

Action #12.2 Expand Number of Eligible SB 35 Projects

1.1	Key Element of CASA Compact	#12. Entitlement reform to reduce delays and improve compliance with state law
1.2	Brief Description <i>1-3 sentence summary of action or policy</i>	<p>Enable more projects use SB 35 as primary by pairing with economic incentives that are offered for similar programs in other States (NYC) and thereby expand construction labor force</p> <ol style="list-style-type: none"> 1. Cap impact fees on SB 35 projects 2. Add 15-year tax relief modeled on NY program to SB 35 projects “reverse redevelopment” 3. Make SB 35 projects eligible for the State Density Bonus 4. Allow SB 35 projects to provide less than 50% affordable in jurisdictions with poor RHNA performance (SF) so more deals can use the program (discuss appropriate rate of inclusionary) 5. Close loopholes on definitions of objective standards, labor standards, legal issues 6. Clarify that single family home remodels and housing developments of less than 4 units, are eligible for SB 35 ministerial approvals without added wage, apprentice, or labor standards to reduce local planning workload on small but often controversial projects. 7. Impose labor /affordability standards only on projects of 20 units or more 8. Link to time limits imposed on tentative tract maps, exempt 100% affordable housing projects from these time limits.
1.3	Supports these CASA goals: <i>(check all that apply)</i>	<input type="checkbox"/> Protection <input type="checkbox"/> Preservation <input checked="" type="checkbox"/> Production
1.4	Desired Effect <i>What problem would this solve? Who would benefit? If applicable, identify any specific populations who will especially benefit.</i>	<ol style="list-style-type: none"> 1. Increase apprentice labor in streamlined projects to help stabilize and grow the construction labor force. 2. Increase number of projects able to use SB 35 by paring added costs with economic offsets to enable more housing production overall in the region.
1.5	Key Questions and Points of Concern <i>What key questions or issues need to be resolved?</i> <i>What are the major sticking points and areas</i>	<ul style="list-style-type: none"> • Some cities will resist State process reforms. • Must be linked to other aspects of CASA compact. • Discuss what tax abatement possible, and therefore what additional economic offsets are required to achieve project viability including package of incentives in CASA regional inclusionary policies, and level of affordability required.

	<i>of negotiation?</i>	
1.6	Resources Needed <i>What costs will be incurred and by whom? Note any funding sources that are readily available, if known.</i>	State law action team
1.7	Scale of Impact <i>(as measured by Plan Bay Area goal alignment)</i>	<p>Protect: _____ tenant households annually</p> <p>Preserve: X _____ ??net new units annually through</p> <p>Produce: new housing quickly and at scale</p> <p>[x] Above moderate housing (>120% ami): _____ units</p> <p>[x] Middle market housing (81-120% ami): _____</p> <p>[x] Affordable housing (<80% ami): _____ units</p>
1.8	Potential Vehicles for Implementation <i>Check all that apply</i>	X Legislation
1.9	Time Frame <i>Time needed for action to be approved and implemented.</i>	<p><i>Select one</i></p> <p><input checked="" type="checkbox"/> Short-Term (0-2 years)— State bills in these areas have already been introduced</p> <p><input type="checkbox"/> Long-Term (6-10 years)</p>
1.10	Feasibility <i>Select one and describe your rationale for why this level of feasibility is anticipated.</i>	<p><i>Select one Rationale:</i></p> <p>X Easy: State Law to begin to reform these practices has already been introduced in Sacramento, CASA members should endorse and assist lobbying efforts for this reform.</p>

CASA ENTITLEMENT REFORM-June 2018

I. ENTITLEMENT PROCESS AND ZONING ENABLES EXCLUSION: the last century of planning and zoning practice promotes racial and income exclusion and prevents robust housing production throughout the United States.

In May, 2018, the American Planning Association issued “Policy Principles for the Nation’s Housing Crisis”. Here, the APA points out that

*“...it is critical to economic mobility within communities and regions that poverty not be concentrated. Thus, “fair share” approaches are necessary and proximity to jobs, accredited schools, and mobility services are key determinants of the specific spatial requirements for inclusive housing....**Housing regulations and practices have often resulted in the creation of communities stratified by income or separated by race or ethnicity. The forces obstructing the creation of truly diverse communities are formidable...many local zoning codes are still based on an almost century-old framework that prioritizes best practices from more than a generation ago such as separating uses and encouraging more space for automobiles than people....** Across our nation in communities of all types, single-family housing is still the preferred development type, often allowed by-right. Meanwhile, multi-family housing often requires a special permit, variance, or other special action to make it happen. Special permitting processes can create development uncertainty, increase the cost of land and development, and stimulate opposition. There are few beneficiaries of this process, the least of whom are the people who need an affordable place to live.*

