



CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

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TO: All Staff
Other Interested Parties

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SUBJECT: IMPLEMENTATION OF STATE LAW SB 330 - HOUSING CRISIS ACT OF 2019

I. INTRODUCTION

On October 9, 2019, the Governor signed into law the Housing Crisis Act of 2019 (SB 330). SB 330 creates new state laws regarding the production, preservation and planning for housing. It amends the State Housing Accountability Act, Permit Streamlining Act and Planning and Zoning Law all under Title 7 of the California Government Code. The bill is in effect as of January 1, 2020.

This memorandum serves as interim guidance for staff and project applicants regarding City processes as they relate to the implementation of SB 330 and does not create any new or additional City ordinances or regulations. It reflects most but does not cover all circumstances and may be subject to additional information, interpretation and consideration. This memorandum provides a summary of pertinent sections of SB 330 for reference purposes only and is not intended to conflict with State Law.

II. SUMMARY OF SB 330 PROVISIONS

SB 330 aims to increase certainty in the development process, speeding the review of new Housing Development Projects, preserving existing affordable housing and preventing certain zoning actions that reduce the availability of housing. The bill establishes a statewide housing emergency until January 1, 2025. During the duration of the statewide housing emergency, SB 330 does the following:

- Creates a new vesting process for zoning and land use ordinances, policies, and standards in place at the time that a preliminary application is submitted, with limitations;
- Requires that the historic status or designation of any site be determined at the time an application for a discretionary action is deemed complete;
- Prohibits imposing or enforcing non-objective design review standards established after January 1, 2020;
- Clarifies the Permit Streamlining Act regarding the review of development applications for completeness;
- Shortens required permit review timeframes and limits the number of public hearings for housing projects that meet all applicable objective zoning standards;
- Prohibits legislative actions that reduce total zoned capacity for housing (i.e. “downzoning”) in the City;
- Clarifies the circumstances under which Housing Development Projects may have their density reduced under the Housing Accountability Act;
- Prohibits approval of a Housing Development Project that results in a net loss of housing units; and
- Creates new housing replacements, eviction protections, relocation assistance, and right-of-return requirements.

A project that meets any of the following criteria (items 1-3 below) per California Government Code Section 65589.5(h)(2)(B) is subject to the provisions of SB 330 where those provisions refer to a Housing Development Project.

1. The project is residential only and creates two or more new residential units on a project site.
2. The project is a mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage of the project designated for residential use, including dwelling units and any uses accessory to the residential units.
3. The project is transitional housing or supportive housing.

For the purposes of the definition of a Housing Development Project, any area used or proposed to be used as a hotel or other transient use is not considered a residential use.

III. DEVELOPMENT REVIEW PROCESS CHANGES

A. *New Filing Requirements for Discretionary Housing Development Projects*

HCIDLA Replacement Unit Determination Letter

All Housing Development Projects related to an application for a discretionary action filed with the Department of City Planning on or after January 1, 2020 will require a Replacement Unit Determination letter from the Housing and Community Investment Department (HCIDLA) before any City Planning entitlement application related to the project can be deemed complete pursuant to the Permit Streamlining Act.

Housing Development Projects related to City Planning applications deemed complete prior to January 1, 2020 do not require a Replacement Unit Determination letter in order to continue processing the entitlement request.

LADBS Preliminary Zoning Assessment

In order to implement SB 330 and other State housing laws as they pertain to the expeditious review of Housing Development Projects, the Department of City Planning will require that discretionary Housing Development Projects that have not been deemed complete by January 1, 2020 receive a Preliminary Zoning Assessment from the Los Angeles Department of Building and Safety (LADBS) before any City Planning application related to the project can be deemed complete pursuant to the Permit Streamlining Act. Applicants will need to submit for zoning Plan Check with LADBS to ascertain if there are any zoning issues or necessary approvals associated with the project and site that should be resolved.

B. New Preliminary Application Process to Provide Certain Vesting Rights

SB 330 creates a new vesting process for discretionary Housing Development Projects during the five-year period until January 1, 2025. It does this by creating a new "preliminary application" process that establishes a new date for the purposes of locking projects into the ordinances, policies, and standards adopted and in effect when a preliminary application (including all of the information required) is submitted and deemed complete. The vesting does not apply to California Environmental Quality Act (CEQA) determinations, including historic resource determinations pursuant to CEQA. In order for a Housing Development Project to receive initial vesting rights, a preliminary application must include all of the information required on the Department of City Planning SB330 Preliminary Application Filing Instructions form (CP-4063) consistent with subdivision (a) of California Government Code Section 65941.1 and upon verification that the preliminary application processing fee is paid.

