

City of Santa Clara

Planning Commission

**2018 Housing Legislation &
Due Process**

January 9, 2019



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The Center of What's Possible



Part 1: Housing Legislation



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Refresher on 2017 Bills...

- AB 1505: Inclusionary Housing
 - City now requires inclusionary housing for both ownership & rental units
- SB 35 Streamlining
 - Santa Clara subject to SB 35 for 50% affordable projects
- No Net Loss Rules & Housing Accountability Act (HAA)
 - No Santa Clara projects have been subject to this, yet



2018 Housing Legislation

- AB 2132: Fee waivers for seniors
- AB 686 & 1771, SB 828: Housing Elements
- AB 2162: Supportive Housing
- SB 1227: Student Housing
- AB 2372: FAR Bonuses
- AB 3194: HAA Changes
- SB 1333: Charter cities



AB 2132: Seniors' Building Fees

- This authorizes the City to waive or reduce building permit fees for home improvements of seniors (at least 60 years of age)
- Improvements must be made to accommodate a disability
- City must adopt an ordinance to implement



Housing Element Bills

- SB 828 – De-politicizes RHNA process
 - Limits justifications to reduce RHNA
- AB 1771 – more on RHNA process
 - Data-driven allocation
 - Adds additional state oversight
- AB 686 – Housing discrimination
 - Housing element must “affirmatively further fair housing” (AFFH)



AB 2162: Supportive Housing

- Authorizes supportive housing by right in multifamily & mixed-use zoning districts
- “Supportive housing” requirements
 - 100% of units are affordable
 - 25% of units (minimum 12) restricted to homeless persons
 - Onsite supportive services, 3% of sf (minimum 90 sf)
 - Plan for providing supportive services
- No parking requirements (if 1/2 mi from transit stop)

SB 1227: Student Housing

- New **35%** density bonus for qualifying student housing developments
- Applies to both apartment-style units and dormitory-style bedrooms
- Bonus applies if $\geq 20\%$ of units/beds are restricted to lower-income students for 55+ years
- Only applies if housing is exclusively for students at an accredited institution



AB 2372: Floor Area Ratio Bonus

- Authorizes City to adopt ordinance to grant FAR bonuses to affordable housing developments
- (Alternative to Density Bonuses)
- Applies to projects on infill sites or near major transit stops
- Bonus applies if \geq 20% of units are restricted to VLI residents for 55+ years
- Severely limits parking (0.1 spaces / affordable unit)



AB 3194: HAA Changes

- City must now process applications for projects that do not comply with the current zoning, if consistent with GP
- City can still require developer to comply with objective standards & criteria of ZO
- But, City must apply density in the GP, if it conflicts with ZO



SB 1333: Charter cities

- Clarifies that Planning & Zoning Law provisions apply to charter cities:
 - General Plans
 - Specific Plans
 - Development Agreements
 - Adoption & Review of Housing Elements
 - Consistency of ZO & GP



...ave been duly convened, and
ates, or any place subject to its jurisdiction,
Section 2. Congress shall have power...
article by appropriate legislation.

Amendment XIV.¹¹

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, which shall be ascertained by the actual enumeration...

Part 2: Due Process



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Due Process

- “No person shall be ... deprived of life, liberty, or property, without due process of law”

U.S. Constitution, amendments V, XIV

California Constitution, art. I § 7

- City will “extend equal opportunities and due process to all parties in matters under consideration”

CSC Code of Ethics & Values § 1.e



Due Process in city government

- Due Process is implicated whenever the City makes a quasi-judicial decision:
 - Conditional use permits
 - Variances
 - Subdivision Maps
 - License revocations
 - Terminating or disciplining employees



What is due process?

- Reasonable notice &
- A reasonable opportunity to be heard
- Before an impartial decisionmaker



An Impartial Decisionmaker

- Pre-existing views on the general policy issues related to a matter do not create disqualifying bias
- Due process does not require that the decisionmaker have no views or opinions at all



An Impartial Decisionmaker

- Disqualifying bias requires:
 - Evidence of specific prejudice against a person affected
 - Bias which is sufficient to impair the decisionmaker's ability to decide the matter on appropriate grounds



Nasha v. Los Angeles

- Planning Commissioner wrote an article in an HOA newsletter calling a project a “threat to a wildlife corridor”
- Commissioner voted against project, along with 2 other Commissioners
- Court found “unacceptable probability of actual bias”
- Because 3 votes were necessary, the tainted vote was decisive



