

# SB 330

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BERLINER COHEN LLP

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# What Is SB 330?

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- Housing Crisis Act of 2019
- Primary goal to streamline approval of housing development projects by cities and counties

# Housing Development Project

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“Housing development project” means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

# Three-step development application review process under SB 330

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- Application Phase
- Consistency Review
- Approval

# Application Phase: Completeness Review

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# Competing Goals of Completeness Review

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Enough Information to  
Review the Application  
Thoroughly and Effectively



Processing the Application  
Promptly to Allow the  
Applicant a Fair Hearing  
on the Merits as Soon as  
Possible

# How Has SB 330 Changed the Process?

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- ❑ SB 330 added a “preliminary application” process.
- ❑ After the preliminary application is received, the applicant submits a formal development application.
- ❑ Application Checklist: The City is required to maintain a published application checklist. The City is required to limit its completeness review to items in the checklist.

(NOTE: The preliminary application checklist and application checklist are two different things.)

- ❑ Completeness letters must now be “complete and exhaustive.”
- ❑ Historical resources determinations are now required as part of application process.

# The Four C's

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- Completeness
- Consistency
- CEQA
- Condition of Approval



# The Four C's

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- A completeness issue is a question of incomplete information required as part of the project application.
- Consistency with applicable standards is addressed in the consistency letter after the project application is deemed complete.
- Information required ***solely*** for CEQA can be requested at any time.
- If a housing development project approval is subject to discretionary review, you can subject the project to conditions of approval that do not reduce the project's density or that are otherwise required as mitigation under CEQA.

# A Note About SB 35 Projects

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- ❑ Ministerial projects are not subject to the Permit Streamlining Act.
- ❑ SB 35 projects are ministerial.
- ❑ Therefore, SB 35 projects are not subject to completeness review.
- ❑ SB 35 has its own timelines, which all run from the date the application is submitted, not from the date the application is deemed complete.
- ❑ This is because SB 35 projects are not subject to completeness review.

# Consistency Review: Housing Accountability Act (HAA) Obligations

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# What Does the HAA Require?

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(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, **it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity** as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

# What Does the HAA Require?

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“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.

- Objective: 45-foot maximum height
- Subjective: Consistent with community character

# What Does the HAA Require?

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(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan.

# Approval

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# SB 330's Five Hearing Rule

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If a project complies with all objective standards, after the application is deemed complete, the City cannot hold more than five hearings on the project before either approving or rejecting it. A “hearing” is defined broadly as any City-sponsored meeting at which the project is addressed and includes community workshops hosted or facilitated by the City, commission hearings, Council meetings, appeals, and study sessions. Meetings held solely for purposes to comply with CEQA do not count, however, because nothing in the SB 330 is intended to supersede CEQA.



# HAA and Project Denial

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- ❑ Except in limited situations based on health or safety findings: If a project complies with all objective standards (or is deemed to comply), it cannot be denied, approved at a lower density, or conditioned in a manner that has the effect of reducing density.
- ❑ If the project is at least 20% affordable to LI, VLI, or ELI households or 100% affordable to MI households, then additional findings must be made to deny a project. See Gov. Code, s. 65589.5(d).
- ❑ The City can condition a project on compliance with subjective standards that do not have the effect of reducing density or making the project infeasible for affordable housing.

# Brief Overview of Other SB 330 Issues

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- No new subjective design standards until 2025
- No net loss until 2025
- Replacement housing requirements until 2025
- No enforcement of anti-growth ordinances until 2025