C. Historic Cultural Monument Nominations

Pursuant to Section 5 of SB 330 and Section 65913.10 of the California Government Code, when a site is nominated for Historic Cultural Monument status, the City must determine whether the site contains a Historic Cultural Monument by the time that a City Planning application is deemed complete per the Permit Streamlining Act for a discretionary action on a Housing Development Project at the site. A determination as to whether a parcel of property is a historic site shall remain valid during the pendency of the Housing Development Project for which the application was made unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities. This provision does not automatically expire.

D. Limits on Project Review Timelines and Number of Public Hearings

SB 330 shortens the timeline to approve or disapprove a Housing Development Project with an associated Environmental Impact Report (EIR) from 120 to 90 days, and from 90 to 60 days for a Housing Development Project that is at least 49% low-income, publicly subsidized, and involves an associated EIR.

The bill also prevents jurisdictions from conducting more than five public hearings in connection with the approval of a Housing Development Project that meets objective zoning standards. The definition of "hearing" found in California Government Code section 65905.5 includes required meetings, hearings and continued hearings such as those associated with City/Area Planning Commissions, Design Review Boards, and HPOZ Boards. A "hearing" also includes appeals, except for those related to the approval or disapproval of a legislative action. The five hearings are counted from the deemed-complete date of the City Planning application. The law requires that a decision be made on the project no later than the fifth and final meeting. Meetings held solely pursuant to CEQA law, including CEQA appeals, are not counted toward the number hearings.

IV. RESTRICTIONS ON ACTIONS TO REDUCE HOUSING

A. Prohibitions on the Adoption of Plans, Zoning Ordinances, Moratoria, and Other Certain Actions That Result in Fewer Housing Units

In "affected" cities such as the City of Los Angeles, SB 330 generally prohibits zoning actions that result in fewer housing units than are permitted as of January 1, 2018. These actions include the adoption of plans that result in a net downzoning or otherwise reduce housing and population, except for specified reasons involving health and safety, affordable housing and voter initiatives. In addition, the bill generally prohibits local limits on the amount of housing or population through a moratorium on housing development, or limits on approvals, permits or housing units that can be approved or constructed.

These provisions require an analysis by City Planning that any legislative action, until 2025, would not lessen housing intensity, as described in Section 13 of SB 330 to include reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing. These restrictions apply to any zone where housing is an allowable use, even if the intent is not to reduce housing intensity. This provision does not impact zoning efforts that reduce intensity for certain parcels, as long as density is increased on other parcels and therefore result in no net loss in zoned housing capacity or intensity.

The law does create certain exceptions from these provisions, including an exception for Housing Development Projects located within a very high fire hazard severity zone as provided in Section 51177 of the California Government Code and in cases meant to preserve or facilitate the production of affordable housing for lower income households or housing that traditionally serves lower income households. A moratorium to protect against an imminent threat to the health and safety of persons residing in the vicinity of the area subject to the moratorium is also permitted, as are voter-approved local initiatives or referenda.

B. Prohibitions on the Establishment or Imposition of Non-Objective Development Standards

SB 330 prevents the City from imposing or enforcing non-objective design standards that are adopted on or after January 1, 2020 (until January 1, 2025). An "objective design standard" is "a design standard that involve[s] no personal or subjective judgment by a public official and is 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 before submittal of an application."

C. No Net Loss of Housing Units

SB 330 creates certain requirements for any Housing Development Project that results in the demolition or removal of a residential unit and submits an application for discretionary action to the Department of City Planning on or after January 1, 2020.

Starting January 1, 2020, no Housing Development Project may be approved that will require the demolition or removal of residential dwelling units unless the project will create at least as many units as will be demolished or removed or that existed in the previous 5-10 years.

This prohibition on approval of discretionary actions that reduces the number of units existing on a site will apply to the approval of new Housing Development Projects through discretionary City Planning actions until 2025.

D. Protected Unit Replacement

SB 330 establishes an additional set of requirements for Housing Development Projects that require demolition or removal of protected units.

Protected units are defined as any of the following:

1. Residential dwelling units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.
2. Residential dwelling units that are or were subject to any form of rent or price control through a public entity's valid exercise of its police power within the past five years.
3. Residential dwelling units that are or were occupied by lower or very low income households within the past five years, as determined by HCIDLA.
4. Residential dwelling units that were withdrawn from rent or lease in accordance with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 within the past 10 years.

