

Addressing Homelessness Through SB 2 Compliance

What is SB 2?

Strategy F1 of the County's Homeless Initiative is **Promote Regional SB 2 Compliance and Implementation**. Adopted in 2007, SB 2 ensures that local zoning supports the development of emergency shelters, and transitional and supportive housing. SB 2 requires every city and county in the state to:



Calculate the unmet need for shelter in the city



Identify a zone or zones where shelters are allowed without discretionary review, and show that the zone or zones have the capacity to address the unmet shelter need



Only apply development standards to shelters that are applied to other development, with the exception of objective standards allowed in 8 specific categories



Treat transitional and supportive housing as residential uses, subject only to those standards applied to other residential uses in the same zone

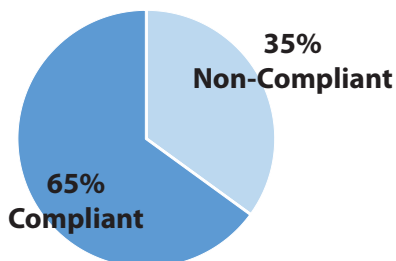


Seasons, LINC Housing: 84 units in Compton, mix of limited-income seniors, seniors with developmental disabilities and formerly homeless seniors

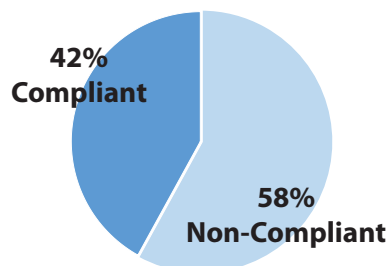
How are cities in Los Angeles County doing with respect to SB 2?

We have more to do. In a March 2017 review of publicly available zoning codes of the 88 cities in Los Angeles County, jurisdictions demonstrated mixed results.

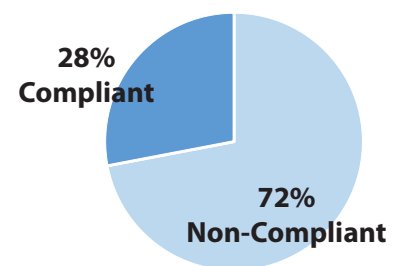
Of cities that impose proximity restrictions:



Of cities that include shelter amenities in their code:



Treat transitional and supportive housing as residential uses:



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Why should we care about implementing SB 2 in our jurisdiction?

Compliance with SB 2 is a key step in developing a comprehensive strategy to housing individuals and families across the region. SB 2 takes a fair share approach and requires all jurisdictions to have adequate zoning and remove barriers to siting shelter and transitional and supportive housing. Also, implementing SB 2 and demonstrating such compliance to the state will both prevent litigation and ensure eligibility for state and federal funds – housing element compliance is critical to the receipt of certain funding sources (see, for example, the State’s Affordable Housing and Sustainable Communities Grant and Housing Related Parks Programs).

2017 Los Angeles County Homeless Count

Service Planning Area	2017 Total	% Change
1- Antelope Valley	4,559	+50%
2- San Fernando Valley	7,627	+4%
3- San Gabriel Valley	4,127	+31%
4- Metro LA	15,393	+30%
5- West LA	5,511	+18%
6- South LA	9,243	+24%
7- East LA County	5,189	+50%
8- South Bay	6,145	+4%
Totals	57,794	+23%

Roughly 58,000 people experience homelessness on any given night. This is a 23% increase from 2016.

Will SB 2 implementation be hard?

No. Though procedures vary among cities, making code amendments is typically not an onerous process. The relevant amendments involve revising definitions and zone text. This process can often be accomplished with the assistance of planning staff at a couple City Council meetings. Making the required amendments does not necessarily require mapping or other more labor intensive processes sometimes involved in amending zoning.

What are the next steps?

Public Counsel, a pro bono law firm, is offering technical assistance to help local cities implement SB 2. As part of Strategy F1, they have created a Best Practices Guide for SB 2. Please use either of the contacts below to request the guide.

Local Zoning Best Practices for Shelter and Transitional and Supportive Housing:

An SB 2 Primer



Community Development Project

July 2017

For more information about SB 2 and technical assistance with implementation, contact Nisha Vyas or Shashi Hanuman at Public Counsel, (213) 385-2977.

For more information about this and other housing policy efforts: housing@planning.lacounty.gov, (213) 974-6417



Local Zoning Best Practices

for Shelter and Transitional and Supportive Housing

An SB 2 (2007) Primer



Community Development Project
October 2017

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Introduction

On February 9, 2016, the Los Angeles County Board of Supervisors unanimously approved a landmark plan representing the most comprehensive effort ever undertaken by the County to combat homelessness. The Homeless Initiative includes 47 strategies. The same day, the City of Los Angeles adopted its plan to address the homelessness crisis. Together, the City and County strategies aim for strategic and historic levels of collaboration to attack root causes of homelessness. The County and City plan to spend hundreds of millions of dollars in the next several years on fighting homelessness in the region.¹

This SB 2 Best Practices Guide helps implement Strategy F1 (“Promote Regional SB 2 Compliance and Implementation”) of the County’s recommendations to increase affordable/homeless housing. Its purpose is to educate cities in Los Angeles County on zoning and land use actions they can take to increase housing opportunities for people experiencing homelessness in our communities. It recognizes the need for all jurisdictions to do their fair share in zoning to address homelessness and encourages compliance with California Senate Bill 2 (SB 2), which amended State Housing Element Law and the State Housing Accountability Act (effective in 2008) to require removal of specific zoning barriers to development of supportive and transitional housing and emergency shelters.

At its core, SB 2 uses land use policy to maximize the availability of affordable/homeless housing. As funding for homeless housing means little without the availability of land appropriately zoned to build that housing, local SB 2 compliance is a necessary complement to the housing and services funding strategies set forth in the county and city plans.

What does this guide do?

This guide provides local governments and advocates in Los Angeles County with an understanding of what SB 2 is, and how to implement its provisions in zoning codes in a manner that affirmatively advances solutions to homelessness. It addresses common misinterpretations of SB 2, and consequences for non-compliance, as well as how fair housing and anti-discrimination laws factor in. This guide then reviews implementation of SB 2 in cities across Los Angeles County. Finally, it concludes with examples of best practices in SB 2 implementation and suggestions for further actions jurisdictions can take beyond SB 2 to advance the provision of emergency shelter and transitional and supportive housing.

What is SB 2?

SB 2, effective January 2008, amended California’s housing element law (State Housing Element Law) and California’s Housing Accountability Act (HAA) to require local governments to take specific zoning actions to encourage the development of emergency shelters and transitional and supportive housing. It also clarifies that under the HAA, a jurisdiction cannot deny applications for such types of housing and shelter without making specific evidence-based findings.

State Housing Element Law mandates that all local governments adopt a housing element as part of the local general plan, which “make[s] adequate provision for the housing needs of all economic segments of the

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community.”² The HAA prohibits a local government from denying affordable housing developments without making certain findings.³ State Housing Element Law and the HAA, along with other federal and state fair housing and anti-discrimination laws, work collectively to ensure jurisdictions advance inclusive land use and zoning policies that address housing needs for all – but particularly for people with lower incomes, special needs, seniors, persons with disabilities, veterans, and other target populations.⁴

SB 2’s amendments to State Housing Element Law and the HAA describe four major requirements:

- **Assess need for emergency shelter:** Each jurisdiction’s housing element must assess the need for housing and services for homeless persons and families, and specifically assess the unmet need for emergency shelters.
- **Demonstrate by-right zoning for shelters:** Each jurisdiction must identify a zone or zones where shelters are permitted without discretionary approval (by-right) with sufficient capacity to meet the unmet need. The jurisdiction must also demonstrate that existing or proposed permitting processes are objective and encourage the development of shelters.
- **Treat transitional and supportive housing the same as other residential uses:** Each jurisdiction must treat transitional and supportive housing as residential uses of property in its zoning code, subject only to restrictions that apply to other similar residential dwellings.
- **Include shelters and transitional and supportive housing as protected uses under the HAA:** Emergency shelters and transitional and supportive housing are now specifically included within the categories of uses that are protected by the HAA (and therefore included within the types of projects that jurisdictions have limited bases to deny).

