

April 6, 2021

Communities for Responsible Development
A grassroots California Committee
Community Associations of Rancho (CAR)
Rancho Santa Margarita, CA 92688

Subject: The California Housing Issues

Friend:

We need your support! Attached is a critical document created and supported by a grassroots committee called Communities for Responsible Development (CRD). Included in this document are considerations that we will be asking both the Governor and our State and Local Representatives to consider as the State Legislature, Cities, Counties and residents grapple with housing issues and pending legislation that will potentially impact all California homeowners and residents.

We are deeply concerned about recent legislation that addresses future housing development and the potential impacts on California homeowners, residents, businesses and our overall economy. Communities for Responsible Development was formed to define how responsible development can benefit all Californians. To that end, we have prepared the following housing and home ownership solution-based outcomes that we feel are important to every California citizen.

Recent State Legislation regarding California housing issues has left residents and local municipalities out of a process that has a profound impact on our environment and our neighborhoods. As implementation of this legislation will impact current density, zoning, existing CC&R's, Architectural Guidelines and Governing Documents, and will also further stress our already challenged infrastructure, roads, utilities, and emergency response efforts, we feel the State needs to consider the overall impacts of current and future mandates. *This document is our contribution towards a cooperative effort in beginning positive and substantive dialogue regarding resolving our current housing issue.*

We ask that you take a few minutes to review our white paper and the desired outcomes we are seeking. If you are in agreement, we simply ask that you join others in Southern California that support our position going forward. All you need to do is send an email to isupportcrd@cox.net and let us know agree with our position. We will add you to the list of signatories at the end of this white paper and after gathering all the signatories, this document will be sent to the Governor's office and our State and Local elected officials.

We truly appreciate your support in beginning meaningful dialogue on this major issue toward a reasonable, viable and fair solution for all Californians. Thank you in advance for your attention to this document and we respectfully ask for your support of these solution-based outcomes.

Sincerely,

Communities for Responsible Development

Californians for **P**ower **R**eliability

COMMUNITIES FOR RESPONSIBLE DEVELOPMENT
A grassroots California Committee

Solution-Based Housing Development Outcomes

REQUESTED BY CALIFORNIA RESIDENTS



PREFACE

California's diverse housing and regional development spans communities from rural to major city landscapes. There is clearly no "one size fits all" solution for these varied geographical regions. CRD supports "responsible" development and housing solutions where local City, County and residents' input can result in realistic solutions that work for all parties and provide development and housing for existing and new homeowners in their region. CRD believes that local planning provides a strong foundation for addressing California's housing challenges while making sure that infrastructure and support services are in concert with that planning. California continues to struggle with periodic droughts, and long-term solutions continue to be challenged. Climate changes in the State are making it more prone to wild fires and public utilities are resorting to PSPS events to shut off power for days at a time during major wind events. The ability to effect orderly and safe evacuations during events such as wildfires, earthquakes and floods is becoming more of a risk due to the already overburdened streets and emergency exit paths. California needs a truly holistic approach to future development and we believe that the solutions recommended in this paper go a long way towards addressing a comprehensive, reasonable and agreeable approach.

INTRODUCTION

While California's population has grown by 5.7 million since 2000, in recent years that growth rate has seemed to level off (source: World Population Review). As the State continues to work toward long-term solutions for the State's housing challenges, it is imperative that California residents be heard. Assuming all elements of a free market are in place, especially supply and demand, we promote the concept of providing new housing and development that has been well thought out, planned and supported by both local communities and residents that are impacted. The attached document specifies some "outcomes" to be considered as part of the long-term housing strategy for the State of California. These specific points have been reviewed and approved by California citizens including small and large businesses, educational institutions, professional associations, municipalities, chambers of commerce, special districts, and other major consumer groups and organizations.

Communities for Responsible Development respectfully requests that this document become a guide to be used in making any legislative and policy decisions relating to the California housing market. CRD is proof that the citizens of this State are willing to be part of our ultimate housing solution. To that end, we also believe that the voices of all Californians must be heard.

