

**SPUR**

San Francisco | San Jose | Oakland

To: CASA Steering Committee, CASA Technical Committee
From: Gabriel Metcalf, SPUR
Date: September 21st, 2017
Re: 11 Actions to Address the Bay Area's Housing Crisis

Housing costs in the Bay Area are skyrocketing. Over the past 20 years, home prices have risen roughly 160 percent above inflation in San Jose, 210 percent in Oakland, and 200 percent in San Francisco while peninsula cities like Palo Alto and Mountain View have seen increases of roughly 300 and 250 percent respectively,¹ pushing working people to the edge of the region, causing overcrowding and exacerbating homelessness. At the same time, the region is slated to add another 820,000 households by 2040. CASA has been convened to develop bold solutions to address this region's housing challenge. SPUR believes that there are 11 key actions that – if taken – would make great strides towards the goal of increasing housing affordability over the long run.

1. Overhaul RHNA.
2. Create an appeals body with the authority to issue building permits.
3. Give more money to cities that build housing.
4. Reform the tax system.
5. Reform CEQA.
6. Create new sources of funding for affordable housing.
7. Up-zone in in-fill locations.
8. Create housing that is affordable by design.
9. Eliminate parking requirements.
10. Ensure that housing development fees are feasible.
11. Preserve existing housing.

The State legislature has recently approved a legislative package to make it easier to build housing in places that aren't meeting RHNA (SB 35) coupled with new revenue for affordable housing, including a \$4B affordable housing bond and/or a document recordation fee. We hope that this legislative package will now be signed by the Governor. Most of the ideas outlined below go beyond what is currently being discussed as part of this year's housing package.

¹ All percentages are based on Zillow's median Home Value Index for all homes, taken as an average of monthly media values for each city in 1996 and 2016. Data available: <https://www.zillow.com/research/data/>.

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Recommendation 1: Overhaul RHNA.

Actors: State legislature, Metropolitan Planning Organizations

A. Adjust RHNA to add a roll-over of unbuilt housing from previous cycles and require cities to zone for more than their target.

Today, cities get eight-year targets for permitting housing at a range of income levels. When cities do not provide sufficient permits for the housing from their prior RHNA cycle, those unpermitted units should be added to future updates so that the RHNA target is additive over time and combines both past performance and future need. Cities should also have an explicit requirement to update their zoning to accommodate the housing that is in their RHNA target. Using the practice in Washington State, cities should in fact zone for at least 125% of the housing in their target since some sites will not actually get developed. Finally, it is worth exploring if the planning horizon for a RHNA cycle should increase beyond 8 years. While the updated housing numbers could still be done every 8 years alongside every other Sustainable Communities Strategy, each community should also have targets for a longer period of time (such as 20-years). These targets could include both jobs and housing. This would not only dramatically increase the housing unit number for each city, but also remove the target setting from the narrowness of a single real estate cycle where a recession or slower real estate cycle temporarily results in dramatically reducing a city's target. The longer cycles and larger housing unit number would invariably make the rezoning process a bigger lift in some communities. But it would also increase the total zoned housing capacity in the region.

B. Fix RHNA by more accurately accounting for true housing demand

Currently RHNA is driven by population projections that are informed by past trends, not future prognostications about what might happen. Additionally, as mentioned above, RHNA targets currently do not take into account existing supply/demand imbalances, which is why many cities continue to meet or exceed their RHNA target but housing costs continue to escalate. We recommend that the methodology for RHNA be overhauled to both account for a more accurate analysis of future demand and also to determine how much housing would need to be added regionally in order to reduce the average price of housing.

C. Put stronger teeth into RHNA to force compliance by creating an appeals body.

Cities that do not update their Housing Element and zoning to comply with RHNA should also face consequences such as:

- i. ability of a developer to appeal to a regional or state body (such as the State's Department of Housing and Community Development).
- ii. loss of funding sources such as the local portion of the gas tax, 1% portion of the sales and use tax or other revenue sources that are not explicitly local.

Using the experience from Washington, local governments do end up complying with the target given that the consequences are severe. In several decades, only one community in has actually been sanctioned with loss of revenues.

D. Add an explicit smart growth and equity vision to RHNA by reducing housing in rural places and increasing them instead in infill areas, particularly in places near transit as well as in or near places of opportunity.

