SUMMARY OF HOUSING CRISIS ACT OF 2019

SB 330 and SB 8

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Introduction

The Senate Bill 330 (SB 330) established the Housing Crisis Act of 2019 (HCA) and was signed on October 9, 2019 and went into effect on January 1, 2020. On September 16, 2021, Senate Bill 8 (SB 8) was signed into law which made some clarifications and updated SB 330, extending the HCA from January 1, 2025 to January 1, 2030. These laws were passed to address the current "housing crisis" in the State with three general aims: 1) increase residential unit development; 2) protect existing housing inventory; and, 3) expedite permit processing. Both SB 330 and SB 8 make numerous changes to the existing legislation such as the Permit Streamlining Act and the Housing Accountability Act.

The HCA Does Not Apply to All Jurisdictions

The HCA applies only to "affected" jurisdictions, which is any city or county that is located in an urbanized area or urban cluster, as designated by the United States Census Bureau. Any jurisdiction with a population less than 5,000 and not located within an urbanized area is exempt. The Department of Housing and Community Development (HCD) has developed a list of "affected cities" and census designated places within unincorporated counties ("affected counties").

Not All Housing Development Projects Are Subject to HCA

HCA defines a "housing development project" as a project that proposes:

- residential units only;
- mixed-use development in which at least two-thirds of the square footage is residential; or
- transitional, supportive, emergency, or farmworker housing.

SB 8 expands the definition of a "housing development project" to include projects with one single dwelling unit and ADUs; however, the Court of Appeal ruled that the HAA does not apply "to building an individual single-family home" (*Reznitskiy v. County of Marin*, 2022, 1st App. District Case No. A161813). SB 8 also includes projects that involve both discretionary and nondiscretionary approvals (Gov. Code §65905.5 (b)(3)).

Key Provisions of the HCA

HCA	Gov. Code
Receipt of a density bonus increase, including associated incentives/concessions, and waivers, does not constitute a valid basis for finding a project inconsistent with applicable plans and standards.	§65905.5(c)(1)
Prohibits a jurisdiction from downsizing property for housing unless the jurisdiction "concurrently" up-zones other property to increase enough permitted density and makes sure there is no net loss in residential capacity city-wide.	§66300(b)(1)(A) and (i)
Retroactively "freezes" residential zoning standards to what they were on January 1, 2018.	§66300(b)(1)(A)
Does not allow jurisdictions to enforce moratoriums or growth control measures on new housing development.	§66300(b)(1)(B) and (D)
Prevents jurisdictions from imposing or enforcing new design standards on housing projects that are not "objective."	§66300(b)(1)(C)
Imposes anti-demolition provisions by having jurisdictions require developers: 1) "replace" demolished protected rental and affordable housing units; 2) offer relocation benefits to displaced tenants; and, 3) offer displaced tenants a right of first refusal for a comparable unit in the new housing development.	§66300(d)
Establishes a preliminary application process for housing developments and allows developers to lock in city ordinances, policies, and development fees prior to filing a complete application.	§65589.5(o)
Establishes a new application checklist for housing development projects and requires jurisdictions to post this application on their website.	§§65940 and 65943
Establishes completeness review requirements for housing development projects. Jurisdictions cannot ask the applicants to provide additional information not listed on application checklist. In addition, when jurisdictions determine that an application is incomplete, the agency is required to write an incompleteness letter but cannot include items not expressly listed on the jurisdiction's checklist.	§65943
Reduces time an agency has to approve/disapprove an application under the Permit Streamlining Act for a housing development project subject to an environmental impact report (EIR) from 120 days to 90 days.	§65950
Prohibits an agency from holding more than five hearings in connection with review of a proposed housing development project (more below).	§65905.5
Requires the agency to make any required historic site determinations applicable to the project at the time when application is deemed complete.	§65913.10

New Preliminary Application

Local agencies are required to compile a checklist and application form for preliminary applications (Gov. Code §65941.1(b)). The HCD also provides a standardized form that applicants may use if the local agency has not prepared its own form. The intent of this process is to make the development review process faster and provide clarity and certainty to an applicant by identifying what application materials are required and by locking in the development requirements, standards, and fees at the time a complete application is submitted. By doing so, the City is prohibited from applying new ordinances, policies and standards to a development with a complete preliminary application. In addition, the local government is not required to provide a formal determination about whether the preliminary application is "complete," rather the preliminary application is considered "deemed complete". An application must be "deemed complete" if it contains all of the information required by Gov. Code §65941.1.

Consistency with "Objective Standards"

The HCA rules that cities and counties are prohibited from denying a housing development project or reduce its density based on a subjective design standard. A project can only be reviewed against "objective, quantifiable, written development standards, conditions and policies," and can only be denied if certain findings described in Gov. Code §65589.5(j) are met. SB 330 clarified the term "objective standards" and is consistent with SB 35, which states that "objective standards" 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 (Gov. Code §66300(a)(7)).

Public Hearing Limit

The five public hearing limit applies to a housing development project that complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete (Gov. Code §65905.5(a)).