Consistent with State Housing Element Law, SB 2 does not require jurisdictions to build or fund shelters or housing – it simply requires the local jurisdiction’s zoning code to affirmatively advance these uses. Importantly, SB 2 also does not restrict *how* local governments allocate resources to address local priorities and needs.

Why should we care about implementing SB 2 in our jurisdiction?

Compliance with SB 2 is a key step in developing a comprehensive strategy to house individuals and families who are homeless. SB 2 takes a fair share approach – requiring all jurisdictions across the State to update zoning ordinances to help house people in the jurisdiction who are homeless – so that the task does not fall on any single locality or region alone. It protects occupants of the shelter or housing from discrimination by clearly focusing on the impacts of the proposed use, rather than the occupants. Lastly, it helps remove barriers to siting the types of shelter and housing that would be most beneficial to people who are experiencing homelessness.

In addition, implementing SB 2 will help ensure that local jurisdictions are eligible for certain state and federal funds. Housing element compliance is a requirement of many funding programs, and a finding of compliance is unlikely if a jurisdiction has not implemented SB 2. For example, the State’s Affordable Housing and Sustainable Communities Grant and Housing Related Parks program include housing element compliance either as a requirement or as a factor for consideration.⁵ Implementation of SB 2 may also make local jurisdictions more competitive in applications for federal funds, such as those available from the Home Investments Partnerships (HOME) program.

Finally, an SB 2 compliant zoning code helps local jurisdictions shield themselves from costly litigation. Recent SB 2-focused litigation included consequences ranging from orders compelling compliance, moratoriums on building permits, and payment of tens of thousands in attorneys’ fees.⁶

Uses protected by SB 2: emergency shelters, transitional housing, and supportive housing

SB 2 protects emergency shelters, transitional housing, and supportive housing. The technical definitions of these uses are defined in the statute and discussed later in this Guide. The following is an explanation of the common usages of the terms, and how these uses fit into a comprehensive homeless strategy.

What is an emergency shelter?

Emergency shelters are temporary housing available to individuals and families experiencing homelessness. Shelters provide the least intensive programs, generally providing meals, a cot and minimum case management services. They often operate from late afternoon to early morning. Individuals and families can typically stay in shelters for up to six months.

What is transitional housing?

Transitional housing serves as a short-term stay when an individual or household is either waiting to secure permanent housing, or has secured permanent housing that is not immediately available. In the homeless services field, the current model for this type of intermediary housing is called ‘bridge housing’ or ‘interim housing.’ Most ‘bridge housing’ and ‘interim housing’ falls under SB2’s definition of ‘transitional housing.’ The target population for transitional housing may be those with special needs, including people with substance abuse problems, people with mental health issues, domestic violence survivors, veterans, or people with AIDS/HIV.⁷ Transitional housing programs typically provide residents with services (often geared toward fostering independent living) through a housing provider directly and/or through coordination with local nonprofit and government agencies. Because the intent is to prepare residents to transition to permanent housing, residential stay is limited to two years (24 months). Living in transitional housing is not a prerequisite to obtaining permanent housing or permanent supportive housing. Transitional housing is typically in multi-family residences, but can also be single-family residences, and may be provided at no cost to residents, or at an affordable cost.

What is supportive housing?

Supportive housing offers deeply affordable rents where the tenant pays no more than 30 to 40 percent of his/her household income on housing costs and the tenant has easy access to a comprehensive array of individualized and flexible services, either on-site or in proximity to the housing site. Tenants have a lease offering an indefinite length of stay as long as the tenant complies with lease requirements. Supportive housing provides access to health and social services, such as mental health and addiction therapy, medical care, and case management to assist tenants achieve stability and lead productive lives in the community.⁸ Supportive housing can include apartments and single-family homes. The term “single-site” housing refers to people living together in a building or complex of buildings, while “scattered-site” housing refers to residents living in apartments or houses located throughout the community.⁹

Why are these uses critical to ending homelessness?

Housing is the key to ending a person’s homelessness. Often people experiencing homelessness are facing multiple barriers to employment and housing stability, including mental illness, substance use, and/or other disabling or chronic health conditions. Supportive housing provides a combination of affordable housing and supportive services designed to help vulnerable individuals and families use stable housing as a platform for health, recovery and personal growth.

While ending homelessness requires a focus on permanent housing solutions, temporary housing is still necessary to support a full system. Shelters and transitional housing should not only provide a place to stay, but also serve as a place to triage and assess clients’ short- and long-term housing and service needs.

Why do these uses need special treatment in the zoning code?

These uses tend to face vocal opposition, often based on misperceptions about the population served. Opposition can also stem from an overall community resistance to change, increased density or traffic associated with the project, and any other host of concerns (some legitimate, some not). Unfortunately, local prejudices often result in policies and practices that inhibit the development of these uses, thereby exacerbating patterns of racial and economic segregation.¹⁰ SB 2 limits the influence of this prejudice, thereby paving the way for a smoother approval process for these uses.

How do SB2's amendments to State Housing Element Law protect siting of emergency shelters?

Immediate shelter is a critical and necessary resource for people experiencing homelessness. Yet the process for approval of emergency shelters in local jurisdictions has a history of uncertainty and barriers. SB 2 was enacted to address the State's concern that shelter providers "encounter tremendous resistance at the local level" and that despite the need for shelter, "some communities offer no zones in which shelters are allowed."¹¹

In March 2017, Corporation for Supportive Housing ("CSH") and Public Counsel conducted an online survey (the "survey") of nonprofit organizations developing and siting supportive housing, transitional housing and emergency shelters throughout Los Angeles County in order to determine the extent to which cities are affirmatively advancing these uses in their zoning codes. According to that survey, emergency shelter providers identified overly burdensome local conditions for approval - including low bed limits, required monthly community meetings, neighborhood patrols, and limits on the number of people that could be served daily at the shelter. Providers also described expensive, time-consuming discretionary approvals processes, the outcomes of which were unlawful denials. For example, shelters have been denied because the population served and location were too close to schools or daycare centers. In one case, a shelter provider proposed 12 sites to a local jurisdiction. All were denied, and during the 3-year legal challenge of this decision, the provider lost its funding to build.

Shelters have been **denied or unpermitted** for unlawful reasons – for example – because the population served and location were "too close" to schools or daycare centers. **SB 2 prohibits such reasons for denial.**

The by-right zone (or zones) for shelter must be large enough to meet the jurisdiction's "**unmet need**" for shelter.

To address these types of barriers, the basic requirement in SB 2 related to shelters is that cities and counties must have at least one zone that permits emergency shelters without discretionary approval, or "by right."¹² The by-right zone (or zones) must be identified in the housing element, and must be large enough to meet the jurisdiction's need for shelter. By-right projects that meet the community's zoning and

development standards are subject to approval at the staff level, rather than a discretionary approval at a public hearing.

