



Date: March 7, 2019
To: Planning Commission
From: Craig Jimenez, Director of Community Development
Subject: Bricks & Mortar: Housing Accountability Act

Originally passed by the California Legislature in 1982, The Housing Accountability Act (HAA) is designed to promote and encourage infill development and streamline approval processes. Over the intervening years, additional legislation and case law have clarified and refined its implementation and scope. In a nutshell, the HAA limits local jurisdictions' (cities and counties) authority by requiring that decision makers base the denial of a conforming housing development project on a very specific set of findings established by state law. This makes it extremely difficult to deny a housing development project for subjective reasons such as neighborhood compatibility or aesthetics and design. To deny a project or require a lower density than what is permitted by the jurisdiction's land use policies, a local agency must determine that the project would have a "specific, adverse impact upon the public health or safety." The threshold for making that finding is high.

In 2017, the HAA was significantly strengthened through the passage of two bills: SB 167/AB 678 and AB 1515. These bills were part of a comprehensive group of laws enacted to address California's housing shortage. This signaled a significant shift in the focus of the state's housing policies from planning to production. In 2018, AB 3194 further amended and strengthened the HAA. Through the passage of these laws, the Legislature's intent was unmistakable: to increase housing production by reducing local authority to deny or reduce the density of proposed housing development projects.

With the adoption of AB 72, the 2017 bill broadened the State's authority to enforce housing laws and penalize jurisdictions that fail to comply with State housing laws. For example, the Governor's Office recently announced that it intends to take legal action against the City of Huntington Beach for refusing to comply with State housing laws. The potential legal and financial consequences of failing to comply with the HAA could be significant.

The Housing Accountability Act

The stated purpose of the HAA is to make local jurisdictions accountable for increasing California's housing supply and for approving housing development based on their adopted General Plan, zoning regulations and other approved land use plans. As clarified this year by AB 3194, when there are inconsistencies between the General Plan and zoning regulations, the General Plan policies take precedence.

At its core, the HAA requires that when a proposed housing development project meets all "applicable, objective general plan and zoning standards and criteria, including [objective] design review standards," the local agency cannot "disapprove the project" or "approve it upon the condition that the project be developed at a lower density" unless the agency makes two specific findings:



1. The project would have a specific adverse impact on the public health or safety unless the project were disapproved or developed at a lower density; and
2. There is no feasible method of mitigating or avoiding the impact other than disapproval or reduction in density.

Pursuant to the HAA, a “housing development project” includes affordable or market rate multifamily residential projects, specified mixed-use, and transitional or supportive housing. Though not explicit, based on the terminology in the law, it would also apply to a single family subdivision with more than one dwelling “unit”. The various requirements in the HAA apply to all of these types of projects, as well as emergency shelters. Although the term is not defined in the statute, *objective* standards generally include quantifiable requirements (such as building height, size, setbacks, and parking requirements) and other standards that do not require anyone to exercise personal or subjective judgment to determine compliance.

Although less common, it is important to note that the HAA specifies that the denial of defined types of development such as farmworker housing, emergency shelters and certain affordable projects require additional findings pursuant to the state law.

Compliance Review Timeframes

The HAA does not specifically prevent a local jurisdiction from following its established approval processes. With that said, for those cities and counties that review housing development proposals through a public process, such as Monrovia, the timeframes to review a project for compliance with that jurisdiction’s applicable objective standards will require that a formal determination of consistency be made *prior* to the approving body’s decision.

If the jurisdiction determines that the project is inconsistent with the City’s applicable objective standards, the applicant must be provided with written documentation specifying how the project does not comply with the standards. The determination (either way) must be made and provided to the applicant in writing within a specified time that an application is deemed complete:

- 150 units or less: within 30 days
- More than 150 units: within 60 days

Process

In order to meet the time limitations imposed by the HAA, Planning staff will be responsible for making the determination as to whether the project meets the City’s applicable objective criteria within the timeframe established by the HAA. The clock begins as soon as the application is deemed complete. For housing development projects, it will be important for staff to issue a “deemed complete” or “incomplete” letter. The determination that the application is complete starts the clock. Prior to the expiration of the review period, the HAA requires that the City send the applicant a letter whether or not the project meets the objective criteria. If the project is inconsistent with the City’s *objective* criteria, the determination letter must specifically state the

standards that are not met and why. The project will be deemed consistent with the City's standards if the review period expires without an adequate response.

Findings

It is important to note that a determination of consistency is not approval. It does, however, lay the groundwork for approval. If the project is determined to be consistent with the applicable objective standards, then in order for the recommending or approval body (DRC, Planning Commission or City Council) to deny or recommend denial the application, the decision to disapprove must be based on **both** of the following findings:

- A. The housing development project would have a **specific, adverse impact upon the public health or safety** unless the project is disapproved or approved upon the condition that the project be developed at a lower density.

In terms of the HAA, a "specific, adverse impact" is defined as a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existing on the date the application was deemed complete." This is an incredibly high standard, in that it is difficult to imagine a scenario where a housing project would have a significant negative impact on public health. AB 3194 added an express provision to the HAA, confirming that local agencies should rely on the "specific, adverse impact" finding infrequently. However, it is important to note that this finding does not address an adverse impact on "public welfare". This is notable since, typically, the imposition of design review, and specifically for Monrovia, neighborhood compatibility review falls under the City's police power authority to protect "public welfare".

- B. There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified above, other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

If project approval includes a condition to lower the density from what is allowed by the General Plan, that requirement must have a specific nexus to mitigate or avoid the adverse impact.

Pursuant to State law, both of these findings need to be supported by a "preponderance of the evidence." What this means is that **if a project conforms to all of the City's applicable objective development standards (no variances or exceptions); it will be extremely difficult to deny a housing project.**

The HAA does not mandate "by right" development or prevent the City from either design or neighborhood compatibility review. Nor does it prevent the City from proceeding with its existing discretionary review and neighborhood compatibility processes. However, the City essentially cannot deny a housing development project or impose conditions that the project be developed at a lower density unless the necessary findings can be made. Additionally, conditions that are not based on "objective" standards that could result in making a project

infeasible are also prohibited. The City has the burden of proof to provide the preponderance of evidence to deny the project or impose such conditions.

Lastly, the HAA is silent on CEQA and therefore "projects" are still subject to that review. That said, most housing projects in Monrovia are smaller conforming, "in-fill" development that clearly meet the conditions that apply to a Class 32 Categorical Exemption. Ultimately, there are still unknowns related to CEQA and the HAA that will need to be addressed either by the Legislature or the courts.