APA went on to set a number of policy goals to promote housing inclusion and equity including the following specific recommendations:

“a reduction or elimination of minimum lot size requirements, the allowance of greater height and density, allowing accessory dwelling units, and the reduction of off-street parking requirements. Modernized codes incorporate the principles of transit-oriented development with an emphasis on the proximity of housing to public transportation amenities and existing infrastructure, providing greater opportunities for non-traditional housing types. These include micro-apartments and accessory dwelling units... allowing mixed-income, multi-family housing as a by-right use and establishing higher thresholds that are subject to special permit reviews. The approval process should be streamlined when there is a nexus between the developments proposed and identified housing needs and demand.”

These recommendations from the American Planning Association, with a specific California analysis on local rules and barriers to expanding housing production are the basis for the CASA Entitlement Reform recommendations to create more inclusive housing in every community.

II. Entitlement Problem Compounded in California: time, cost, process in California has ballooned as deference to local discretion and even neighborhood veto of housing controls the land use process to prevent new housing. Planning and zoning rules are frequently not transparent and can change throughout the process or at the final hearing on a project. These processes mean that housing cannot be delivered timely, cost-effectively, or with certainty thereby suppressing housing in the region, harming all forms of affordable and market rate housing development. The process favors existing

residents, particularly single family homeowners who are most able and interested in using the planning and zoning process to exclude new community entrants by requiring more local review bodies and hearings, creating more discretionary review permits, filing multiple appeals and demands for more time or study, and using the environmental review process to block or demand exactions from new housing developments.

- A. Permit Streamlining Act no longer effectively controls timing of most discretionary projects due to CEQA creating a lengthy and litigious entitlement process. The California Permit Streamlining Act (PSA) was adopted to create limits to how much time a local government could take to review and consider a project before it would be “deemed approved” as submitted. Over the last decade or more since the adoption of the California Environmental Quality Act, however, CEQA case law interpretations now mean that PSA only applies after CEQA documents have been completed. As a result, hard deadlines for projects requiring CEQA review have in practice been eliminated, and there is no drop-dead date for locals to approve housing that cannot be pushed forward. Developers of all types fear CEQA challenges which can stop their entitlements or cause delays that make projects infeasible. This has allowed the process to eclipse the reasonable control of planning staff in face of increasing public demands for more input. Hard and fast deadlines need to be applied to more projects, especially smaller minor projects, to speed up approvals overall, reduce staff workloads, and restore timeliness to housing approvals. (Ex: SF planning streamlining inhibited by large volume of small projects such as deck additions/modifications).
- B. 11th Hour Demands: Cities change rules and fees throughout the process beyond the requirements of CEQA analysis, making it impossible for projects to anticipate “11th hour” cost adds that may make deals infeasible, delay or derail approvals, drive projects to reduce their costs by whatever means possible, often by avoiding hiring contractors with better skilled and trained labor “, and creates uncertainty which can chill a city’s overall pipeline from both an entitlement and financing perspective. While the ability to delay a project may create time for community organizations to engage in the entitlement process, it also gives local anti-housing forces the same tool kit to the detriment of housing in the region.
- C. Cities are using loopholes in HAA and SB 35 to avoid State housing law. These loopholes need to be closed. Local agencies, seeking to build less housing or to avoid State housing laws have begun to enact moratoria, rezonings, remove MF housing overlays, or define subjective things like “shadows” as objective standards. SB 35 may also be improved by adding language regarding labor management and enforcement.
- D. These added processing steps, and added conditions or impositions on market rate and affordable projects drive up the cost of housing, delay housing deliveries, threaten housing feasibility and access to finance, and thereby limit housing production overall.

III. Per the national APA recommendation, California must adopt streamlining and ministerial permitting requirements for housing types other than single family, including ADUs and small MF projects. California must also begin to consider reduction or elimination of minimum lot size in infill areas, reduce parking requirements, and create more multi-family zoning especially near transit.

References:

https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf

[American Planning Association, *Policy Principles for the Nation's Housing Crisis*, May 2018](https://www.planning.org/policy/principles/housing/)

<https://www.planning.org/policy/principles/housing/>

Solutions: Reinstate fairness, reasonableness, certainty, and deadlines in housing permitting through entitlement reform and expand use of SB 35 as State's streamlining vehicle by adding tax incentives and fee caps to SB 35 projects.