With SB 2, shelter developers will know where they are permitted to build and operate shelters by-right in the jurisdiction, and will not spend valuable time and resources acquiring parcels that have no realistic potential for approval for use as a shelter. Since zoning ordinances require legislative body approval through a public hearing process, the community still has the opportunity to weigh in on where shelters should be permitted in the zoning code amendment process, rather than at a more controversial point where an individual shelter is seeking approvals from the jurisdiction.

SB 2 does not require a jurisdiction to build any shelter, nor does it require a locality to permit shelters by-right on every site. Once a jurisdiction has identified sufficient by-right zoning to meet its unmet need for shelters, it may designate other zones that require a conditional use or other discretionary permit for shelter use.¹³

What types of emergency shelters are protected by SB 2?

SB 2 defines emergency shelter as “housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.”¹⁴

Given the broad scope of the SB 2 definition, most emergency shelters that commonly operate to house people experiencing homelessness and that do not charge for such service are likely to fall within the scope of the statute’s protection. Thus, as a jurisdiction looks to ensure its zoning code complies with SB 2, it is important to ensure that the zoning code definition of emergency shelter is consistent with the statutory definition. A more narrow definition may conflict with the statute. For example, some jurisdictions define emergency shelters to include only shelters operated by nonprofits or religious organizations. Others require the emergency shelter developer to provide more than minimal services. Others fail to include the required language ensuring shelters do not deny anyone based on inability to pay. Insofar as these definitions limit the types of shelter that would be permitted by-right under SB 2, they do not comply with SB 2.

How can my jurisdiction assess unmet need for shelter beds?

The by-right zones must demonstrate “sufficient capacity” to accommodate “unmet need.”¹⁵ How does a jurisdiction assess whether its zoning meets this requirement? To start, the jurisdiction needs to understand its unmet need for emergency shelter. While SB 2 does not provide a specific formula to determine this number, Department of Housing and Community Development (HCD) guidance is instructive and explained below:¹⁶

- **Determine unsheltered homeless count:** Determine the total daily average number of unsheltered persons, including, if possible, a breakdown of the number of single males, single females, and families with children. Datasets are available for the 2016 Greater LA Homeless Count that break down the number of unsheltered homeless persons by jurisdiction and by census tract.¹⁷ The number of unsheltered homeless persons take into account seasonal and year-round need.¹⁸
- **Subtract existing beds and units that are vacant and available to homeless population:** Determine the number of available and existing resources available to persons experiencing homelessness in the community, including shelter beds, transitional housing and supportive housing units. **Count only vacant and available beds or units in the community.** Also, take into consideration whether available beds/units match the needs of your jurisdiction’s homeless population. For example, if your jurisdiction has only one shelter, and the shelter does not accept families, any available beds in that shelter should not be counted as an available resource for the family portion of the homeless population.
- **Subtract qualifying pipeline beds and units:** The unmet need for shelter beds can be further reduced by taking into account certain beds or units that are in the pipeline for production during the housing element planning period. There are two ways to do this. First, jurisdictions that have adopted a 10-year plan to end chronic homelessness (a separate document from the housing element) may subtract the number of supportive housing units identified in that 10-year plan that are in the pipeline for production during the housing element planning period. Second, local governments can agree to work with up to two other adjacent communities using a multijurisdictional agreement requiring parties to develop at least one year-round emergency shelter within two years of the beginning of the housing element planning period. A qualifying agreement (as detailed in a housing element approved by HCD) will allow the jurisdiction to reduce its unmet need further, in proportion to the number of beds in the pipeline allocated to it in the agreement.

- **Calculate the unmet need:** The result of the preceding steps is the unmet need for shelter for persons experiencing homelessness in the jurisdiction, both seasonally and year-round. The steps are illustrated in the following table.

Calculating Unmet Need for Shelter Beds			
Number of Unsheltered Homeless People	Number of Available, Vacant Beds and Units	Deductions for Pipeline SH Units ¹⁹ or Pipeline Beds in a Multijurisdictional Agreement ²⁰	Unmet Need for Shelter Beds
X	Y	Z	X-Y-Z

How does my jurisdiction demonstrate sufficient by-right capacity to accommodate unmet need?

Once the unmet need for shelter beds is determined, the jurisdiction must identify a zone or zones with **sufficient by-right capacity** to accommodate the need.

What does “by-right” mean?

In the SB 2 context, “by-right” means that emergency shelter is a permitted use that does not require a conditional use permit or other discretionary permit.²¹ Only administrative approval may be required – meaning that the decision-maker determines only whether there is conformity with objective standards, and is not authorized to exercise independent, subjective judgment. Requiring conditional use permits, variances, or other procedures requiring discretionary decision-making for the chosen zone or zones would violate the statute. Design review is permissible, but this process must be ministerial, rather than discretionary.²² And unless the jurisdiction requires public notice of other non-discretionary actions, it should not require public notice of applications for emergency shelters.

Some jurisdictions create “overlay zones” as a mechanism to permit shelters by-right. An overlay zone is superimposed on the existing zoning map, and modifies the underlying zoning classification within its boundaries. Consistent with the general requirements of SB 2, if a jurisdiction chooses to do an overlay zone, it should ensure that there is sufficient capacity in the overlay zone to address the entire unmet need for emergency shelter, after subtracting any sites that are not suitable, have limited realistic potential for development, or are otherwise inconsistent with SB 2.²³

What does “sufficient capacity” mean?

Sufficient capacity means that the identified by-right zone or zones have enough space to physically accommodate the unmet need for shelter beds identified in the jurisdiction’s housing element. To understand if there is sufficient capacity within the identified zone or zones, a jurisdiction may take the following steps:

- **Determine total by-right acreage:** Calculate the total acreage of sites in the by-right zone or zones.
- **Subtract sites within the by-right zone or zones that do not have realistic potential for development or are not suitable for shelter development:** Sites within the by-right zone or zones must have **realistic potential** for development or reuse in the housing element period, and must be **suitable** for shelters, accounting for safety hazards such as flooding, contamination, and other environmental constraints, and accounting for location, including proximity to transit, job centers and public and community services.²⁴ More details on determining realistic potential and suitability are discussed later in this section. The result of this step is the **realistic and suitable by-right acreage**.

- **Determine an average or ideal beds per acre:** The jurisdiction should determine an average or ideal “beds per acre” for a shelter by looking at existing shelters. This can vary between jurisdictions, so there is no one-size-fits-all number.
- **Multiply the realistic and suitable by-right acreage by the beds per acre:** The result of this calculation is the jurisdiction’s shelter bed capacity. In other words, the number of shelter beds that could be developed within the identified zone or zones in the jurisdiction.
- **Compare the capacity to the unmet need:** If the jurisdiction’s shelter bed capacity is more than the unmet need, the jurisdiction has demonstrated sufficient capacity. If the jurisdiction’s shelter bed capacity is less than the unmet need, then the jurisdiction must identify additional by-right zone or zones.

Realistic and Suitable By-Right Acreage Times Average Beds Per Acre = Capacity		
Realistic and Suitable By-Right Acreage	Average Beds Per Acre	Capacity
Acreage of sites in the by-right zone or zones that have realistic potential for development and are suitable for shelter development	Determine based on previous shelter developments, or ideal for shelters based on input from providers	Once calculated, compare the capacity number to the unmet need for shelter to determine if sufficient.

The sufficient capacity analysis must appear in the jurisdiction’s housing element. This capacity analysis may include only the zones designated by-right for shelter – any additional zones where shelters are permitted as a conditional use or subject to other discretionary approval cannot be considered. Regardless of the extent of need identified in the housing element, the jurisdiction is required to have at least one by-right zone able to accommodate at least one year-round emergency shelter.²⁵ The only exceptions to this requirement are if the jurisdiction is able to demonstrate that the need is fully accommodated with existing, available shelter beds or through a multi-jurisdictional agreement.²⁶

How can my jurisdiction demonstrate sites have “realistic potential” for development?