Pursuant to SB 330, the City may not approve a Housing Development Project that requires the demolition or removal of a protected unit before January 1, 2025, unless the project will replace any existing, demolished or removed protected units. Unit replacement will require a determination by HCIDLA.

The bill requires the proposed Housing Development Project shall provide:

- Any restricted affordable housing units to be replaced on a one-for-one basis at the same income category and of equivalent size, including:
 - At least the same number of units of equivalent size (number of bedrooms) made affordable at the same or lower income category as those existing households at the time the units were occupied.
 - A recorded 55-year affordability covenant for rental units, and equity sharing covenant for for-sale units pursuant to GC 65915(c)(2).

- o At least 70% of the units be made lower income restricted affordable units if the income category of the household in occupancy cannot be established, according to the following categories (rounding fractional units up) according to the most current data from HUD's Comprehensive Housing Affordability Strategy (CHAS) database.
 - 51% very low (VL) and 19% low income for Density Bonus projects; or
 - if a Transit-Oriented Communities (TOC) project: 32% extremely low, 19% VL, and 19% low income.
- Any units that are subject to a rent or price control that existed in the past five years (from the date of submittal to HCIDLA) and is/was occupied by an above income tenant shall be replaced with price/rent controlled units. Please note that separate or additional replacement requirements may apply per LAMC 151.28.

The law allows replacement units established pursuant to these requirements to be counted towards any requirement to provide affordable housing (restricted to moderate income or lower) as part of a Density Bonus, TOC, or other locally-established requirement that requires on-site affordable housing as a condition of approval (including the Affordable Housing Linkage Fee exemption). While a lower income category unit may normally be provided in lieu of a higher category unit, if a "protected unit" tenant wishes to exercise their right of return, then the unit may only count toward the income category of the returning tenant.

E. *Expanded Rights for Residential Occupants*

Any occupants of protected units being demolished or removed must be provided certain allowances, including:

- The ability to live in the units they occupied until six months before construction activities begin;
- The developer agrees to provide relocation benefits as determined by HCIDLA; and
- A "right of first refusal" for a comparable unit available in the new Housing Development Project which is affordable to the household at an affordable rent.

V. PROJECT REVIEW PROCEDURES

A. *New Filing Requirements Prior to Deeming Complete a City Planning Application*

Before City Planning staff deem complete any application related to a Housing Development Project filed or to be deemed complete after January 1, 2020, a project must have been reviewed by HCIDLA and LADBS (See Diagram A). Prior to deeming complete an application, a HCIDLA Replacement Unit Determination letter will be required. See subsection D below for more information on the Replacement Unit Determination process.

In addition, a LADBS Preliminary Zoning Assessment will be required for all Housing Development Projects related to a City Planning application for a discretionary action filed on or after January 1, 2020 in order to deem complete the application. Housing Development Projects submitted to the Department of City Planning prior to January 1, 2020 but not yet deemed complete as of January 1, 2020 will also require a LADBS Preliminary Zoning Assessment to deem the City Planning application complete, per the

Permit Streamlining Act. To obtain a Preliminary Zoning Assessment from LADBS, the applicant shall submit a Preliminary Zoning Assessment Referral Form along with architectural plans sufficient for showing compliance with local zoning requirements as provided in LADBS Information Bulletin P/GI-2020-31. The Preliminary Zoning Assessment Referral Form will be available at all Los Angeles City Planning public counters and on City Planning's website (planning4la.org) in January 2020.

B. Optional Vesting SB 330 Preliminary Application for Discretionary Housing Development Projects

Project applicants choosing to seek vesting rights through a SB 330 preliminary application may request an appointment through the City Planning Department website (planning4la.org) to file the preliminary application. The preliminary application must be deemed complete by City Planning staff in order to obtain vesting rights. The required information and materials are listed on the Preliminary Application Instructions form (CP-4063) and on the Preliminary Application form (CP-4062). A preliminary application is deemed complete at the time that all required forms, documents and materials are submitted, and the final invoice has been issued and proof of payment is presented to City Planning staff. In addition, a project must meet the following timelines (See Diagram A) and project thresholds in order to retain vesting rights that would be granted through the preliminary application process:

