrictions they apply only to a “mythical” project.⁷ The current approach is simply unsustainable and inequitable. It is time for California to adopt a state-level framework that facilitates the production of housing in areas that align with economic, environmental, and equity goals.

Gov. Jerry Brown’s recently introduced Streamlining Affordable Housing Approvals (SAHA) proposal

¹ California Housing Partnership Corporation (2016). *Confronting California’s Rent and Poverty Crisis: A Call for State Reinvestment in Affordable Homes*, available online at <http://chpc.net/wp-content/uploads/2016/04/State-Housing-Need-2016.pdf>.

² California Legislative Analyst’s Office (2015). *California’s High Housing Costs: Causes and Consequences*. Sacramento, CA: Legislative Analyst’s Office.

³ Hsieh, C.-T., & Moretti, E. (2015). *Why Do Cities Matter? Local Growth and Aggregate Growth*. National Bureau of Economic Research Working Paper 21154; Lens, M. C., & Monkkonen, P. (2016). “Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income?” *Journal of the American Planning Association*, 82(1), 6–21; Ganong, P. & Shoag D. (2015). *Why Has Regional Income Convergence in the U.S. Declined?* Harvard Kennedy School Working Paper RWP12-028.

⁴ Glaeser, E. & Gyourko, J. (2003). *The Impact of Building Restrictions on Housing Affordability*. *Economic Policy Review* 9 (2): 21-39; Gyourko, J. & Molloy, R. (2015). *Regulation and Housing Supply*. in Duranton, Gilles, J. Vernon Henderson, and William C. Strange eds., *Handbook of Regional and Urban Economics*. Volume 5B. *Handbook of Regional and Urban Economics*. Amsterdam; San Diego and Oxford: Elsevier Science; Quigley, J. & Raphael, S. (2005). *Regulation and the High Cost of Housing in California*. *The American Economic Review* 95 (2): 323–328.

⁵ California Legislative Analyst’s Office. (2015). *California’s High Housing Costs: Causes and Consequences*. Sacramento, CA: Legislative Analyst’s Office.

⁶ J. Hernandez et al. (2015). *In the Name of the Environment: Litigation Abuse Under CEQA*. San Francisco, CA: Holland & Knight.

⁷ J. Hernandez et al. (2015). *In the Name of the Environment: Litigation Abuse Under CEQA*. San Francisco, CA: Holland & Knight, p. 82.

represents an important effort in this direction, and seeks to balance local land use controls with the broader goal of expanding the supply of housing. Meanwhile, the state could also consider adopting legislation similar to Chapter 40B in Massachusetts, which establishes a state-level appeals court for qualified projects. These two approaches are not either/or—they share common goals and are complementary in many ways. (See table on page 7) Both use state authority to ensure that local governments don't shirk their duty to provide housing for their workforce. Also, both apply solely to projects that expand the supply of housing for lower-income households, as well as reduce permitting timelines to lower the costs of development. In each approach, however, these shared goals are achieved through different administrative mechanisms.

Gov. Jerry Brown's SAHA proposal was included in the May 2016 budget and is currently under deliberation. The proposal recognizes that funding for affordable housing will go further if complemented by a more cost efficient and predictable land use system. In effect, SAHA fast-tracks eligible housing projects by making local design review of eligible projects "ministerial" rather than discretionary. Eligible projects would

be approved "by right," which would also mean that CEQA wouldn't apply. The proposal therefore addresses what is often cited as the primary roadblock to affordable housing developments in California: the use of the CEQA process to delay, create uneconomic approval conditions, or entirely reject multi-family infill developments.

However, the proposal also places limits on which developments would qualify for "by right" approval. Importantly, it restricts "by right" development to sites that localities have already planned and zoned for multi-family residential housing, meaning that localities still have the underlying right to determine general plan, zoning, height, and density requirements. In addition, it is limited to urbanized, infill sites reflecting the priority the governor has placed on aligning land use with transportation to achieve climate change goals.