Specific Proposals:

1. Enable more projects to avail themselves of SB 35 as primary streamlining mechanism by pairing SB 35 projects with economic incentives that are offered for similar programs in other States (NYC):

Clean-up law and add economic offsets for added affordable and labor costs:

- 1) Cap impact fees on SB 35 projects
- (2) Add 15-year tax relief modeled on NY program to SB 35 projects "reverse redevelopment"
- (3) Make SB 35 projects eligible for additional units under the State Density Bonus Law
- (5) Allow SB 35 projects to provide less than 50% affordable in jurisdictions with poor RHNA performance (SF) so more deals can use the program (discuss appropriate rate of inclusionary)
- (6) Close loopholes on definitions of objective standards, labor standards, legal issues, qualifying projects

Streamlining for smaller projects without added labor and affordability impositions which are more challenging for smaller projects to achieve

- (4) Impose labor /affordability standards only on projects of 20 units or more including single family homes and o reduce local planning workload on small but often controversial projects.

2. Reduce process for small projects that cannot utilize SB35 (20 units or less)

- a) **Increase the number of ministerial approvals for CEQA purposes** for small (20 unit or less) infill housing developments so that the Permit Streamlining Act will again be applied to these. Modify the PSA to require a 6-month discretionary review process or be deemed approved.
- b) **Restore fairness and certainty to fees and process under Permit Streamlining Act**
Fees/exactions must be codified, cannot ask, developer shall not offer differences, and they shall vest at the time the project application is deemed complete by the Planning Division.
- c) **Limit total number of de novo public hearings** to three (3), not counting appeals or continuances

3. For all housing projects -close loopholes in the HAA (helps SB 35 projects and others)

- Close loopholes on objective standards.
- Close loopholes so projects identified in general plan for housing are protected by the HAA if a project-by-project rezoning needed for approval.

4. “Make It Work” package of reforms to Inclusionary Zoning, Density Bonus, Housing Mitigation Fees and Taxation of Affordable Units (at affordable price) so these work together

- a. No mitigation fees, housing fees, or IZ fees on density bonus or affordable units
- b. DBL projects needing discretionary permits (CUP) cannot be denied except for DBL findings
- c. Codify the LUNA case. Synching up density bonus affordable to credit to local IZ
- d. Give the Density Bonus to all SB 35 projects
- e. Eliminate duplicate or triplicate requirements to pay for affordability and clarify that IZ units count as \$ credit to DB units at their affordable value, not just the number of BMR units
- f. Cap property taxes at affordable rent/price to assist in paying for on-site inclusionary
- g. Create regional inclusionary rules that expand to missing middle income categories with appeals panel at Bay Area Metro.

5. Create more MF housing types and ministerial approvals to create inclusive zoning in every neighborhood. Increase State required MF zoning including smaller multi-family housing types in current single family zones to create more inclusion in every neighborhood (duplex, triplex, quads) especially near transit. Increase ministerial multi-family permits to both enable zoning for these housing types, as well as to require approval of them. Create codes that encourage smaller more naturally affordable housing types, on small lots (with no minimum lot size), in a manner that expands home ownership opportunities in highly exclusionary communities and in communities at risk of gentrification and displacement with no other affordable home ownership opportunities. Increase state-required ministerial approvals for ADUs.

Create a small homes building code to encourage small, inherently energy efficient housing types without treating them as larger single family homes. Impose impact fees on a per square foot basis not on a per unit basis to eliminate bias towards larger homes.

(See also CASA Cost, Missing Middle Action Plans)

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Policy Principles for the Nation's Housing Crisis

Our nation is confronting a housing crisis. This crisis varies in scope and specifics from city to city and market to market, but the reality remains that current policies are undermining the broad goal of ensuring housing choice and affordability for all.

The shortage of quality affordable housing reinforces inequality and limits access to opportunity, and the lack of housing options hurts the economy and constrains social and economic mobility. Addressing this crisis must be a priority for policymakers.

Planning Is the Solution

Good planning is essential for increasing housing options, boosting affordability and unlocking opportunity. Enhancing planning resources and reforming planning policy can help ensure communities see the housing they need in the places that work best. Policy changes can address a host of current obstacles: reducing the cost to build housing, reducing living expenses for residents, supporting community development and revitalization, meeting new market demands while addressing past market failures, and ensuring we live up to the promise of affordable quality housing for all. It is not an appropriate goal to provide affordable homeownership options to all; rental is now and will remain an important part of the mix of housing options.