The housing element should include the vacant or underutilized acreage of the by-right zone(s), and the realistic capacity for shelters in the zone(s).²⁷ This may include addressing the potential for conversion of existing, underutilized property uses to shelters.

Realistic potential means that emergency shelter development is actually feasible. For example, if a jurisdiction where the unmet need is significant identifies a single by-right zone with limited lots or sites available for development or conversion, it will be difficult to demonstrate sufficient capacity. Identifying multiple zones that demonstrate, in the aggregate, significant square footage is a better approach allowing potential shelter developers flexibility in the site acquisition process. While not all lots will be realistic for development, there is a greater chance that enough may be to satisfy the unmet need.

In the same way, sites occupied exclusively by existing, thriving uses are unlikely to have realistic potential for emergency shelter development unless the jurisdiction can show a likelihood of redevelopment. Examples may include sites substantially occupied by uses such as stadiums, shopping complexes, and newly constructed apartments, etc. It would be difficult to demonstrate potential for redevelopment of such sites.

How can my jurisdiction demonstrate a zone is “suitable” for emergency shelters?

Suitability of a zone for emergency shelter uses is determined by examining what other uses are permitted in that zone, and whether those uses are generally compatible with residential and shelter use. Industrial zones are likely not suitable for residential uses due to potential environmental impacts. However, areas within the zone that are in the process of being redeveloped to include residential uses and where industrial uses are being phased out may be compatible.²⁸ A commercial zone that permits residential or residential compatible services (i.e., social services, offices) may be suitable for shelters. Underutilized civic buildings that have the potential for conversion may also be suitable for shelters if compatible with residential uses. In establishing a by-right zone or zones, the local government should consider proximity to transit, job centers and public and community services.²⁹ Like any other residential uses, emergency shelters require zones where day-to-day living is appropriate.

Unsuitable or unrealistic sites may include:

- Industrial sites
- City- or county-owned water reservoirs
- Beach parking lots
- Actively utilized civic buildings
- Sewage treatment plants
- Fire stations
- City- or county-owned utility lots

What are the minimum, objective standards for shelters in by-right zones?

Communities may express concern that “by-right” means that they are not able to ensure health and safety standards. However, “by-right” in this context does not mean “anything goes.” SB 2 permits local governments to apply objective zoning standards to shelters in by-right zones, as long as the jurisdiction uses a non-discretionary process to ensure those objective standards are met. One way to do this would be through a site plan review application that clearly denotes the objective standards.

Generally, there are two categories of permissible standards for emergency shelters under SB 2. First, a jurisdiction may only apply development and management standards that apply to residential or commercial use within the same zone.

Second, a jurisdiction may apply written, objective standards related to:³⁰

1. maximum bed limits,
2. off-street parking,
3. size and location of waiting and client intake areas,
4. provision of on-site management,
5. up to 300 feet separation requirements from other shelters,
6. length of stay,
7. lighting, and
8. security.

Even if permitted by SB 2 (either because it is listed in the statute in the category of an acceptable standard, or because it may otherwise be applicable to residential or commercial development), emergency shelter standards must be objective, encourage and facilitate the approval of shelters, and may not be applied in a manner that renders shelter development infeasible.³¹ For example, a restrictive bed limit might make shelter development impractical.

Common standards/amenity requirements for emergency shelters that go beyond what SB 2 likely allows:

- Proximity restrictions to public parks, schools, colleges, universities and childcare facilities
- Compatibility with neighborhood character requirements
- Unreasonably low bed limits for by-right sites
- Commercial kitchen and dining room
- Counseling centers
- Laundry, personal storage, and lockers
- Pet kennels
- Expensive landscaping
- Neighborhood reports
- Community relations plans
- Outdoor gathering space
- Play areas

Standards must focus on the use as an emergency shelter, and not on the perceived characteristics of potential occupants.³²

Why are permissible standards limited to eight categories?

Zoning standards on shelters that are not required of other development may be unnecessarily burdensome. Shelter providers report needing flexibility to ensure successful operations. For example, requiring particular amenities could raise construction and/or operation costs. And some standards may be implemented in a subjective manner, leaving room for decision-makers to deny the shelter for unlawful, arbitrary reasons.

It is important to remember that shelters are still subject to standards generally applicable to residential or commercial development within the same zone, and that emergency shelter funders often require additional standards. There is no need to duplicate these standards in the zoning code.

Can the zoning code require standards to ensure resident safety?

Yes. As the list of permissible standards under SB 2 includes on-site management, lighting and security, jurisdictions are free to regulate in these areas, and to rely on building codes and other safety standards that apply equally to residential or commercial development within the same zone. However, the imposed standards cannot be unreasonably difficult to meet or implemented in a subjective way. For example, a jurisdiction can require a site management plan, but should not maintain discretionary approval power over the contents of the plan.

Can the zoning code limit the number of beds per shelter?

Yes. But while SB 2 allows jurisdictions to impose a cap on the number of persons “served nightly” by a shelter, any limit imposed must not discourage development of shelters. Low maximum bed limits may make it difficult to obtain adequate funding to maintain and administer the shelter. Generally, a higher number (or no limit) is preferable to encourage and facilitate development. For example, the City of Oakland has a 100-bed limit per shelter in its by-right zones.³³

What about design review standards?

A jurisdiction may impose design review standards, but these standards should be comparable to what is required of residential or commercial developments in the same zones, and applied in a manner that does not render shelter development infeasible. Some specific design guidelines might include screened refuse areas or wheelchair accessibility.

Can the zoning code require particular amenities?

Amenities, such as laundry facilities and kitchens, cannot be required of shelters in by-right zones, unless such amenities are also required of other residential or commercial uses in that zone. And even if required of residential or commercial uses in the zone, an amenity requirement could be problematic if it would make shelter development infeasible. Jurisdictions can still choose to encourage desired amenities with permissive language in their zoning codes. A jurisdiction can also consider providing additional funding for amenities – such as accommodations for service or emotional support animals, exercise facilities, and community gardens.³⁴

Can the zoning code require minimum onsite parking spaces?

A jurisdiction may require off-street parking based upon demonstrated need, but cannot require more parking for emergency shelters than it requires of other residential or commercial uses within the same zone. The burden is on the jurisdiction both to demonstrate that the parking requirement is based on demonstrated need, and that it does not exceed parking requirements for other residential and commercial uses in the same zone. It would therefore be important for the jurisdiction to document (through a study of local shelters) the need for parking for shelters, factoring in specific population types. For example, shelters that serve people experiencing chronic homelessness will likely have lower parking needs.

Also, the jurisdiction should analyze its parking requirement for shelters and compare it to the parking required of other residential and commercial uses in the zone. Where this is not directly possible because parking requirements for shelters are based on number of beds, the jurisdiction may consider translating its shelter parking requirement into a square footage requirement (or other measure that is more easily comparable to nearby commercial or residential requirements). This will allow the jurisdiction to compare its shelter parking requirement against parking required for any other residential or commercial uses. Alternatively, the jurisdiction might simply also allow a developer to choose one of two parking options: either the designated parking standard for shelters, or the comparable parking standard for commercial or residential uses in the zone, whichever is lower.