RHNA has no explicit smart growth framework. Instead it is more of a tool to push for fair share of housing responsibilities across jurisdictions. While we support the idea of asking all communities to do their part on housing production, at a statewide level this misses the direct link with the State's climate change and land use goals. As a modification, we suggest that the total RHNA obligations line up with the growth assumptions in the region's Sustainable Communities Strategy. We should also modify RHNA to reduce housing requirements in truly rural places (unless they are already urbanized, adjacent to employment areas and/or near regional transit, or the region wants to do comprehensive planning for a compact, transit-oriented walkable new town). At the same time, we should increase housing targets for urban and suburban areas and in places with existing employment and transit.

Recommendation 2: Create an appeals body with the authority to issue land use entitlements and building permits.

Actor: State legislature

California should adopt a measure like the Massachusetts 40B law by either:

- A. Creating a state level appeals body with the power to override local land use decisions for certain types of affordable housing developments in certain situations, OR
- B. Having the state charter new regional appeals bodies to implement the region's Sustainable Communities Strategy. Currently, the SCS is simply advisory and the land use portion is not enforceable. A regional appeals body would also be able to hear appeals for cases where jurisdictions reject land use entitlements as well as building permits for new housing even as they add developments which create substantial number of jobs (such as the recent Brisbane case).

There is precedent for the state creating a regional agency to oversee certain types of land use. In the Bay Area, the San Francisco Bay Conservation and Development Commission (BCDC) oversees land use activity in some areas adjacent to the San Francisco Bay. The California Coastal Commission also oversees local planning along the Pacific Ocean.

A definition of what projects could make use of the appeals process and what constitutes a "safe harbor" from the appeals process would need to be defined.

Recommendation 3: Give more money to cities that build housing.

Actors: State legislature, MTC

The state and/or region should condition receipt of key transportation and infrastructure funds based on local jurisdictions meeting state and regional housing targets.

MTC is already aligning some resources in a way that supports the SCS through the expansion of the One Bay Area Grant (OBAG) program. MTC and other Metropolitan Planning Organizations (MPOs) should expand the funds that are connected to housing performance to additional sources of funding and planning documents such as the federal-required Transportation Improvement Program (TIP), the four-year regional transportation spending plan. (See: <http://mtc.ca.gov/our-work/fund-invest/transportation-improvement-program>)

MTC could use the “good neighbor” scoring criteria outlined above to guide discretionary funding decisions that would further incentivize local governments to build housing in the right locations.

Recommendation 4: Reform the tax system.

Actors: State legislature, County Assessors, Statewide voters

A. Increase property taxes on commercial property by changing the two percent cap on increases in the commercial property tax as well as creating a “split roll” within the property tax.

There have long been proposals to create a “split roll” for property taxes where commercial property taxes would increase to assessments based on the market valuation, not the point of sale plus two percent annual increases. One way to arrive at this split roll would be to allow for annual increases above the two percent cap. Over time, this would reduce the gap between the market valuation and the current assessment. Another change would be to allow for a catch-up to two percent for prior years where the property values did not increase by two percent. (Such as during a recession where housing prices dropped or increased slower than two percent.)

This proposal should be designed in such a way to not create an additional fiscal disincentive against housing (as taxes from commercial development would continue to grow over time). As described below in (B), the increased property taxes should initially flow to state and regional bodies, not individual cities.

A second option focused on changing residential rates could include progressive tiering property tax increases based on property valuation (i.e. expensive homes would be taxed at a higher rate than lower cost homes).

Either proposal would need to phase in property tax increases over time. For the residential change, it would be necessary to ensure that low income households and households on fixed incomes would not lose their homes as a result of these reforms.

Actors: State legislature, MTC

B. Pool and share regionally existing and new taxes and redistribute them based on housing and population growth and alignment with the region's Sustainable Communities Strategy.

SPUR recommends that any proposal for a "split roll" should ensure that all of the additional property tax revenue flow into a state or a regional pool (not a local one) and that the additional resources are then redistributed to jurisdictions based on a formula that includes both population growth and a spatial pattern that reinforces the SCS (i.e. infill near transit).

Other local taxes should also be pooled regionally, such as sales and hotel taxes. This could be accomplished by taking the growth of these revenue streams, pooling them regionally, and then redistributing using some objective criteria such as overall population growth.