Many of our nation's cities have been dubbed "high cost" and metropolitan areas are struggling to maintain their workforce due to stagnant wages. Small towns and rural communities face unique housing issues that deserve attention and investment such as improving housing quality

and options. Production has not kept pace with demand. Preservation of existing affordable homes, whether through existing affordability restrictions or market forces is also critical. Planners are well-positioned to address these issues due to their close-proximity to development activities, permitting, and policy-setting at all levels of government.

APA seeks to identify and remove barriers to housing affordability. Some barriers are regulatory, some are social, and some are economic. Eliminating these barriers will require political solutions; others require funding; all will require revisiting community goals. Long-held beliefs some planners hold about the planning process and regulatory frameworks may have contributed to the housing crisis, however well-intentioned. Where and how people want to live is changing. A range of reforms can help our communities and neighborhoods provide more affordable choices.

With these policy principles, policymakers at all levels can advance strategies that will equip communities to address changing demographics and needs. Together, we can provide local communities with new tools, updated plans and codes, better public involvement, and a pathway for truly inclusive prosperity.

These strategies are intended to advance the following goals and objectives:

- Remove INSTITUTIONAL BARRIERS in zoning codes, funding programs and lending practices;
- Ensure AFFORDABILITY by facilitating the production of housing at all price points;
- Promote DIVERSITY by producing a wide variety of housing types and formats;
- Ensure EQUITY in the distribution of affordable units; and
- Ensure adequate FUNDING from both public and private sources.

Realizing these principles will require a concerted effort by all of those in the planning profession to advocate, to engage their legislative officials and to conduct public outreach and education. Planning can deliver homes, places, communities, and opportunity.

A Call to Action

POLICY PRINCIPLES TO SOLVE THE NATION'S HOUSING CRISIS

We believe the following policy principles will address systemic housing issues through the collaboration of legislators, planners, developers, and residents.

Principles

▲ Modernize State Planning Laws

Many state planning and zoning enabling statutes have not been updated in a generation. This stunts local planning and keeps it from being responsive to current issues and needs. There is presently a wide variety in how states address local planning efforts from those that are very prescriptive, and sometimes pre-emptive, to "home rule" states that offer little in the way of statewide regulation or oversight. While it is important to respect the differing forms of governance, there is a need for state involvement (and resources) to ensure consistency and universal participation among municipalities.

Reviewing and updating states' enabling statutes for zoning and housing policies is an essential step. Whether through mandates, funding, technical assistance, or other incentives, states should require binding comprehensive plans that reflect current housing, economic, and demographic trends and require implementing zoning amendments that advance plan goals and lead to production and preservation of affordable housing. All states should empower options for the use of tools like inclusionary zoning, support investment, provide data, and establish production goals. States can advance housing goals by requiring jurisdictions to provide affordable housing and options across all incomes and price points. States should designate a single agency to oversee housing policy, support local planning and achieve key production and affordability goals.

^ Reform Local Codes

In addition to outdated state zoning laws, many local zoning codes are still based on an almost century-old framework that prioritizes best practices from more than a generation ago such as separating uses and encouraging more space for automobiles than people. Communities need to review and modernize codes, and planners need resources to make this a reality. Outdated codes paralyze sound planning efforts, leading to income disparities, uncoordinated development, poor land use and, consequently, housing problems. Communities should adopt or revise codes to enable mixed-uses, offer a variety of housing types and price points and increase the number of places to build while being attentive to equity and resiliency. States can play an important role in supporting this effort.

In practice this may mean a reduction or elimination of minimum lot size requirements, the allowance of greater height and density, allowing accessory dwelling units, and the reduction of off-street parking requirements. Modernized codes incorporate the principles of transit-oriented development with an emphasis on the proximity of housing to public transportation amenities and existing infrastructure, providing greater opportunities for non-traditional housing types. These include micro-apartments and accessory dwelling units.

A lower cost of construction does not always translate into a quality affordable unit. The total cost of occupancy or ownership should be taken into consideration when looking at local building and zoning codes, not simply the cost of production or acquisition. Building

techniques that reduce maintenance and risk, while costlier at the outset, may have a substantial positive impact on the total cost of occupancy over time. For example, exceeding minimally-acceptable insulation requirements during construction will typically reduce utility bills over the tenancy of the dwelling unit.