Under the statute, as clarified by SB 8, the definition of "hearing" covers a broad range of meetings of a board, commission, council, department, or subcommittee, including "any public hearing, workshop, or similar meeting, including any appeal, conducted by the city or county," with respect to the project (Gov. Code §65905.5). In addition, SB 8 clarifies that meetings related to the State Density Bonus Law (Gov. Code §65915) are considered a hearing under the five public hearing limit.

"Hearing" does not include a hearing to review a legislative approval required for a proposed housing development project, including, but not limited to, a general plan amendment, a specific plan adoption or amendment, a planned community adoption or amendment, or a zoning amendment.

Application Process:

From Preliminary Application to Project Approval

Below are steps and the accompanied provisions dictating the timeline of the application process:

Step 1: Preliminary Application

(Gov. Code §65941.1)

- Applicant submits preliminary application form and pays permit processing fees.
- No affirmative determination by the local government regarding the completeness of a preliminary application is required, simply that the applicant had submitted all required application materials.
- The purpose of the preliminary application is to establish "vesting" of applicable objective planning, zoning, and subdivision criteria at the time of submittal.

Step 2: Full Application

- Applicant submits full application within 180 calendar days of preliminary application submittal. If applicant fails to file full application, then the "vesting nature" expires. The full application is the materials required for the land use entitlement being sought (e.g., development plan, tentative map).
- Application contains all information required by the local government application checklist pursuant to Government Codes §§65940, 65941, and 65941.5.
- If revision of a project changes the number of units or square footage of construction by 20% after submitting the preliminary application, then applicant is required to submit a new preliminary application (Gov. Code §65941.1).

Step 3: Completeness Review

(Gov. Code §65943)

- The agency has 30 days to determine application completeness in writing. If complete, agency sends applicant a notice confirming completion. If incomplete, agency provides applicant a list of incomplete items in writing. If this notice is not sent within 30 days, the application is deemed complete.
- For incomplete applications: applicant has 90 days to correct deficiencies and submit the material(s) needed to complete the application.
  - When the applicant resubmits, the local agency has 30 days to evaluate. If application is still incomplete, the agency must specify items and specific information that is needed to complete the application.
  - If the applicant does not submit the necessary items within 90 days or a formal application is not received within the 180-day period from application acceptance, then the preliminary application shall expire and have no further force or effect (Gov. Code §65941.1[d][2]).
  - When applicant resubmits and the application is still incomplete in the third review, an appeals process must be provided.
- The agency may not subsequently request any new information that was not on the initial list.