Californians did not have direct input in State-mandated housing legislation and rules, yet we are willing to work with the State to develop more equitable and reasonable solutions to development and housing going forward. We are not willing to have our communities and neighborhoods compromised by State mandates that negatively impact our safety and quality of life. We are simply looking for long-term accountability and ownership as it relates to our future housing requirements.

The following solution-based outcomes are a tool for you to keep on top of your priority list. Californians must be treated fairly and equitably when it comes to this extremely important issue for our residents, businesses and the economic future of the state of California.

SUMMARY of OUTCOMES

1. Local control must be maintained to facilitate meaningful and responsible future development.
2. Infrastructure must be evaluated and provided as needed to facilitate any new development.
3. Safety impacts must be considered and mitigated for any future residential development.
4. Local master planned communities and Homeowner Associations (HOAs) must not be negatively impacted by future residential development.

While the above list summarizes the desired “outcomes” expected by California residents, the following sections more specifically define potential solutions associated with each individual outcome. Please note that the proposed solutions are not considered “all-inclusive”.

Details of related pending/existing legislation that may have an impact on future residential development can be referenced in the Appendix.

OUTCOME 1: *Local control must be maintained to facilitate meaningful and responsible future development.*

We believe California cities, counties and local municipalities along with their residents are willing to be part of the solution. Onerous legislation and State mandates that take away local control are not the answer to providing future housing development:

- Cities and local municipalities are in the best position to analyze and understand their current and future housing needs. Future housing development must provide their communities and residents with improved quality of life.
- Cities and local municipalities should conduct (or continue to conduct) outreach and public hearings with their constituents in order to solicit input and keep them informed regarding future development in their locale
- Cities and municipalities should be able to continue to follow their master plans, local ordinances and building codes.
- Future housing and proposed development should meet the needs of the local community without imposing negative impacts on existing residents.

Desired Outcome: Local control must be retained. Cities, Counties and local Municipalities must continue to have a strong voice in determining and following their community master plans, zoning regulations and local building codes. Residents, homeowners and local governments must be able to continue to have a voice in future development.

OUTCOME 2: *Infrastructure must be evaluated and provided as needed to facilitate any new development.*

New development should take into consideration the provision of basic infrastructure that meets current and future needs:

- Power grids are already being stressed by increased demand in certain areas. While more renewable power is coming online, the advent of all-electric vehicles will put a further strain on the State's electrical systems. Investor Owned Utilities (IOUs) are already forcing major power outages when high wind events occur. Any future development must address energy efficiencies, protections and impacts to the power grid.
- Many California roads are already significantly impacted during rush hours. Further development, if not in the right geographic areas, could further aggravate this condition. Responsible development and housing should balance commercial versus residential development in order to keep their impact as safe and practical as possible.
- Many residential areas with urban interfaces are subject to wildfires. Evacuations during emergency events cannot be further, negatively impacted by future development and housing.
- The provision of reliable water and wastewater services must continue to be considered in all future development planning. Southern California continues to be in a drought situation and local water agencies must be able to serve new residential development without creating supply issues for current community and fire protection requirements. Future development cannot negatively impact the provision or reliability of these services.

Desired Outcome: Local infrastructure must continue to be able to support new development. The provision of electricity, water & sewer services must continue to be considered for any new development. Impacts on roads for daily travel and emergency evacuation must be evaluated to determine whether it can support future development.

OUTCOME 3: *Safety impacts must be considered and mitigated for any future residential development.*

Local cities and municipalities have emergency response plans and infrastructure in place to respond to area emergencies. Local police, fire and paramedic emergency responders are provided in order to maintain a safe environment for California residents:

- Adding or changing housing (in the form of ADUs or garage conversions) to existing development will force more parking onto local streets. The addition of more overnight parked vehicles could increase crimes of opportunity (vehicle theft and break-ins) and inhibit emergency responders from reaching their destination. Any future residential development or changes in current housing should not impact the parking load on local streets.
- Creation of denser housing in currently developed residential communities could foster increased crime and increase the potential for fire and paramedic response. Cities and local communities would need to re-evaluate their public safety metrics in order to continue the provision of appropriate police, fire and paramedic services.
- Many residential areas with urban interfaces are subject to wildfires. Existing developed communities back up to national forests and other natural brush and forested areas. As more frequent wind events bring the danger of fast-moving wildfires that can move directly toward these adjacent developed areas, it is critical that residents have the ability to quickly and safely evacuate when needed. While many vulnerable housing developments already have limitations on their capacity to evacuate, any additional development and housing could further stress inadequate evacuation routes. Any future residential development in existing housing areas must take into consideration the ability to safely and quickly evacuate residents.
- Local and arterial streets were designed to support a specific residential and commercial development load. Any future residential development and housing must ensure that street and highway safety is not negatively impacted by future residential development.

Desired Outcome: Future residential development must take into consideration all aspects of community safety. It cannot jeopardize the safety of any established residential areas.

OUTCOME 4: *Local master planned communities and Homeowner Associations must not be negatively impacted by future residential development.*

Many planned housing developments within the State are managed under the provisions of formal Covenants, Conditions and Restrictions (CC&Rs) that were created to maintain the value and safety of local neighborhoods. **There are approximately 55,000 HOAs with over 13 million residents in the State.** Every homeowner in one of these planned communities is required to acknowledge and agree to the provisions in these documents. In many cases, these CC&Rs can only be modified with a two thirds approval of the membership:

- CC&Rs are established in order to protect the current and future values of homes in the neighborhood. These communities were originally planned and designed to meet local and State/Federal building codes and provisions. Any unreasonable mandates to modify these developments could negatively impact the value of these areas. CC&Rs must continue to be under the control of the relevant Home Owners Association (HOA). Any increase in capacity within HOAs will negatively impact property values, on street parking, property views, local traffic and community safety. Additional development of these properties must be conducted with the approval of the local municipality and the governing Home Owners Association.
- Residents of planned communities (Associations) purchased their homes with the knowledge that any future development was conditioned upon the provisions of the CC&Rs/Contracts they entered into at the time of purchase. Having the State force unapproved development within these Associations beyond the provisions of local building codes and master plans and the provisions of the Association's CC&Rs violates the trust of individual homeowners. The State should NOT mandate provisions that conflict with these local ordinances, CC&Rs and contracts.
- A State mandate that forces the construction of ADUs ("granny flats", garage conversions etc.) without consideration for local building codes, ordinances or HOA rules and regulations would have a negative impact on existing, master planned communities. In-fill development and housing should only be considered when it will not have a negative impact on established, master planned communities.
- Forcing ADUs in master planned communities could also cause legal issues including violation of CC&Rs, title issues with split lots, utility and metering issues,

easement issues, leased vs. owned lots, disclosure issues upon sale/purchase and added liability potential.

- HOA's have existing Architectural Guidelines that are intended to establish and serve as a consistent set of guidelines and standards for residential architecture improvements, changes, maintenance and development standards for ongoing maintenance, proposed improvements and maintenance for the entire development of the community.
- A Declaration in many CC&R's establishes and provides for an Architectural Review Committee (ARC) comprised of volunteer Homeowners appointed by the Board of Directors, requiring prior written approval of any change, addition, improvement or alteration to property. Changes or improvements include (but are not limited to) any structure or building, fences, colors, landscape or lawn type changes, that may be added or altered. Further, they require that all plans, specifications and material change information for any improvements proposed to be constructed, show the nature, kind, shape, height, finish(es), colors, and/or materials be either approved, conditionally approved, or disapproved in relation to existing and surrounding structures, topography, and overall development for the development and housing. Changing or increasing residential types on established lots without regard for these guidelines has the potential to impact both quality and value for individual homeowners as well as communities and over region
- Many HOAs are fully developed. Roads and provided amenities (i.e. pool, parks) have been designed and provided to meet the needs of a specific number of members. Additional residents in an established community could place a strain on these amenities.
- Most HOA budgets and dues structures for a fully developed community take into account the number of "units" within the development. Some of these HOAs are gate guarded communities where roads, street lights and other infrastructure are part of their budget responsibility. Increasing density beyond the master planned amounts could place a strain on these elements and force increases to reserves. HOAs would have to determine how to re-allocate their dues to account for ADUs, split lots and unplanned increases in the communities housing occupancy.
- **The bottom line is** that many residents who purchase within an HOA do so with the understanding that they must accept and comply with the CC&Rs in order to maintain the overall appearance and value of the community in which they live. They have made a major investment based on this expectation. Arbitrarily changing or overriding these covenants and contracts could lead to chaos within