Case study: City of Los Angeles response to shelter crisis

The City of Los Angeles has the largest population of unsheltered homeless residents in the nation.³⁵ Los Angeles recently amended its municipal code to allow shelters streamlined processing if the city council declares a shelter crisis.³⁶ These regulations apply in residential (R3, RAS3, R4, RAS4, R5), commercial (C2, C4, C5, CM), and industrial (M1, M2, M3) zones on land owned by and operated by a church or non-profit organization, and on all city-owned properties regardless of zone.³⁷ The amendment includes several provisions that facilitate new homeless shelters during a shelter crisis, including provisions that:



- Allow shelters on land owned and operated by religious organizations, nonprofits or the city to be built by-right, with no limitation on occupancy³⁸ ;
- Dispense with parking requirements for shelters if there is insufficient space; and
- Dispense with any separation requirements for shelters.

Shelters established by religious organizations and churches under the relaxed restrictions above must comply with operating requirements established by the fire department and notify neighboring properties and nearby schools before opening the shelter.³⁹ Under the City's rules, it may declare a shelter crisis for up to one year and renew such declaration on an annual basis.⁴⁰ On April 19, 2017, the Los Angeles City Council declared a shelter crisis, activating the relaxed restrictions.⁴¹ For cities, a benefit of declaring a shelter crisis is that state law limits the liability of government agencies permitting homeless shelters during a shelter crisis. Specifically, during a declared shelter crisis, state law provides immunity from liability for ordinary negligence, and suspends "the provisions of any state or local regulatory statute, regulation, or ordinance prescribing standards of housing, health, or safety" to the extent that strict compliance would hinder crisis mitigation efforts.⁴²

Understanding the Law: Do's and Don'ts for Emergency Shelter Zoning

<p><u>DO</u> properly define “emergency shelter.”⁴³</p>	<p>State law defines emergency shelter broadly. A local definition that is more limiting may result in fewer providers being able to benefit from the by-right zoning in that community, resulting in fewer resources for people experiencing homelessness.</p>
<p><u>DO</u> identify the unmet need for emergency shelters.</p>	<p>The jurisdiction cannot demonstrate sufficient zoning capacity to meet the need without this number.⁴⁴</p>
<p><u>DO</u> ensure that your zoning code explicitly permits emergency shelters by-right (without discretionary approval) in at least one zone.</p>	<p>All jurisdictions, regardless of need, must designate at least one by-right zone for shelters.</p>
<p><u>DO</u> identify suitable and realistic sites.</p>	<p>Sites must be suitable and have realistic potential for residential development, and have sufficient capacity to meet the emergency shelter need.⁴⁵</p>
<p><u>DON'T</u> apply standards to shelters that require more than what is required of residential or commercial development within the same zone, unless expressly permitted by SB 2.</p>	<p>Jurisdictions may apply written, objective standards on eight (8) enumerated concerns.⁴⁶</p>
<p><u>DON'T</u> implement unnecessary operational standards, and don't impose requirements that shelters be located a certain distance from parks, schools, etc.</p>	<p>The <u>only</u> distance limitation allowed by law is to require that emergency shelters be up to 300 feet apart.⁴⁷</p>
<p><u>DON'T</u> require, but <u>DO</u> encourage amenities.</p>	<p>Requiring amenities through the zoning code is beyond what SB 2 allows.</p>
<p><u>DO</u> use permissive language when drafting (“can” or “may” rather than “shall” or “must”) in connection with amenities.</p>	<p>Permissive language allows shelters the needed flexibility while also identifying jurisdictional priorities for shelters.</p>
<p><u>DON'T</u> limit the maximum number of beds or persons to be served nightly.</p>	<p>Bed limits are permissible, but such limitations would not be allowed if they discourage or prohibit development.⁴⁸</p>
<p>Optional: <u>DO</u> designate zones on a map clearly such that members of the public can determine what properties are designated “by right” in a clearly marked and easily identifiable fashion.</p>	<p>This will encourage community participation at the time zoning code amendments are considered, rather than during the shelter approval process, and will help providers easily identify where they can build and operate shelters.</p>

How do SB2's amendments to State Housing Element Law protect siting of transitional and supportive housing?

SB 2 mandates that local governments treat supportive and transitional housing as residential uses in local zoning codes, "subject only to those restrictions that apply to other residential dwellings of the same type in the same zone." Implemented properly, this ensures equality of treatment for all residential uses regardless of the occupant.

By ensuring such equality of treatment, SB 2 addresses community opposition to transitional and supportive housing due to misperceptions about occupants and any other host of fears. Indeed, one issue that often arises with transitional and supportive housing is the description in public notices or in public meetings of such uses as "facilities," as opposed to "housing." As a result, opposition to the proposed housing may form because of the perception that the use is not residential. Likewise, jurisdictions have attempted to put unreasonable or inappropriate conditions on such developments, or have treated such developments as either uses requiring conditional use permits or uses prohibited in residential zones. In our survey, 12 out of 14 developers reported that supportive housing was not defined in the zoning code, and 2 out of 4 developers reported that transitional housing was not defined. Over half of the developers of supportive housing reported that their projects were subject to greater restrictions than what was required of other residential housing. Examples include increased parking, increased fees, and requests to host community meetings not required by the zoning code.

Under SB 2, transitional and supportive housing are residential uses intended for certain "target populations," including individuals and families experiencing homelessness. These uses, and the populations they are designed to serve, are defined in the state housing element law:⁴⁹

(g) "Supportive housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

(i) "Target population" means persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.

(j) "Transitional housing" means buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.

Our zoning code doesn't mention transitional and supportive housing. Does our zoning code need to be amended?

More than likely, yes. For clarity, and to comply with state law, jurisdictions should specifically adopt the SB 2 definitions of transitional and supportive housing into their zoning codes. They should also include an affirmative statement following each definition that such use "may be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone."

In addition, jurisdictions should explicitly include supportive and transitional housing as permitted uses in all residential zones, subject only to the development standards applicable to residential uses of the

same type in the same zone. To avoid any internal conflicts with the zoning code, the jurisdiction should also update any applicable tables of permitted uses to mark supportive and transitional housing as permitted uses.

Jurisdictions should also review their zoning codes carefully to remove any other barriers to transitional and supportive housing. For example, the zoning code may contain definitions of uses that could be confused with transitional or supportive housing, such as community care facilities⁵⁰ or boarding houses.⁵¹ The jurisdiction should clarify that these other uses are in fact distinct from transitional or supportive housing. One way is to remove potentially overlapping definitions, or clarify within any such definitions that they do not include supportive and transitional housing.

There may be other barriers to transitional and supportive housing that are specific to a jurisdiction's zoning code. An individualized analysis of the zoning code for SB 2 compliance is recommended.

City of Oakland's SB 2 zoning code revisions in response to homelessness crisis

The City of Oakland, along with the entire Bay Area region, is facing growing levels of displacement. With more people unable to afford housing, the proliferation of high levels of homelessness, tent encampments, and people losing their homes are on the rise.⁵² A January 2015 homeless count reported approximately 1,400 homeless individuals on the streets of Oakland,⁵³ and 4,040 homeless individuals in Alameda County generally.⁵⁴ In 2014, the City of Oakland implemented a number of changes to its zoning code (to address SB 2's requirements), including clearly depicting and zoning areas across the city where emergency shelters are allowed by-right, and revising the characterization of transitional and supportive housing in the zoning code.

The amended zoning code uses a visual map to identify permitted areas where emergency shelters can be built by-right across the city – including in residential, mixed use, urban residential, neighborhood center, community commercial, retail, medical, business and industrial zones, totaling approximately 544 acres. Shelters are permitted to have a maximum of 100 beds and allow residents to stay for up to 180 days – both relatively permissive standards compared to other cities. The amended code also explicitly treats transitional and supportive housing the same as other residential dwellings as required by Government Code Section 65583(a)(5).