1. The Preliminary Application must be filed with City Planning prior to filing an application requesting approval of any discretionary action.
2. A subsequent application filed with City Planning requesting approval of a discretionary action (not including ministerial administrative reviews) must be filed within 180 days of the date that the Preliminary Application is deemed complete.
3. If the City Planning application is deemed incomplete after filing, the applicant must submit all missing or incomplete items to City Planning within 90 days of being notified in writing by City Planning staff.
4. Construction of the project must commence within two and one-half years following the date that the project receives final approval, including all necessary approvals to be eligible to apply for, and obtain a building permit or permits and all appeal periods or statutes of limitations have been exhausted or resolved in favor of the Housing Development Project.
5. Any change in the residential unit count is limited to less than 20 percent—exclusive of any increase resulting from the receipt of a density bonus, concession, waiver, or similar provision—indicated on the submitted and deemed complete Preliminary Application.
6. Any change in the Building Area is limited to less than 20 percent—exclusive of any increase resulting from the receipt of a density bonus, concession, waiver, or similar provision—indicated on the submitted and deemed-complete Preliminary Application.

C. City Planning Zoning Conformance Review

Once an application for a discretionary action on a Housing Development Project is deemed complete, DCP staff will conduct a zoning conformance review within the period provided by the Housing Accountability Act, California Government Code Section 65589.5(j)(2). Specifically, this review will take place within 30 days from application being deemed complete for Housing Development Projects with 150 or fewer units, and within 60 days from application being deemed complete for Housing Development Projects with more than 150 units. The zoning conformance review will be informed by the completed LADBS Preliminary Zoning Assessment in addition to DCP staff's review of the applicability of any other zoning or land use standard to a Housing Development Project.

D. HCIDLA Protected Unit Removal / Replacement Review

In order for a City Planning application to be deemed complete, all Housing Development Project applicants must receive a determination from HCIDLA regarding the number and type of required replacement units and the number of tenants eligible to exercise the right of first refusal. All discretionary Housing Development Project applicants are required to obtain this determination even if there are no existing residents or residential units. Applicants are strongly encouraged to obtain the HCIDLA determination prior to submitting a vesting SB 330 Preliminary Application and prior to drafting any blueprints or building plans. This determination will also be required to obtain a permit for demolition or removal of a residential unit.

To receive a determination, the project applicant must complete an application for a Replacement Unit Determination with HCIDLA and pay the applicable fee. Once completed, a Land Use Analyst will determine:

- The number of currently occupied protected units and the income level of the tenants;
- The number of protected units that existed in the past five years but are now vacant, demolished, or removed; and
- The number of units that were removed from the rental market within the past 10 years including the number of bedrooms.

In order to assess the income of the tenants, HCIDLA will send a packet to the current occupants requesting income documentation such as employer pay stubs, W2s, tax returns, etc.

Based on the income of the tenants, HCIDLA will require the replacement units to be restricted to the same or lower income category as the tenant as shown in Schedule 6 or 7 of Land Use Rent Incomes on HCIDLA's website (Schedule 7 if a project is receiving Affordable Housing Trust Funds).

If the income of the current tenants is unknown or (in the case of vacant units) if the income of tenants from the past five or ten years is unknown, HCIDLA will make a determination that rental units were last occupied by 51% very low income households and 19% low income households for Density Bonus projects pursuant to the latest U.S. Department of Housing and Urban Development's (HUD) Comprehensive Housing Affordability Strategy (CHAS) database. If the project is using the Transit Oriented Communities (TOC) program, HCIDLA will make a determination that 32% of the units were occupied by extremely low income households, 19% very low income, and 19% low income.

All replacement calculations resulting in fractional units shall be rounded up to the next whole number. The replacement units must be of equal size to the units that were demolished or removed unless otherwise determined by HCIDLA.

E. Relocation and Right of First Return Determination

The amount of relocation for each household occupying a protected unit will be determined by HCIDLA pursuant to applicable law. The relocation procedures will include a requirement to offer the right of first return to any interested and eligible prior occupants.

F. HCIDLA Affordable Housing Covenant

Any Housing Development Project that is required to replace a protected housing unit must apply for a Land Use Covenant with HCIDLA. The completion of a Covenant is a requirement to issuance of the building permit. The fee for the preparation and filing of a Land Use Covenant is \$5,813 per project. Additionally, there is an annual monitoring fee of \$173 per restricted unit upon receipt of the Certificate of Occupancy (all fees are subject to change). Preparing and executing a Covenant takes approximately 8-12 weeks upon receipt of all the required documents, although a complex project may take longer.

VI. QUESTIONS AND CONTACTS

For questions regarding the Replacement Unit Determination, relocation, right of return, and Affordable Housing Covenant requirements, contact the Housing and Community Investment Department at hcidla.SB330@lacity.org.