Actor: Local governments

C. Establish more taxes on land, not what is on it.

Land taxes could include parcel taxes or even real estate transfer taxes. One type of land tax worth exploring is a tax or fee on vacant and underutilized land, such as surface parking lots in urban areas. This could be an incentive to develop such parcels if there is sufficient market demand.

Actors: State legislature, MTC

D. Fund a property tax bump for new housing in in-fill locations.

Options include:

- i. property tax increases for building infill

For every housing development that a city approves that meets an "in-fill" definition, increase the percentage of property tax a city receives by a certain amount. The County Assessor would be responsible for determining that the housing meets the definition of in-

fill and moving the additional funds from the county ERAF account to the specific city. The State would then backfill the ERAF account for the “lost” property taxes. The State legislature would need to set aside enough funding to support this pro-housing program.

ii. property tax increases for “good neighbor cities”

MTC could create a scoring system to determine which jurisdictions are substantially complying with the SCS, taking into account both market rate and affordable housing production, market factors, and the number of jobs the jurisdiction has created versus housing units. Scoring would be based on actual housing production numbers as certified by county assessors, not just planning or zoning for units. MTC could then use its scoring criteria to determine whether a jurisdiction would be eligible to receive a bump in property taxes for being a “good neighbor” jurisdiction. Care must be given to ensure that local governments don’t try to “game” the system by accepting a smaller housing allocation for planning purposes in order to exceed that allocation for the purposes of receiving additional funding.

Actors: State legislature

- E. **Backfill forgone property taxes for affordable housing developments.** Under California’s property tax welfare exemption, affordable housing developments that are owned by non-profit corporations receive a property tax exemption. Affordable housing is not the only type of development covered under this exemption – it also extends to other “charitable purposes” such as religious institutions and hospitals. This exemption extends only to the property taxes that the state collects – it does not include special assessments placed on the property (such as General Obligation bond payments). Never-the-less, some cash strapped jurisdictions may be less inclined to support affordable housing due to the perceived property tax hit. The State could eliminate this issue by backfilling forgone property taxes for affordable housing developments. It could also explore extending the exemption for households at 80 to 120 percent of Area Median Income (AMI).

For D and E above, the funding for these additional costs to the state would come from the split roll or some other form of overall property tax reform that results in net new revenue to the state.

Recommendation 5: Reform CEQA.

Actor: State legislature

- A. **Amend CEQA to make the judicial review of all agency decisions based on the “substantial evidence” standard of review.** Under this standard of review courts defer to agency decisions if supported by substantial evidence in the record, rather than the “fair argument” standard of review now applied to the review of negative declarations and some exemption determinations. Under the fair

argument standard, courts overturn agency decisions if the petitioner submitted any evidence into the record creating a fair argument of a potential environmental impact, even if the agency relied on other substantial evidence supporting its decision. The fair argument standard of review leads many agencies to eschew preparation of negative declaration, in favor of more expensive and time consuming EIRs, in order to avoid application of the fair argument standard.

B. Create on the state level CEQA review courts.

The judges for such courts (likely administrative law judges, not superior court judges) would be experts in application of law and where all lawsuits challenging agency CEQA decisions would be litigated. There would be no appeals to the Court of Appeal or California Supreme Court from the CEQA court. This reform would remedy the situation that exists now where non-expert superior court and court of appeal judges are called upon to review complex agency decisions can drag out for two or more years.

C. Prohibit duplicative CEQA lawsuits. If a specific plan has completed CEQA review and the period to file a CEQA lawsuit against that specific plan has ended, then projects conforming with the plan should not be eligible for a CEQA lawsuit.

D. In the case of a CEQA lawsuit, prevent the Courts from overturning the project approval. Currently the courts are allowed (but not required) to rescind development permits in response to a CEQA lawsuit. This stops projects from going forward when instead they should simply have the opportunity to do additional study and potentially change the project. In such cases where there is a CEQA lawsuit, the allowable remedies from the courts should be restricted to requiring project sponsors to complete additional study of a project. This requirement should *only* apply to projects that are in locations envisioned for growth in the adopted SCS.

Recommendation 6: Create new sources of funding for affordable housing.

Actors: State legislature, MTC, local governments

A. Develop an ongoing target for how much affordable housing funding is needed at the regional, countywide and local level.