^ Mandate Inclusionary Growth Strategies

It is critical to economic mobility within communities and regions that poverty not be concentrated. Thus, "fair share" approaches are necessary and proximity to jobs, accredited schools, and mobility services are key determinants of the specific spatial requirements for inclusive housing. It is also important that truly inclusive housing be mixed income with both market and subsidized units — whether rental or ownership — in close proximity to avoid stigmatizing residents/owners of the affordable units.

Further inclusionary measures use a proactive approach to preservation of affordable housing units by exercising strategic property acquisition in current and future transit corridors. This will ensure that developing or redeveloping areas will not preclude transit-dependent populations from having the mobility needed for access to jobs, schools, health care, goods and services, and more.

The goal of truly inclusive growth requires policies that allow everyone to reap the benefits of economic growth and prosperity. Taking steps to mitigate the effects of gentrification and rising housing costs on existing residents can advance both social equity and support for new development. Innovative policy approaches can give current residents a genuine stake in housing and development while helping new residents access housing opportunity.

Housing regulations and practices have often resulted in the creation of communities stratified by income or separated by race or ethnicity. The forces obstructing the creation of truly diverse communities are formidable but increasing mandates for the removal of impediments and judicial decisions that assign liability regardless of intent make it even more urgent to deploy inclusionary practices. While inclusionary zoning may take different forms, the most common mandates that fixed minimum percentages of affordable units be set aside in exchange for greater density within the same building or project. Others allow for a prorated number of affordable units that may be provided offsite; still others allow for payment to a dedicated fund for use by others. States can support and enable the use of these and other tools that support inclusive growth and expanded housing opportunity across all communities.

^ Remove Barriers to Multi-Family Housing

Across our nation in communities of all types, single-family housing is still the preferred development type, often allowed by-right. Meanwhile, multi-family housing often requires a special permit, variance, or other special action to make it happen. Special permitting processes can create development uncertainty, increase the cost of land and development, and stimulate opposition. There are few beneficiaries of this process, the least of whom are the people who need an affordable place to live.

Local jurisdictions can change this by allowing mixed-income, multi-family housing as a by-right use and establishing higher thresholds that are subject to special permit reviews. The approval process should be streamlined when there is a nexus between the developments proposed and identified housing needs and demand.

^ Turn NIMBY into YIMBY

Community support and approval is often one of the biggest hurdles to housing affordability. While many communities may acknowledge the need to address affordability issues and often adopt housing goals and strategies, community opposition and resistance to change often block sound housing policy and development from moving forward. Planning must no longer be a tool for those who only want to avoid change. Rather, planning can, and should, be an instrument to build communities for all and realize people's vision for their future.

The planning community can play a key role in countering opposition. Building general support for housing affordability means engaging the community early and often and listening to and addressing community values and concerns. An outreach strategy can guide planners on how to engage the general public and key stakeholders in dialogues about housing need, demand, and trends, as well as the impact of not addressing the issues. Holding listening sessions can lead to greater agreement on community priorities and create an impetus for change. Methods of outreach and opportunities for engagement should be inclusive and responsive to a broad range of constituents. Policies and practice should work to focus public engagement earlier in the process and establish a common framework for delivering the projects envisioned in those plans.

^ Rethink Finance

Traditional sources of federal funding for affordable housing may not always be available. Popular Department of Housing & Urban Development programs such as Community Development Block Grants and HOME remain in place but at sharply reduced monetary

levels. It is critical that all entities engage with their federal representatives to increase or restore HUD funding. Federal policy must also address the impacts of recent tax reform on a range of tax credits and related finance tools for housing.

Lending institutions often have inflexible standards or have periods where lending is reduced. While we do not want to return to the days of risky lending practices and lax regulation, we encourage banks to support mixed-use and other non-traditional development formats. Institutions can also support housing affordability by reducing requirements for developers to provide higher parking volumes.

Greater investment is needed in lower-income communities and to lower-income households. Tools like the Community Reinvestment Act help ensure fair lending practices and are essential. So too, are a range of tax, incentive and policy tools that promote critical investment in these communities. Potentially changing or repealing these requirements would devastate markets that need financial leverage to succeed.

The potential for further reductions in federal funding for infrastructure will place a greater burden on the private sector to provide for public works. States and local jurisdictions may offer a combination of strategies including access to low-interest bonds, revolving loans, tax credits, and grants to boost private investment. Local government assessment and tax policies are also a frequent impediment to innovative housing plans, often due to unfamiliarity or the lack of an applicable established assessment class. Maintaining a robust federal-state-local partnership is vital for housing.

APA's Housing Principles were approved by APA's Board of Directors on March 29, 2018.



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