their community. The results could include safety issues, street parking problems, noise and quiet enjoyment issues, lot line view problems and budget/dues issues just to name a few. Most HOAs have provisions to amend their CC&Rs with some percent of their membership voting for any specific change. Taking into consideration local ordinances, building codes and zoning, this should continue to be the mechanism to evaluate and implement any density changes within these planned communities.

Desired Outcome: Exempt Homeowner Associations (HOAs) and other developments with contracted obligations and/or master planned designs from provisions of legislation that contradict or are in direct conflict with their governing documents and/or contracts. Allow HOAs to enforce their current governing documents or revise them (with required community approvals) as needed.

APPENDIX

Current/Pending Legislation Related to California Housing Issues

SENATE BILL 9 (ATKINS) – PROPOSED

Proposed Senate Bill 9 picks up where last year’s SB 1120 left off. Both bills remove local control over housing, and promote higher housing density. If enacted, SB 9 would allow for the construction of two homes on any parcel within a single-family residential zone, and would allow for the splitting of a single residential lot into two equally sized lots. The Bill requires that cities approve these actions ministerially and overrides local zoning in certain instances. This bill would effectively eliminate single-family zoning statewide.

The Bill does not address community associations or the restrictions found in most CC&Rs and Architectural Guidelines, leaving open the question of whether restrictions limiting the number of homes on any parcel, as well as restrictions regarding parking, and preservation of views will be enforceable. The Bill also does not address the many unanswered questions regarding how title will be affected and whether title insurance will be available. The Bill also fails to address the reluctance of many lenders to support “lot splits” and the creation of higher density of rental properties in a community.

A fact sheet summarizing the provisions of this bill and an analysis of the bill from Renne Public Policy Group is included in Appendix “B”

ASSEMBLY BILL 3182 – SIGNED BY GOVERNOR

Despite fierce opposition, including over 5,000 constituents personally expressing opposition to the bill, Governor Newsom signed Assembly Bill 3182 into law on September 29, 2020. Under the new law, any provision in an HOA governing document (CC&Rs, Bylaws, Rules and Regulations) “that prohibits, has the effect of prohibiting, or unreasonably restricts” the rental of any of the separate interests, accessory dwelling units (“ADU”), or junior accessory dwelling units (“JADU”) in a community association is rendered unenforceable. If the HOA is found to have unreasonable restrictions, it could be liable for a \$1,000 civil penalty as well as attorney fees to the complaining party. A summary of the new law is included as Appendix “B”.

To increase affordable housing in California, Governor Newsom signed the legislation to encourage homeowners to convert their garages into living spaces and build small

dwelling units in their back yards as low-income rentals. Following is a summary of key points.

AB 3182 (Continued)

Defined. An “**Accessory Dwelling Unit**” (**ADU**) means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is situated. (Govt. Code §65852.2(j)(1).) They can’t be over 1,200 square feet or be more than 50% larger than the main home.

A “**Junior Accessory Dwelling Unit**” (**JADU**) means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A JADU can include separate sanitation facilities, or may share sanitation facilities with the existing structure. (Govt. Code §65852.22(h)(1).)

Garage Conversions. The legislation authorizes garage and carport conversions into ADUs or JADUs (depending on size) that can be rented. (Govt. Code §65852.2(a)(1)(D)(iii).) Garage conversions must only be allowed in property zoned for single family residential use (typically fully detached residences and zero lot line properties) and in planned unit developments, but can still be prohibited in property zoned for multifamily residential use (typically condominium properties, whether multistory stacked or townhouse style construction). Zoning requirements for any development should be confirmed with the appropriate municipality (city or county).