The region, county and city should each determine how much annual funding is needed to accomplish their affordable housing goals. One calculation (using Regional Housing Needs Allocation numbers, typical affordable housing costs, supportable mortgages and subsidies) estimates a roughly \$1.45 billion annual subsidy gap for the nine-county Bay

Area.² Setting concrete targets for the city, the county and the region will help coalesce support for needed new funding sources.

B. Create new resources at the state, regional, county and local levels.

SPUR believes that affordable housing should primarily be funded by the broader property tax base rather than just new development. In the absence of major tax reform, some options beyond those in discussion at the state level include:

- **A county-level or region-wide transfer tax imposed on higher-end property transactions.**

This would tax high-value residential transfers (perhaps of \$1.5 million and more) at a higher rate. The higher rate would operate as a surcharge above the existing tax rate.

- **A region-wide jobs-housing linkage fee assessed to new commercial development.**

This has been discussed at the Metropolitan Transportation Commission and could be structured in such a way that rates are higher in the cities that have added jobs the most aggressively within the region and/or that have not developed their share of affordable housing.

- **Bonds for Bay Area counties that haven't passed one in the past two years.**

Alameda, Santa Clara and San Francisco counties recently passed major affordable housing bonds totaling nearly \$2 billion, and San Mateo County approved a ten-year half-cent sales tax extension that will in part be used to support affordable housing. Sonoma County or Contra Costa County could be the next counties that might consider passing an affordable housing bond.

It is important that regional or county funds are distributed at the regional or county level, particularly in counties where some local cities are not supportive of affordable housing development. In cities that do not support affordable housing development, this funding is critical for affordable housing developers to secure sites.

Recommendation 7: Up-zone in in-fill locations.

Actor: Local governments

A. Increase zoned capacities in Priority Development Areas, and in areas adjacent to regional rail and major local transit stations.

There are many parts of the Bay Area that are suitable for more development. We believe that infill locations near transit, especially areas adjacent to regional rail such as BART and Caltrain, and local transit such as BRT should be developed with greater intensities.

² Strategic Economics and Novin Development Consulting for the Great Communities Collaborative, "Funding Affordable Housing Near Transit in the Bay Area Region," May 2017 http://www.greatcommunities.org/wp-content/uploads/Funding-Affordable-Housing-Near-Transit-in-the-Bay-Area-Region_5917.pdf

Since local governments are responsible for making local zoning decisions, each local government should seek to maximize growth in these important areas.

B. Adopt minimum heights or densities in transit oriented locations where market factors make lower density development more economic to build.

In some markets, it may be fiscally advantageous to developers to build housing that is well beneath zoned capacity (i.e. stick frame housing in areas that may be zoned for mid-rise or high-rise development). In locations near transit, cities may want to adopt minimum density or height requirements to ensure that these locations are not underbuilt. In areas directly adjacent to transit, buildings should be a minimum of five stories.

Actor: State legislature

C. Give more control to transit agencies including BART, Caltrain and High Speed Rail to make land use decisions within 1/4 mile of regional or state-level transit nodes.

This control could be awarded if a local government fails to adequately plan and zone for growth in transit oriented locations. In such a case the state legislature should consider giving authority such as zoning and building permit approvals to transit agencies for areas within a certain radius of a transit node. Alternatively, the state could give such authority to a new state level agency with certain types of redevelopment powers.

Recommendation 8: Create housing that is “affordable by design.”

Actor: State legislature

A. Cap fees on ADUs and provide funding to cities and regions to develop materials to enable owners to more easily and efficiently develop ADUs.

There are many impediments to the creation of new Accessory Dwelling Units (ADUs) by homeowners. The fees imposed on such units may be too high. Owners may also find the process of permitting such units to be cumbersome. In order to aid owners in creating ADUs, the state should cap all fees on new ADUs. The state may also wish to provide funding to cities and counties to create materials that explain the ADU permitting process and/or develop sample architectural plans for such units.

Actor: Local governments

B. Eliminate density controls that limit the number of units allowable on a lot based on the size of the lot. Instead move to form based codes to determine the size and shape of development projects.

Often cities will use density controls to control what is allowed to be built on a parcel (either through the adoption of maximum “dwelling units per acre” or by limiting the

number of units based on the size of the parcel). We believe that density should be controlled instead through physical form (height, bulk and setback) which can allow for more units to be developed within the buildable envelop.

C. Apply impact fees on a per-square-foot basis rather than a per unit basis

Applying fees on a per unit basis encourages developers to build fewer larger units rather than a greater number of compact units.