Is my jurisdiction required to do anything beyond amend the zoning code?

Yes. Jurisdictions must still ensure that in practice, supportive and transitional housing developments are not subject to greater restrictions when compared to other residential uses of the same type in the same zone during the approvals process.

For example, if a provider uses an existing duplex for transitional or supportive housing, then that project is subject only to development standards applied to any other duplex in that zone, and would not need separate approval for a change in use. Likewise, if a developer chooses to build transitional or supportive housing apartments, then standards for multi-family apartment buildings in that zone will apply. And while transitional and supportive housing are typically multi-family housing, they can also be single-family residences. To comply with SB 2, jurisdictions must not prohibit transitional and supportive housing in single-family zones.

Some jurisdictions require staff to review a management plan for transitional housing approval, but do not apply the same or similar requirements to other types of residential development. Others require

planning review of House Rules and specific service provider referrals and quotas, which might be appropriate as funding criteria or requirements, but would not be appropriate or permitted by SB 2 unless also required of other residential developments.

A zoning code cannot require of transitional or supportive housing any standard not also required of another residential use in that zone, such as:

- Management plan
- Review of house rules
- Local resident quotas or preferences
- Service provider referral requirements

Can specific plans, mixed-use zones, overlay zones, or other zoning tools prohibit transitional and supportive housing?

No. If residential development is permitted in mixed-use zones, etc., the jurisdiction should make explicit that transitional and supportive housing are permitted in those zones, and that such uses will be processed and treated equally to applications for other permitted residential development.

Can we do more to promote transitional and supportive housing?

Yes. SB 2 sets forth baseline requirements to ensure transitional and supportive housing are treated equally to other residential uses. Many jurisdictions now recognize the benefits of transitional and supportive housing in addressing homelessness and have begun to take action to encourage development. Nothing in SB 2 or State Housing Element Law restricts the ability of a jurisdiction to use zoning to encourage these housing types. For example, a jurisdiction may decide to expand commercial zones to allow residential uses by-right, to affirmatively permit transitional and supportive housing in all residential zones regardless of the treatment of other residential uses, or to remove conditional use permit requirements for multi-family housing to ensure that supportive and transitional housing are not subject to conditional use permits. A jurisdiction could also exempt fees for transitional and supportive housing (and/or 100% affordable housing developments) and provide streamlined processing.

Nothing in SB 2 or State Housing Element Law restricts the ability of a jurisdiction to zone to encourage transitional and supportive housing.

Finally, if the jurisdiction directs funding towards developing affordable and transitional and supportive housing, the jurisdiction should assess the degree to which any funding requirements imposed may act as a barrier, and weigh such requirements from a cost-benefit perspective.⁵⁵

Understanding the Law: Do's and Don'ts for Transitional and Supportive Housing

<p><u>DO</u> define “transitional housing” and “supportive housing” in zoning code in a manner consistent with SB 2.</p>	<p>Local definitions that are more limiting than the state law definitions may result in fewer providers being able to benefit from the protections for supportive and transitional housing.</p>
<p><u>DO</u> include an affirmative provision stating that transitional housing and supportive housing shall be considered a residential use of property.</p>	<p>Zoning codes that are silent on this matter leave room for ambiguity.</p>
<p><u>DON'T</u> require additional approvals, or put conditions on, transitional and supportive housing that do not apply to similar residential developments.</p>	<p>Some cities require review of a housing project's management plan, local preferences, quotas, screening and security procedures. This is not permissible to do through zoning unless also required of other residential uses.⁵⁶</p>
<p><u>DO</u> review the zoning code for definitions that might be confused with transitional and supportive housing, and remove or clarify such provisions.</p>	<p>Avoid confusion and ensure treatment of supportive and transitional housing as a residential use by removing or clarifying such definitions.</p>
<p><u>DON'T</u> prohibit transitional housing and supportive housing in areas zoned for single-family housing.</p>	<p>While transitional housing and supportive housing uses are typically multifamily residences, they can also be single-family residences.</p>
<p><u>DON'T</u> prohibit or restrict transitional or supportive housing in “mixed-use” zones that allow residential dwellings.</p>	<p>Allowing transitional and supportive housing on the same terms as other residential uses is required across all zones, including mixed-use zones.</p>

How do SB 2's amendments to the Housing Accountability Act protect shelters and transitional and supportive housing?

Enacted in 1982 and commonly referred to as the "Anti-Nimby Act," California's Housing Accountability Act (HAA) addresses uncertainties in local governments' approval processes by limiting the reasons for denial of certain projects. SB 2 amended the HAA in 2008 to explicitly include emergency shelters and transitional and supportive housing within the scope of its protection.⁵⁷ As amended, the purpose of the HAA is to ensure that "a local government not reject or make infeasible housing developments, including emergency shelters" that contribute to meeting the regional housing need.⁵⁸

Government Code Section 65589.5(d) provides that a local agency cannot deny a housing development project (including transitional and supportive housing) for very low, low-or moderate-income households,⁵⁹ or an emergency shelter, or condition approval in a manner that renders the project infeasible⁶⁰, unless it makes written findings based on substantial evidence as to one of the following:

- (1) Jurisdiction is in compliance with its housing element and has met its share of the regional housing need for the income category proposed to be built, or for emergency shelter, as the case may be;
- (2) Development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety with no feasible method to mitigate (inconsistency with zoning ordinance or general plan land use designation is not a specific, adverse impact);
- (3) Denial of project is required to comply with state or federal law;
- (4) Development is proposed in agricultural area or area with insufficient water or wastewater facilities;
- (5) Development is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation, and jurisdiction has a compliant housing element.⁶¹

Examples of potential violations of HAA:

- Approval of a shelter with conditions that make the development of the shelter infeasible.
- Unnecessarily delaying hearings on a supportive housing project.
- Denying a supportive housing project without making required findings.
- Approval of supportive housing project with conditions beyond what is required of other residential uses.
- Requiring a developer of a shelter or supportive housing with site control to find different sites to build on.

Another provision of the HAA is helpful for supportive and transitional housing developers and relates to jurisdictional attempts to reduce the size of the project. Government Code Section 65589.5(j) applies to housing development projects (defined to include transitional and supportive housing) that comply with applicable, objective general plan and zoning standards and criteria, and restricts the ability of local agencies to disapprove such projects, or to approve them at lower densities.

Under section 65589.5(j), agencies must find that the project would have a "specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density."⁶² These findings are similar to those described in Government Code Section 65589.5(d)(2), but "the focus is on the necessity of requiring reduced density in the development."⁶³

Because sections 65589(d) and (j) require specific written findings supported by evidence, they limit improper consideration of who will reside in an affordable housing development – essentially, pretextual objections that have no basis in fact. Under the HAA, therefore, jurisdictions ultimately have limited bases upon which to disapprove or condition shelters and transitional and supportive housing. Also, note that if the locality failed to identify adequate sites for housing or by-right zoning for shelter required by SB 2 and State

If a developer of transitional or supportive housing is required to reduce the proposed number of units for the site, such condition could be a violation of the HAA.

Housing Element Law, then there would be even fewer permitted reasons to disapprove a project.

If a qualifying project is denied, or the jurisdiction either imposes conditions that have a substantial adverse impact on the viability of the project, and/or approves the project at a lower density than proposed, the applicant, persons eligible for the housing or shelter, or a “housing organization” may file suit to challenge the action. Denial of a project includes both an affirmative vote to deny the project by a local agency, and the mere passage of a specified time period following certification of an environmental document without action on the application.⁶⁴ In any HAA suit, the jurisdiction has the burden of proof to demonstrate that its action was consistent with the findings required by the HAA. Non-compliance could result in a court order requiring the jurisdiction to comply with the HAA, approve the project, and pay the plaintiff’s counsel’s attorneys’ fees.⁶⁵

Staff and decision-maker familiarity with the Housing Accountability Act and education on its provisions may help prevent illegal denials of projects and is an appropriate strategy to help advance development of shelters and transitional and supportive housing.