We think "by right" legislation offers a compelling approach to expanding California's supply of affordable housing. A second, complementary approach is to establish a state-level appeals process for qualified development projects. Massachusetts Chapter 40B, passed in 1969, is often pointed to as model state legislation in this area, given its effectiveness at expanding affordable



POLICY AREA	STREAMLINING AFFORDABLE HOUSING APPROVALS (SAHA)	THE MASSACHUSETTS COMPREHENSIVE PERMIT ACT (CHAPTER 40B)
Affordability	<p>For developments within a transit priority area: at least 10 percent of total units affordable to low-income households or at least 5 percent allocated to very-low income</p> <p>For developments outside of a transit priority area: at least 20 percent of total units affordable to individuals with 80 percent or less of area median income (AMI)</p>	<p>25 percent of units must be affordable to families earning less than 80 percent of the area median income</p> <p>Proposed development must receive funding under a state or federal housing program (e.g. LIHTC)</p> <p>Regulatory Agreement</p>
Zoning	<p>Limits production to locations and densities that have already been approved by local governments in general plans and zoning codes</p> <p>Development is located on a site that is immediately adjacent to parcels that are developed with urban uses</p>	<p>Applies to areas <i>not</i> already zoned for multi-family housing</p>
Environmental Review	<p>"By right" projects are subject to "ministerial" actions since zoning and general plan had CEQA review; no added CEQA review</p>	<p>Developers must abide by the Massachusetts Environmental Protection Act (MEPA)</p>
Process Timeframe	<p>Design review of the development shall not exceed 90 days from the submittal of the development</p>	<p>Public hearings must start within 30 days of the application, which can last up to 6 months. After ending the public hearing, the Zoning Board of Appeals (ZBA) must issue a decision within 40 days</p>
Profits	<p>No developer profit caps</p>	<p>Developer must agree to cap profits to a maximum of 20 percent in for-sale developments and 10 percent per year for rental developments</p>
Review	<p>Developers must opt in to the new law with a written request to the local government stating that they intend to utilize the benefits of the new law. If the development is compliant, the city is obligated to comply and permit the project ministerially</p> <p>Failure to comply would result in a writ mandate issued by the court, ordering the city to comply</p>	<p>If the ZBA denies an application or approves it with conditions that make the project "uneconomic," developers have the right to appeal to a state-level administrative, quasi-judicial body, the Housing Appeals Committee (HAC)</p> <p>HAC has the authority to overturn a local ruling unless the zoning board can prove that there is a "valid health, safety, environmental, design, open space, or other local concern... [which] outweighs regional housing need"</p>
Exemptions	<p>No exemptions</p>	<p>Municipalities are exempt if they have at least 10 percent of their housing stock affordable to households earning below 80 percent of AMI, or are making progress towards those goals through an approved Housing Production Plan (HPP)</p>

housing in both urban and suburban localities without any documented negative impacts on local infrastructure or property values.⁸ Other states, such as Connecticut, Rhode Island, and Illinois have adopted similar approaches with success.

So what exactly is Chapter 40B and what does it do? Fundamentally, it is a broader, more comprehensive approach to the same challenges SAHA is tackling. Chapter 40B applies to all sites, regardless of underlying zoning, and streamlines the number of project reviews by instituting a process for developers to apply for a comprehensive permit for qualified affordable housing projects. In addition, in jurisdictions that have not met their fair share of affordable housing, the developers have the right to appeal to a state-level Housing Appeals Committee (HAC) if the locality denies the application or approves the development with conditions that make it “uneconomic.” Municipalities that are meeting or exceeding their housing production targets and fair share housing goals are rewarded with exemption from this process.

SAHA and application of Chapter 40B in California are promising solutions, but we know neither will solve all of California’s housing needs. Addressing the state’s lack of affordable housing will require significant public funding to provide for the most vulnerable populations. However, given limited resources, it is vital that we use such funding more effectively. Both SAHA and Chapter 40B do so by helping to improve the certainty and cost efficiency of development projects. Ultimately, implementing either, or perhaps a combination of both approaches, will be necessary to meaningfully expand the supply of housing for California’s families. ■

⁸Citizens’ Housing and Planning Association, “Chapter 40B: The State’s Affordable Housing Law,” January 2014, <http://www.chapa.org/sites/default/files/40%20B%20fact%20sheet.pdf>. Cowan, Spencer M. “Anti-Snob Land Use Laws, Suburban Exclusion, and Housing Opportunity.” *Journal of Urban Affairs* 28, no. 3 (June 1, 2006): 295–313. Lindsay Koshgarian, Alan Clayton-Matthews, and Carrie Bernstein, “Economic Contributions of Housing Permitted through Chapter 40B: Economic and Employment Linkages in the Massachusetts Economy from 2000-2010” (UMass Donahue Institute, September 2010). Alexandra DeGenova et al., “On the Ground: 40B Developments Before and After” (Tufts University, May 1, 2009). David J. Ritchay and Zoe R. Weinrobe, “Fear and Loathing in Massachusetts: Chapter 40B, Community Opposition, and Residential Property Value” (Master in City Planning, Massachusetts Institute of Technology, 2004).

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