March 2018

SCRA OPPOSES SENATE BILL SB 827 -- INCREASES DENSITY AND TALLER BUILDINGS

The SCRA board voted unanimously to oppose Senate Bill 827 by which the state would mandate zoning regulations at the local level and would lead to more density and taller buildings. Starting at a “transit hub” it would be applied along a “corridor” for one half mile from the transit hub. Presently the current zoning for building heights along the Ventura Boulevard corridor in Studio City are limited to 30 ft. on the Southside and 45 ft. on the Northside. SB 827 would allow increases in height to 85 ft. within one half mile of transit hubs such as LA Metro stations or other transit hubs on transit corridors. For example, Studio City is home to the Redline station at Universal. The impact of SB 827 would be to devastate the residential area within half mile of this Redline Station. Also large high-rises would be permitted to be built adjacent to the hillsides along the transit corridor, blocking views, restricting down flow of cooler air from the hillsides and canyons all of which help keep temperatures down in the Valley floor and introduce cleaner air into the mix. Any municipal height limit to the contrary would be overridden.

Studio City has had experience in the past where Sacramento has passed overriding zoning laws. By way of example, older buildings in Studio City that contained affordable apartments were torn down. The theory was that an increase would result in more apartments. In exchange and as a bonus for allowing this height increase, two affordable units would be provided, and the rest of the units would be at the going market rate. The end result was not as intended and failed to meet the objective. Many existing buildings that were affordable were demolished leading to a demonstrably net loss of affordable housing in Studio City. The point is that Los Angeles is best suited to understand our local problems and explore solutions at local level.

On a broader view, all east/ west and north/ south streets will probably be defined as transit corridors in the future.



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IN THIS ISSUE

NBC Universal Hilton Hotel

SCBA Update

Harvard Westlake

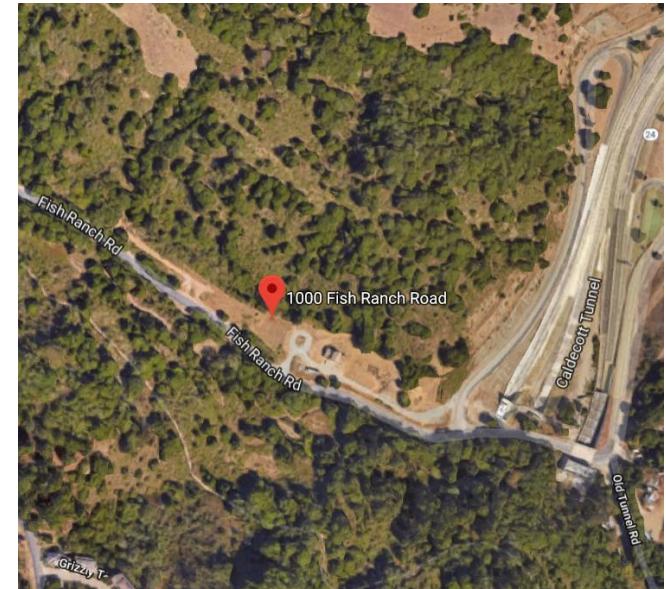
Woody's Group v. Newport Beach

- Restaurant applied to extend hours, add dancing, and install a patio cover
- Councilmember sent email to City Clerk stating he “strongly believed” that the project was inconsistent with “the residential character of the area”
- Court concluded the email demonstrated an unacceptable probability of actual bias.



Attard v. Contra Costa County

- Board of Supervisors denied residential development permit for 5-acre site outside Orinda, primarily because it didn't have necessary Caltrans permits
- One of supervisors emailed Caltrans, critical of the project and asking Caltrans to shut down sewer line
- Court stated that this email showed “the type of bias proscribed by *Nasha*”



Common Law Conflicts

- Law made by court decisions
- Applies when public official is tempted by personal or pecuniary interests
- Clark v. City of Hermosa Beach...



Clark v. City of Hermosa Beach

- Application to construct residential duplex
- Planning Commission approval appealed to Council
- Robert Benz overtly demonstrates animus toward applicants
- Benz then votes against project with 3-2 majority
- Court concludes that “Benz's personal animosity toward the Clarks contributed to his conflict of interest; he was not a disinterested, unbiased decisionmaker.”



Avoid pre-commitment

- Statements made to developers, residents
- Statements made in newspapers, newsletters, blogs, facebook
- Statements made at City Council meetings & committee meetings
- Statements made at PC meetings before the close of public hearings
- Architectural Committee decisions



If You Are Concerned...

- When in doubt, abstain
- Don't discuss or influence (staff or colleagues)
- Identify nature of conflict at meeting
- Leave chambers
- Contact City staff with questions



Final thought

- “Always do right – this will gratify some and astonish the rest.”

Mark Twain



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