Understanding the Law: Housing Accountability Act Do’s and Don’ts	
<u>DO</u> educate planning staff and decision-makers on the types of projects protected by the HAA and the consequences for non-compliance.	May result in fewer actions to deny or unreasonably condition projects.
<u>DO</u> draft and submit a compliant housing element to HCD identifying adequate sites to accommodate both the regional housing need and the need for emergency shelter.	Having adequate sites gives flexibility to make decisions based on the merits of a project rather than based on the penalties associated with not having adequate sites.
<u>DO</u> maintain objective, quantifiable, written development standards for approval of projects.	Nothing in the HAA stops a jurisdiction from regulating projects for health and safety and other permissible reasons through objective standards.
<u>DO</u> ensure standards placed on qualifying projects actually facilitate development.	Standards that in practice make a project infeasible could subject the jurisdiction to a claim under the HAA.
<u>DON’T</u> place unreasonable conditions on shelters and transitional and supportive housing.	Such conditions could make the project infeasible, and subject the jurisdiction to a claim under the HAA.
<u>DON’T</u> react to community opposition by delaying or denying a qualifying project, or reducing its density.	Such actions could violate the HAA and other anti-discrimination and fair housing and land use laws if based on perceptions about the occupants of the housing, or the fact that the housing is affordable.

How do fair housing and anti-discrimination laws protect the siting, development and funding of emergency shelters, supportive and transitional housing?

SB 2's planning and zoning requirements are intertwined with the goals of fair housing and anti-discrimination efforts: to combat segregation and policies that exclude (either intentionally or effectively) certain populations and to ensure access to housing opportunity within communities. Below is a summary of relevant laws in this area.

Fair Housing & Anti-Discrimination Laws that Prohibit Discrimination in Land Use Actions	
Fair Housing Act, as amended (FHA), 42 U.S.C. § 3601 et seq. and implementing regulations, 24 CFR Part 100 et seq.	Prohibits discriminatory activities, including “otherwise making unavailable” or denying housing on the basis of race, color, national origin, religion, sex, familial status and disability.
Title II of the Americans with Disabilities Act (ADA), 42 U.S.C.A. § 12132 and implementing regulations, 28 CFR Part 35 et seq.	Prohibits land use discrimination against persons with disabilities by state or local governments; imposes affirmative obligation on state and local governments to grant reasonable accommodations.
Section 504 of the Rehabilitation Act of 1973 (Section 504), and implementing regulations, 24 CFR 8 et seq.	Prohibits land use discrimination against persons with disabilities involving the receipt of federal funds.
California Government Code Section 11135 (Section 11135)	Prohibits discrimination on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation by the state government and entities receiving state funding.
California Fair Employment and Housing Act (FEHA), Cal. Gov. Code § 12955 et seq.⁶⁶	12955 (l) prohibits land use discrimination on basis of race, color, religion, national origin, sex, familial status, disability, gender, gender identity, gender expression, sexual orientation, marital status, ancestry, source of income, and genetic information.
California Government Code § 65008	Prohibits local government discrimination against emergency shelter, subsidized housing and any housing intended for occupancy by low- and moderate-income persons (generally same categories under FEHA plus age and lawful occupation).

In general: how can a jurisdiction avoid discriminatory intent and discriminatory effect in land use decisions?

Land use practices and decisions violate federal and state fair housing laws if they either intentionally or effectively deny equal housing opportunities to a protected class. A land use practice or decision effectively denies equal housing opportunity where it creates a disparate impact. Disparate impact refers to zoning or land use requirements and practices that adversely affect one group of people of a protected characteristic more than another, even if those practices are facially neutral. The federal Fair Housing Act, as amended (“FHA”) and the California Fair Employment and Housing Act (FEHA) explicitly prohibit discriminatory practices that make housing unavailable to protected classes, including to individuals based on disability.⁶⁷

Under California law, local governments are required to consider and attempt to avoid any land use actions that would have a potential disparate impact, including increased segregation or disproportionate displacement, unless there is a sufficiently compelling purpose and no feasible alternatives.⁶⁸ California law unequivocally prohibits any local government from “impos[ing] different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity... than those imposed on non-assisted developments.”⁶⁹ The law not only prohibits discrimination against affordable housing and emergency shelters, it allows for the preferential treatment for such housing and shelters. Because “residential development” includes supportive housing and transitional housing, these uses also come under the cover of Section 65008.⁷⁰

Understanding the Law: Fair Housing Do's and Don'ts	
<p><u>DO</u> make decisions that have an identifiable relationship to legitimate, nondiscriminatory zoning policies.</p>	<p>For example, a community group opposes an emergency shelter in your jurisdiction, citing concerns about traffic congestion. Your jurisdiction's homeless population is growing. An environmental study establishes that the traffic congestion can be effectively mitigated. The planning commission approves the development's requested entitlement based on the environmental study.</p>
<p><u>DON'T</u> rely on “fake facts”: assumptions and speculation about particular uses and the persons these uses will serve.</p>	<p>A planning commission denies a conditional use permit for a supportive housing development, citing community concerns regarding a perceived increase in crime and impact on property values. As those concerns are speculative, the planning commission's decision is vulnerable to a fair housing challenge.</p>
<p><u>DO</u> reject community concerns based on discriminatory attitudes about who will reside in the development.</p>	<p>A group of local residents opposes a supportive housing development, commenting that they are “really against welfare recipients next door to our homes,” and that the development will attract “gangs.” Citing “community concerns,” planning staff requires the developer to enter into an agreement that includes a provision that the developer agrees not to rent to individuals with criminal convictions. Here, the planning staff allows discriminatory attitudes to guide decision-making and the jurisdiction is vulnerable to a fair housing challenge.</p>

What is a reasonable accommodation?

Federal and state law place an affirmative duty on local governments to provide persons with disabilities reasonable accommodations to zoning and land use rules, policies or practices when such accommodations may be necessary to afford such persons equal opportunity to housing.⁷¹ Housing element law further requires local governments to provide reasonable accommodations for housing for persons with disabilities.⁷²

A “reasonable accommodation” is a change to, or flexible application of, land use or zoning policies and procedures where the requested accommodation may be **necessary** to afford a person or groups of persons with disabilities an equal opportunity to use and enjoy housing.

Federal law defines a person with a disability as “any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment.”⁷³ California law applies a broader definition of disability that would include any physical or mental impairment that limits one or more major life activities.⁷⁴ Both the Fair Housing Act (FHA) and Fair Employment and Housing Act (FEHA) prohibit discrimination through land use decisions that make housing opportunities for such individuals unavailable.⁷⁵

A reasonable accommodation may be requested by a person or persons with disabilities, or a developer whose project will provide housing opportunities to persons with disabilities. Who requests the accommodation matters less than the assessment of whether the accommodation is reasonable, and therefore necessary, to facilitate equal housing opportunities for persons with disabilities. For example, a homeowner may need a wheelchair ramp in order to access his or her home. The homeowner may request a modification from the city’s setback requirement as a reasonable accommodation. An accommodation is presumed to be reasonable unless granting the accommodation would constitute a fundamental alteration of the nature of the zoning scheme or create an undue financial or administrative burden on the jurisdiction. Note that financial or administrative burden is qualified by “undue” – a jurisdiction cannot cite any financial or administrative burden to justify denial of a reasonable accommodation. Even where a jurisdiction makes a supported finding that a requested accommodation is not reasonable, it is required to engage in an “interactive process” with the requesting party to determine if there is any accommodation that will facilitate access but not result in an undue financial or administrative burden, or fundamentally alter the zoning scheme. The question of whether an accommodation is reasonable must be determined on a case-by-case basis. Jurisdictions should therefore be wary of creating or applying blanket rules that could serve to limit access to accommodations.