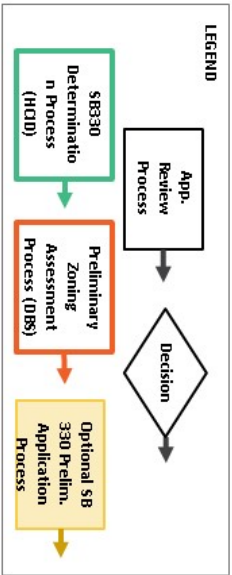
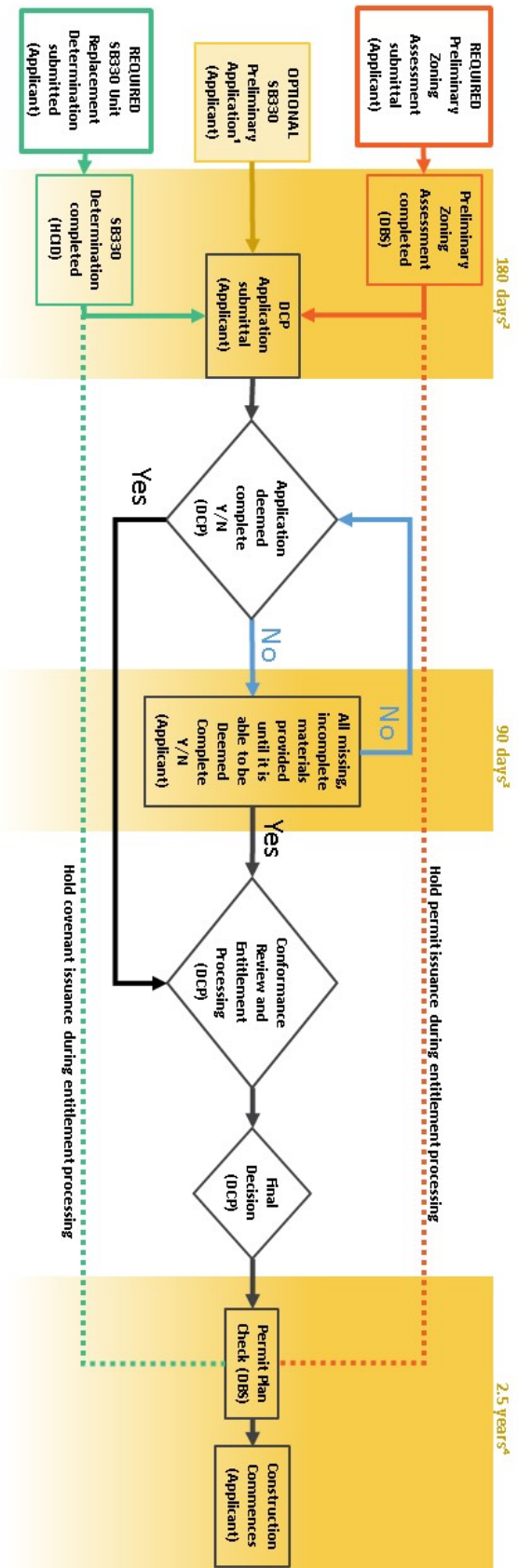
For questions about the Preliminary Zoning Assessment conducted in Plan Check and new clearances relating to the demolition or removal of units and to new Housing Development Projects, contact the Department of Building and Safety at ladbs.ASAP@lacity.org, 3-1-1 (within the City of Los Angeles) or (213) 473-3231. You may also visit their website at ladbs.org.

For questions regarding the optional vesting Preliminary Application, the required zoning review procedures, and other provisions of SB330 relating to discretionary Housing Development Projects in the City of Los Angeles, visit one of the City Planning public counters, contact Planning staff at planning.PARP@lacity.org, or visit the Los Angeles City Planning website for more information:

planning.lacity.org/development-services/preliminary-application-review-program

Discretionary Housing Development Project Work Flow

Diagram A



FOOTNOTES

1. The Preliminary Application must be filed with City Planning prior to filing an application for a discretionary action.
2. An application filed with City Planning for a discretionary action must be filed within 180 days of the date that the Preliminary Application is deemed complete.
3. If the City Planning application is deemed incomplete after filing, the applicant must submit all missing or incomplete items to City Planning within 90 days of being notified in writing by City Planning staff.
4. Construction of the project must commence within two and one-half years following the date that the project receives final approval.