HOW CALIFORNIA'S NEW HOUSING CRISIS ACT CAN HELP DEVELOPERS GET THEIR PROJECTS DONE

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By: Kenneth A. Kecskes, Kaitlyn J. Sikora

Developers have new powerful tools to suspend restrictions on housing development and reduce the time it takes to approve housing developments in California. The recently adopted Housing Crisis Act of 2019 ("SB 330") aims to do so in three ways. First, it streamlines and expedites the process for submitting an application and securing the crucial "deemed complete" status. Second, it accelerates certain deadlines and timeframes under the Permit Streamlining Act for housing projects. Finally, it limits the number of public hearings that a city or county may hold after a project's application is deemed complete and awaiting approval.

How Does SB 330 Work? For a period of five years beginning on January 1, 2020, SB 330 expedites approval of housing projects by putting certain constraints on the authority of local governments. For example, SB 330 limits the rights of cities and counties to adopt land use regulations that limit the number of housing units or increase the imposition of impact fees on housing projects. In addition, for developers that file a state law defined "preliminary application," SB 330 freezes local laws in place at the time the application was submitted.

FIVE EXAMPLES OF HOW SB 330 CAN HELP A DEVELOPER:

1. SB 330 implements procedures to streamline the process by which a project application is "deemed complete."

First, SB 330 places limits on the time for which a local agency can conduct its review of a project application. Any public agency review of a project, and any resubmittals thereafter, must be responded to within 30 days after submittal. In certain cities and counties, limiting the review period will be a drastic improvement for developers.

Second, SB 330 increases transparency and limits the reasons for which a local agency can deem an initial review or resubmittal of a project application "incomplete." In order to increase transparency, all local agencies must create a "submittal checklist" that specifies, in detail, the information that the city or county requires from any applicant for a development project. If any application is deemed incomplete, then the local agency must provide an "exhaustive list of items that were not complete." The list of items that were not complete, i.e. the basis by which the application was deemed incomplete, is limited to those items that were previously identified by the local agency on its submittal checklist. Further, upon resubmittal of the application, the local agency cannot require new information that was not identified as a basis for the initial status of incomplete.

2. SB 330 creates an expedited review process for larger projects that require an Environmental Impact Report.

If a project requires an Environmental Impact Report ("EIR"), SB 330 limits the time by which a local agency must approve or deny a project after an EIR certification by the lead agency. If the project consists of housing or is a mixed-use project with two-thirds of the project devoted housing, then the local agency must approve or deny the project within 90 days after the project is EIR certified. If the project includes affordable housing with public financing, then the local agency must approve or deny a project within 60 days after the project is EIR certified. The outside dates for approval after EIR certification should remove some uncertainty in development timelines for large projects.

3. SB 330 imposes a cap on the number of hearings that a local government can hold before approval of a project.

SB 330 places a limit on the number of hearings a local agency can schedule before it approves or denies certain housing projects. If a housing project complies with "applicable, objective, general plan and zoning standards in effect at the time an application is deemed complete," then the local government cannot conduct more than five hearings. Significantly, each continued hearing date counts as a hearing for purposes of the five hearing cap. Public hearings and, at times, the persistent continuances thereof, can feel like a delay tactic to developers. The five hearing cap should have a positive impact on housing developments in which community opposition is a concern.

4. SB 330 allows a developer to prevent new ordinances, policies, and standards from frustrating their projects through the submission of a "preliminary application."

A developer may submit a preliminary application, which, with some exceptions, locks in existing local law and stops local governments from applying any newly enacted ordinances, policies, or standards to the project after the date the application was submitted. For example, fees cannot be increased beyond those in effect at the time the preliminary application was submitted, with the exception of any automatic annual increases or Consumer Price Index increases.

The preliminary application requires detailed contents, including:

- A site plan and elevations showing the design, color and material, and the massing, height and approximate square footage of each building that is to be occupied;
- The number of parking spaces;
- Any environmental constraints, i.e. known pollutants, species, natural hazards, historic resources, wetlands, coastal zone, streambed alteration, or location of public easements;
- The number of below-market rate units and density bonus concessions; and
- Whether the property will be subdivided.

There are some carve outs that allow new laws necessary to prevent a specific public health issue or safety issue, with no feasible alternative, or to prevent or substantially lessen an impact under California's Environmental Quality Act. In addition, if a developer significantly changes a project (generally a change to 20% of the project) then the freeze on laws in place at the time the application was submitted may not apply.

5. SB 330 limits the power of certain cities and counties to restrict new housing developments through new development policies, standards or conditions.

With respect to cities in an urbanized area or cluster and wholly urbanized counties, the law has restrictions on implementing new development policies, standards or conditions that may restrict housing developments, including any initiatives or referendums voted into law by the general populace. Notably, charter cities located in urbanized areas are specifically included in this provision.

Cities and counties are restricted from implementing any new development policies, standards or conditions that have any of the following effects:

1. A change to the general plan land use designation, specific plan land use designation, or zoning that results in a less intensive use. Less intensive use means, for example: (i) reductions in height, density or floors area ratio, (ii) new or increased open space or lot size requirements, (iii) new or increased setback requirements, minimum footage requirements, or maximum lot coverage limitations, and (iv) anything than would lessen the intensity of housing.

1. A reduction of the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning below what was allowed under the applicable land use designation and zoning ordinance in effect as of January 1, 2018.

2. A moratorium, or similar restriction or limitation, on housing development, including mixed-use development, unless to it is necessary to specifically protect against an imminent threat to the health and safety of persons in the affected city or county.

3. After January 1, 2020, any new design standards that are not objective design standards.

4. Enforcement of any rule that: (i) limits land use approvals or limits the issuance of permits necessary for the approval and construction of housing, (ii) imposes a cap on the number of housing units, or (iii) limits the population. This restriction, however, does not apply to any laws passed prior to January 1, 2005 in cities or counties that are predominantly agricultural.

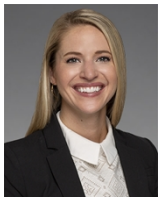
5. Demolishing any existing housing units, unless the housing development project will create at least as many housing units.

SB 330 provides real estate developers with new tools to build housing in California. The new law is complex, but with knowledgeable counsel, they can be applied to save valuable time and money and, hopefully, alleviate the significant shortage of housing in the state.

KEY CONTACTS

KENNETH A. KECSKES
PARTNER

SAN FRANCISCO, LOS ANGELES
KEN.KECSKES@KLGATES.COM



KAITLYN J. SIKORA
ASSOCIATE

SAN FRANCISCO
+1.415.882.8047
KAITLYN.SIKORA@KLGATES.COM

