

California Can't Afford to Let Cities Slide on Housing

By **BENJAMIN M. REZNIK**

IN adopting SB 1818 five years ago, the state Legislature thought it finally had figured out a way to force local jurisdictions to comply with the state mandate of providing more affordable housing.

Despite the fact that the mandate has been on the books for many years, allowing the building of bonus market-rate units to help defray the cost of mandated low-income units, cities were able to skirt its intended result. They did this by simply refusing to budge on their local development standards that limited structures in height, floor area, lot coverage and so forth. Many builders willing to include affordable housing were unable to do so simply because they could not squeeze in the density bonus units under the cities' building envelopes. Without these units, it was economically infeasible to include the affordable housing.

Tired of this gamesmanship, the Legislature adopted SB 1818 in order to put teeth into its important mission. Now, a city cannot apply any development standard that will have the effect of physically precluding the construction of a density bonus project. A builder can apply for concessions or incentives such as a reduction in development standards (e.g., setbacks, parking, height, square footage, etc.) that the city can only deny if it can make the finding, based on substantial evidence, that the sought-after concession or incentive would have a "specific

adverse impact ... upon public health and safety or the physical environment."

A city cannot deny a requested concession or incentive as being inconsistent with its general plan or zoning because SB 1818 specifically precludes doing so. Finally, SB 1818 provides for mandatory attorney fees to a litigant who prevails.

So you say, "What's the problem?" Well, some cities, such as Los Angeles, West Hollywood and Santa Monica, have figured out new ways to skirt the requirements of SB 1818.

Board resolution

In Los Angeles, the Community Redevelopment Agency has embarked upon a program of down-zoning sections of the North Hollywood Area Plan so that when a developer seeks to apply SB 1818, he comes up with far fewer allowable units. The CRA has done this without the adoption of new zoning ordinances or following the state procedures for public hearings. They did it by a simple resolution of its board. Our office has filed a lawsuit challenging this action and it is now pending before the Court of Appeal.

West Hollywood has also created a set of new zoning rules to protect itself from SB 1818. In 2007, West Hollywood adopted a building moratorium on multifamily construction while it proceeded to downsize the allowable development in all of its multifamily zones. Doing it under the guise of trying to stop the

proliferation of large luxury condos, the city proceeded to reduce the height and limit the size of each unit that can be built, thereby making it economically infeasible to construct a state density bonus project.

Lest it be outdone, Santa Monica also adopted a moratorium on its very own affordable-housing ordinance. Back in 2005, Santa Monica adopted an ordinance that incentivized affordable-housing development by allowing any project with at least 20 percent affordability to proceed on a quick administrative approval process, in lieu of a more lengthy zoning process.

One of our clients decided to take advantage of this incentive and proposed two projects, each with 100 percent affordable housing! That was too much of a good thing for Santa Monica, so the city immediately adopted a moratorium to stop his projects and then proceeded to change its laws.

How is this an attack on SB 1818? The city decided to remove an incentive it created for encouraging the development of affordable housing for fear that SB 1818 would restrict its ability to control and/or deny future affordable housing projects.

Looks like the Legislature may have to make the next chess move!

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