Parking. Local agencies cannot impose parking requirements for JADUs (Govt. Code §65852.22(b)(1)) reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction (Govt. Code §65852.2(a)(1)(B)(ii)). Most associations already have parking problems. ADUs will exacerbate the problem. Associations that require cars be parked in garages cannot use the requirement to stop garage conversions. (Govt. Code §65852.2(a)(1)(D)(xi).) The bill voids any restrictions that would prevent the construction of ADUs. (Civ. Code §4751.)

Three Per Lot? While the law limits one JADU for each residential lot zoned for single-family residences (Govt. Code §65852.22(a)(1)), the statute is unclear on the number of ADUs that are permitted on the same lot and the requirements vary for multi-family residential lots. It may be possible to have a garage converted to a JADU, part of the interior of the residence converted to an ADU and a detached ADU in the back yard.

AB 3182 (Continued)

Expedited Approvals. The bill expedites the approval process. Local agencies will be required to process applications within 60 days of their submission. (Govt. Code §65852.2(b).) Some applications can receive ministerial approval. (Govt. Code §65852.2(e).) That means they can be approved without a hearing notwithstanding any local ordinance regulating the issuance of variances or special use permits.

Fees Limited. In addition to streamlining applications, permit fees will be limited. Agencies cannot treat ADUs as a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, nor can they require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge. (Govt. Code §65852.2(f).)

Increased Parking. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, local agencies cannot require that those off-street parking spaces be replaced. (Govt. Code §65852.2(a)(1)(D)(xi).) In other words, parking is pushed to the streets. In addition, if owners want to create parking additional on their lots, the bill allows for parking in setback areas. That means more vehicles can be parked on a lot and parked closer to neighboring houses.

Setback Requirements. Setback requirements that would prevent the construction of backyard ADUs will be voided. Setbacks will be reduced to "no more than four feet from the side and rear lot lines." (Govt. Code §65852.2(a)(1)(D)(xi).)

While there is uncertainty and disagreement over the impact of this language on minimum rental terms, the law specifically allows associations to prohibit short term and transient rentals, defined as rentals of 30 days or less, and also allows associations to place a rental cap of twenty-five percent (25%) of the separate interests (or greater) in the association. However, AB 3182 also states that if the owner lives in either the main residence or an ADU or JADU on the property, then the property does not count as a rental unit.

AB 3182 (Continued)

AB 3182 also requires any associations with provisions in their governing documents that conflict with the new requirements to amend their governing documents no later than December 31, 2021. Associations must comply with the prohibition on rental restrictions specified in the new law starting on January 1, 2021, regardless of whether the association has revised their governing documents to comply with the new requirements. Any association that willfully violates the new law is subject to a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

AB 3182 also amends the government code to require quick approval of applications to cities and counties for construction of ADUs and JADUs, deeming all such applications approved if not acted upon within 60 days (this applies to governmental agencies, not associations). Last, the new bill also requires that properties which meet the minimum requirements be allowed to construct one ADU and one JADU on the same property.

One very problematic part of this bill is that it also amends the law outside the Davis Stirling Act, Government Code Section 65852.2. This statute, addressing how municipal building and safety departments handle applications to build ADUs or JADUs, states that if the agency does not respond to an application to build an ADU or JADU within 60 days, the application is deemed “approved.”

The passage and enactment of AB 3182 significantly impacts community associations statewide, and leaves unanswered the issue of whether restrictions in CC&Rs limiting parking, preservation of views, and prohibition garage conversions will be enforceable.

The new legislation prohibits HOA governing documents from containing anything which prohibits, has the effect of prohibiting, or unreasonably restricts rentals of homes, accessory dwelling units (“ADU’s”), or junior ADU’s (“JADUs”). It is clear that “prohibiting” means – HOAs cannot completely ban rentals. However, it may be harder to define the “effect of prohibiting” or “unreasonably restricting” rentals. Most likely, the two issues (effect of prohibiting or unreasonably restricting) are close to synonymous. Is a rental provision in the governing documents a thinly veiled effort to halt rentals, or is there a legitimate explanation showing a reasonable restriction that many owners can meet? This will be the critical question when evaluating present and future clauses in governing documents relating to rental restrictions.