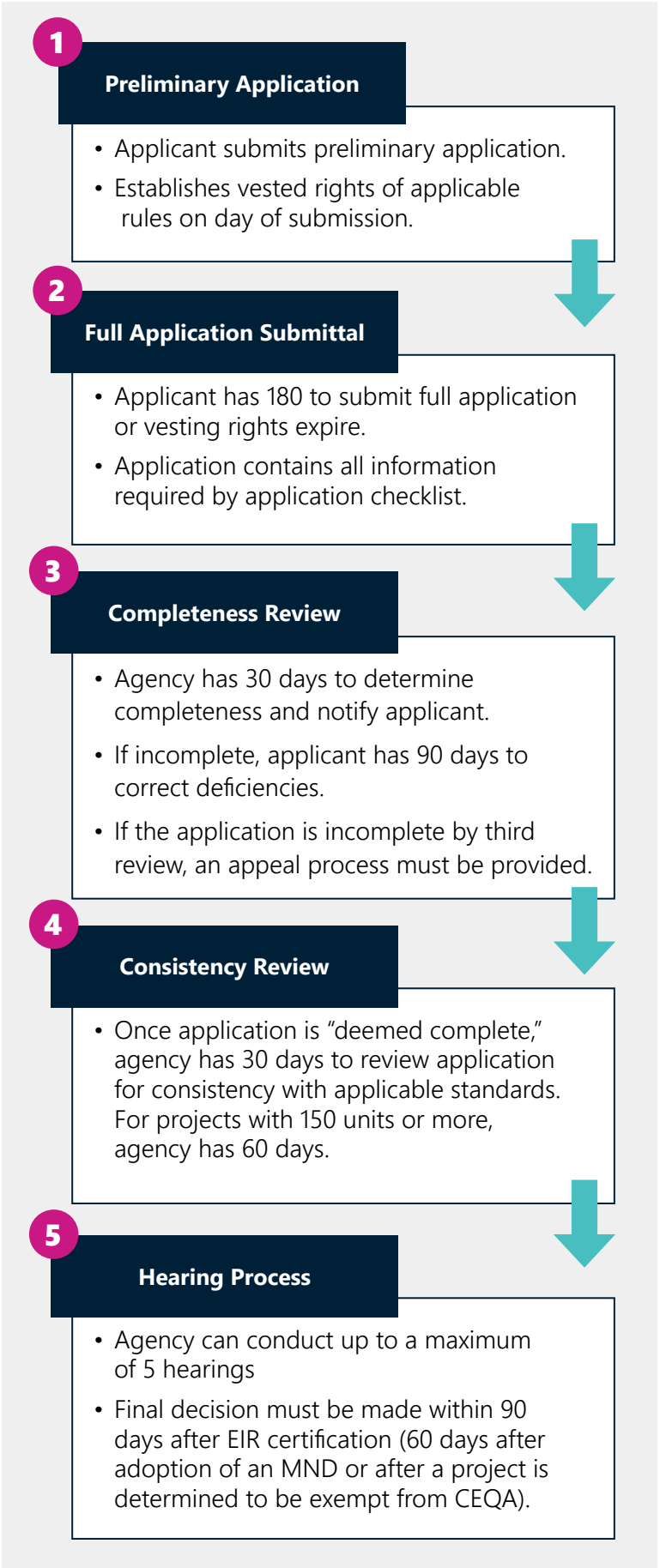
Step 4: Consistency Review

- After the full application is deemed complete, the agency then reviews the entire application for consistency with applicable objective standards (Gov. Code §65589.5).
- The agency identifies and provides specific provisions and explanations why the agency considers the housing project to be inconsistent or non-compliant with identified provisions.
  - For projects with 150 units or less, the agency has 30 days to review after the full application is deemed complete.
  - For projects with 150 units or more, the agency has 60 days to review after the full application is deemed complete.

Step 5: Hearing Process

- When a full application is deemed complete and the proposed project complies with applicable standards, the agency can conduct a maximum of five hearings.
- The agency must make a final decision on a housing development project within 90 days after certification of an environmental impact report (or 60 days after adoption of a mitigated negative declaration (MND) or an environment impact report (EIR) for a housing development project or 60 days from the determination by agency that the housing development project is exempt from CEQA) (Gov. Code §65950).
- If the project is not approved, then the application is subject to judicial review under the Housing Accountability Act.
- The housing development project must begin construction within 2.5 years following the date of final approval or the applicant will lose all vested rights received at the time the preliminary application was submitted (Gov. Code §65589 [o]).

SB 330 Summary Timeline of Application Process



Resources/Links:

HCD – Statutory Determinations for Limiting Jurisdiction's Abilities to Restrict Development:
https://www.hcd.ca.gov/statutory-determinations

HCD's Memo:
www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf

HCD's SB 330 Standardized Form:
www.hcd.ca.gov/community-development/accountability-enforcement/docs/SB 330 Preliminary Application Template_Final.docx

HCD's SB 330 Affected Cities and Counties Interactive Map:
cahcd.maps.arcgis.com/apps/webappviewer/index.html?id=5a63b04d7c494a6ebb2aa38a2c3576f5

HCD's List of Affected Cities:
www.hcd.ca.gov/community-development/docs/affected-cities.pdf

HCD's List of Affected Counties:
www.hcd.ca.gov/community-development/docs/affected-counties.pdf

SB 330 Bill Provision:
leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB330

SB 8 Bill Provision:
www.leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB8

Frequently Asked Questions (FAQs)

What if the project changes after the preliminary application is submitted?

If the revisions change the number of residential units or square footage by 20% or more, exclusive of any increase resulting from the receipt of a density bonus, incentive/concession, waiver or similar provision, then the applicant loses vested rights and the local government can apply current development standards, rather than those standards in place at the time of the preliminary application (Gov. Code §65589.5[o][2][E]). In addition, the applicant will have to file a new preliminary application.

If the revisions do not change the project in this way, the local government must still apply the standards in effect at the time the preliminary application was submitted.

Can a local government deny a housing development project?

HCA strengthens the Housing Accountability Act (Gov. Code §65589.5) which states that a housing development project that complies with the objective standards of the general plan and zoning ordinance must be approved by the agency, unless the agency is able to make written findings based on the preponderance of the evidence in the record that either: 1) the local government has already met its Regional Housing Needs Assessment (RHNA) requirement; 2) there is an impact to the public health and safety and this impact cannot be mitigated; 3) the property is agricultural land; 4) the approval of the project would violate State or Federal law and this violation cannot be mitigated; or, 5) the project is inconsistent with the zoning and land use designation and not identified in the general plan housing element RHNA inventory.

"Objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.

Can a local government change land use plans or development standards that result in residential reduction of density or intensity?

No, HCA restricts the adoption of land use or zoning amendments that would result in the reduction of allowed residential density or intensity of land uses than what is allowed under the regulations in effect on January 1, 2018, per Gov. Code §66300(b)(1). This government code section defines "less intensive use" to include, but is not limited to: reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing. Furthermore, the local government is further prevented from establishing moratoriums or other restrictions on housing projects and cannot place new caps on the number of land use approvals or permits that will be issued for housing projects.

The purpose of this material is to provide guidance, which agencies and other entities may use at their discretion. This guidance does not alter lead agency discretion in decision-making, independent judgment and analysis, and preparing environmental documents for project or governmental action subject to CEQA requirements. This material is for general information only and should not be construed as legal advice or legal opinion.