D. Make it easier to build in-law units by modifying development standards and parking requirements and reducing information, process and financing barriers for property owners.

As mentioned above, there are many barriers to the creation of new ADUs. Cities can adopt rules and regulations that support the creation of new in-law units. They can also eliminate parking requirements for such units (possibly the biggest barrier to the creation of new ADUs) or allow for tandem parking if the new ADU is being created in an area not well served by transit.

Recommendation 9: Eliminate parking requirements.

Actor: Local governments

A. Remove parking minimums. In certain transit-oriented locations (near BART, Caltrain, HSR and high frequency local transit nodes), replace minimums with maximums.

Parking is expensive to build, especially if such parking is structured or below-grade. By removing parking minimums, developers will not be required to over-build parking. In transit oriented locations, parking maximums will encourage the use of more sustainable forms of transportation.

B. Require the “unbundling” of parking by separating the price of parking from the price of a housing unit.

Prospective owners and renters should not be required to purchase or rent parking.

C. Study the possibility of making garages convertible to other uses in the future.

Cities (or perhaps MTC) should study the possibility of requiring that above-ground parking garages be convertible to other uses in the future. There are some similarities between the floor plans and structural needs of office buildings and garages. A conversion study could include design and cost considerations, including at floor plates with discrete ramps (rather than sloped floors), sufficient ceiling heights for either residential or office uses, column spacing and exterior treatments. Examples of proposed conversion-ready parking garages include AvalonBay Communities’ planned 475-unit mixed-use

development in the Arts District of Los Angeles and the World Trade Center Denver campus.

Recommendation 10: Ensure housing development fees are feasible.

Actor: State legislature

A. Create state reporting requirements on fees and requirements to HCD.

Setting fees and requirement levels can be challenging. If fees are set too high, then development can be rendered infeasible. If fees are set too low, then local governments risk leaving public benefits on the table. Sometimes advocates will push for fees and exactions without an eye towards financial feasibility. For this reason, we believe that some safeguards against infeasible public benefits requirements should be put in place. One safeguard could include greater state oversight of fee levels. Building on the analysis of governmental constraints required by AB 879 (Grayson), we recommend that all fees and exactions, including inclusionary requirements, should be reported to the State Department of Housing and Community Development (HCD). HCD should develop baseline requirements for financial feasibility analyses needed to support new fees and exactions.

B. Review state requirements related to the additional costs on new housing development for providing park land and associated facilities to make sure they do not inhibit the housing production, particularly for multifamily housing and ADUs.

The provision of park land and associated park and recreational facilities, or the payment of fees in-lieu of providing them, can create a substantial financial burden on housing development. The Quimby Act and the Mitigation Fee Act govern how communities establish park requirements and fees, but there is no standard methodology or maximum fee level that is charged in contrast to school fees. As communities rarely charge fees on non-residential development, these costs often only burden new housing development. The state should revisit these requirements and consider establishing statewide standards that take into account compact, smart growth development and encourage the provision of housing, particularly multifamily and ADUs.

Actor: Local governments

C. Review the local entire fee stack on development every 3-5 years to ensure that requirements on market rate development do not impact the ability of new housing to be built.

Financial feasibility studies are necessary to determine how much the public sector can charge before a particular development becomes infeasible. Before fees are assessed on

new housing development, cities should analyze the entire fee stack (including all fees, requirements and exactions) to determine if they negatively impact the ability of the market to produce more housing.

Recommendation 11: Preserve existing housing occupied by low-income households.

Actors: MTC and local governments

The region and local jurisdictions should create policies and programs that preserve the long-term affordability of existing subsidized housing and enable affordable housing developers to purchase market rate housing developments and make them permanently affordable.

Many of the Bay Area's affordable housing developments are owned by mission-driven developer/owners that have capacity to rehabilitate and maintain affordability beyond the original deed restrictions. However, some existing affordable housing projects are at-risk because of the original subsidy type or because the owner is either profit-motivated or has less capacity. Protection of existing affordable housing should be a priority for local governments.

In addition, much of the region's housing that is currently occupied by low-income households is not income- or rent-restricted. This is a resource that should be protected. Successful programs that enable affordable housing developers to acquire and preserve these units are already in place through MTC's NOAH pilot program and San Francisco's Small Sites program. In addition, Oakland's voters recently passed measure KK, which includes funds for the acquisition of existing housing.