AB 3182 (Continued)

One positive result of the new Section legislation is its specific approval of rental caps as low as 25% of the HOA (excluding ADUs or JADU's). The law allows a cap of 25% or higher, so HOAs that currently have a rental maximum of 25% or more are OK in this regard.

Another positive addition from Section 4741(c), is the confirmation that HOAs may ban short term rentals (30 days or less). It is not yet completely clear if this will have any impact on HOAs that have lease term minimums in their documents regarding normal non-vacation rentals (often 6 months or one-year initial lease term). However, since short term rentals are considered non-residential use by many cities, there is a strong likelihood that minimum lease term requirements will be defensible in court – if the HOA can show the requirement is reasonable.

SENATE BILL 6 – (CABALLERO, EGGMAN, RUBIO) - PROPOSED

This bill, the Neighborhood Homes Act, would deem a housing development project, as defined, an allowable use on a neighborhood lot, which is defined as a parcel within an office or retail commercial zone that is not adjacent to an industrial use. The bill would require the density for a housing development under these provisions to meet or exceed the density deemed appropriate to accommodate housing for lower income households according to the type of local jurisdiction, including a density of at least 20 units per acre for a suburban jurisdiction. The bill would require the housing development to meet all other local requirements for a neighborhood lot, other than those that prohibit residential use, or allow residential use at a lower density than that required by the bill.

The bill would provide that a housing development under these provisions is subject to the local zoning, parking, design, and other ordinances, local code requirements, and procedures applicable to the processing and permitting of a housing development in a zone that allows for the housing with the density required by the act. If more than one zoning designation of the local agency allows for housing with the density required by the act, the bill would require that the zoning standards that apply to the closest parcel that allows residential use at a density that meets the requirements of the act would apply. If the existing zoning designation allows residential use at a density greater than that required by the act, the bill would require that the existing zoning designation for the parcel would apply.

SENATE BILL 6 (Continued)

The bill would also require that a housing development under these provisions comply with public notice, comment, hearing, or other procedures applicable to a housing development in a zone with the applicable density. The bill would require that the housing development is subject to a recorded deed restriction with an unspecified affordability requirement, as provided. The bill would require that a developer either certify that the development is a public work, as defined, or is not in its entirety a public work, but that all construction workers will be paid prevailing wages, as provided, or certify that a skilled and trained workforce, as defined, will be used to perform all construction work on the development, as provided.

The bill would require a local agency to require that a rental of any unit created pursuant to the bill's provisions be for a term longer than 30 days. The bill would authorize a local agency to exempt a neighborhood lot from these provisions in its land use element of the general plan if the local agency concurrently reallocates the lost residential density to other lots so that there is no net loss in residential density in the jurisdiction, as provided. The bill would specify that it does not alter or affect the application of any housing, environmental, or labor law applicable to a housing development authorized by these provisions, including, but not limited to, the California Coastal Act, the California Environmental Quality Act, the Housing Accountability Act, obligations to affirmatively further fair housing, and any state or local affordability laws or tenant protection laws. The bill would require an applicant of a housing development under these provisions to provide notice of a pending application to each commercial tenant of the neighborhood lot.

SIGNATORIES:

The following signatories concur with the solution-based “outcomes” proposed in this document. As such, they are requesting that **all** actions taken at a state and federal level focus on these desired outcomes as a key consideration in the final resolution of the California housing planning going forward:

LARGE BUSINESS

PROFESSIONAL ORGANIZATIONS

SMALL BUSINESS

NON PROFIT ORGANIZATIONS

EDUCATION

GOVERNMENT SECTOR/CITIES

HEALTH CARE

UTILITIES

HOMEOWNER ASSOCIATIONS

ELECTED OFFICIALS