What are best practices in reasonable accommodations?

In crafting or reviewing reasonable accommodation policies, jurisdictions should consider the following:⁷⁶

- Start with the broader definition of disability under state law.
- It is unlawful to charge a fee for a reasonable accommodation application.⁷⁷
- Include confidentiality provisions and exclude any public notice requirements. Specifically, Disability Rights California recommends handling reasonable accommodation requests “in a confidential manner on a separate, but coordinated, track with other related land use approvals,” and an appeals process for the applicant that is decided by an administrator and not a public body.⁷⁸
- Narrowly tailor any application form or information sought to determine the reasonableness of the accommodation, make it user-friendly, and assist applicants who cannot make a written request on their own.

What is affirmatively furthering fair housing?

The FHA requires that the United States Department of Housing and Urban Development (HUD) administer programs and activities relating to housing and urban development in a manner that affirmatively furthers the policies of the Act. This duty extends to recipients of federal funds administered

by HUD, including local governments and public housing authorities. The failure to affirmatively further fair housing can result in HUD suspending or withdrawing federal funding from subject jurisdictions.⁷⁹

HUD published a final rule on Affirmatively Furthering Fair Housing (AFFH Rule) in July 2015. The AFFH Rule created a standardized process for fair housing planning, required of recipients of Community Development Block Grant (CDBG), HOME Investments Partnership (HOME), Housing Opportunities for Persons with AIDS (HOPWA) and Emergency Solutions Grant (ESG) funding. In addition to certifying that they will take affirmative steps to address discrimination and further integration, local governments and public housing authorities must engage in the Assessment of Fair Housing (AFH) planning process.⁸⁰ Using HUD data, jurisdictions must assess patterns of integration and segregation; racially or ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs. The process is required to engage meaningful community participation to set fair housing goals to increase choice and provide access to opportunity.

The AFFH rule does not require jurisdictions to make particular land use decisions or zoning changes. It does require them to assess current land use policies and zoning to evaluate their impacts on fair housing choice. “The purpose of this assessment is to enable [jurisdictions] to better fulfill their existing legal obligation to affirmatively further fair housing, in accordance with the Fair Housing Act and other civil rights laws.”⁸¹

The City of Los Angeles, County of Los Angeles, (in addition to 47 participating cities), and their public housing authorities are undergoing the AFH process and are currently required to complete this process in 2017.⁸² These assessments will necessarily include the racial and ethnic make-up of persons experiencing homelessness and those at risk of homelessness, as well as the intersection between disability and homelessness. The AFH is an opportunity to meaningfully engage in a discussion about how land use and zoning are barriers to housing opportunities for these populations and how to break down these barriers.

For example, a jurisdiction may find that because the separation between homes and stores, public transportation, and medical facilities is great, people with fixed incomes generally have fewer realistic housing choices in this community. This disproportionately affects people with physical disabilities. To respond to this barrier, the jurisdiction includes a program in its AFH to review its land use policies, particularly its investment in equitable transit-oriented development, including along commercial corridors.

The same jurisdiction finds that in several neighborhoods, gentrification pressures are causing displacement and an increase in homelessness of existing low-income immigrant communities of color. The AFH therefore includes several programs in response, including a requirement that new residential projects that receive subsidy, zoning benefits, or benefits from the use of public land provide affordable housing and replace any demolished units, with a right of first refusal to displaced low-income tenants.

Interaction of law with practice - how is Los Angeles County doing in zoning for homeless populations?

Many jurisdictions have yet to implement SB 2 in their zoning codes properly, despite the fact that SB 2 went into effect in 2008. Even jurisdictions with a strong history of funding shelter and transitional and supportive housing have demonstrated some level of technical non-compliance with SB 2. In some cases, the jurisdiction had yet to update its zoning code as required by SB 2. In other cases, interaction between different code provisions when read together resulted in ambiguity and/or technical non-compliance.

Finally, some jurisdictions were entirely silent on treatment of supportive and transitional housing, again, resulting in ambiguity.⁸³

35% of jurisdictions that imposed proximity restrictions did so illegally. For amenities, **58%** of jurisdictions that regulated on this basis imposed illegal amenity requirements.

In a March 2017 review of publicly available zoning codes of 88 cities in Los Angeles County, jurisdictions demonstrated mixed results and an overall substantial lack of compliance.⁸⁴ For emergency shelters, jurisdictions often placed conditions on shelters beyond what SB 2 allows, or designated inappropriate or unsuitable zones for shelters. Jurisdictions tended to have restrictive maximum bed requirements and parking requirements. Zoning codes retained illegal proximity restrictions (e.g., requiring shelters to be at least 300 feet from a park or school). 35% of jurisdictions that imposed proximity restrictions did so illegally. For amenities, 58% of those that regulated on this basis imposed illegal amenity requirements. With respect to transitional and supportive housing, 72% of localities surveyed did not clearly and affirmatively treat transitional and supportive housing equally to other residential uses in their zoning codes.

What are Jurisdictions in Los Angeles County Doing With Respect to SB 2?					
	Max Number of Beds	Off-Street Parking Required	300 Feet Proximity	Length of Stay	Amenities
SB 2's Requirement	The maximum number of beds or persons permitted to be served nightly by the facility must encourage and facilitate emergency shelter development.	Off-street parking, if any, must be based on demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.	Emergency shelters cannot be required to be more than 300 feet apart. No other reparation requirements are allowed.	The length of stay is limited to 6 months or less.	Amenities cannot be required.
Ranges for Cities in LA County	<u>Median</u> : 30 <u>Highest</u> : 150 <u>Lowest</u> : 5	<u>Median</u> : 1 space per 5 beds <u>Highest</u> : 1 space per 3 beds <u>Lowest</u> : 1 space per 50 beds	-	14 days to 6 months	-
Cities in LA County Regulating On This Basis	45 cities allow 15 or more beds; 42 cities allow 20 or more beds.	10 cities require no more than 1 space per 7 beds; 15 cities require no more than 1 space per 6 beds.	72%	-	67%
Examples	<u>Burbank</u> : 150 beds per establishment; <u>Hawthorne</u> : 150 beds per facility; <u>Inglewood</u> : 100 beds per shelter.	<u>Inglewood</u> : 1 space per 50 beds plus 2 additional spaces; <u>Monterey Park</u> : 1 space per 10 beds plus 1 space for each staff member; <u>Santa Monica</u> : 1 space per 10 beds.	-	-	-
Recommended Best Practice	No limit on number of beds per emergency shelter.	No off-street parking requirement for emergency shelters.	-	-	-

	Define Transitional and Supportive Housing	Zoning Code Clearly States That Transitional and Supportive Housing is Treated as a Residential Use
SB 2 Requirement	Define transitional and supportive housing consistent with Cal Gov't. Code § 65582, subds. (g), (i), (j).	Treat transitional and supportive housing as residential uses subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.
Estimated Percentage of Cities Meeting This SB 2 Requirement	66%	28%

The following table illustrates several examples of zoning code provisions that technically did not comply with SB 2 based on an informal review of zoning codes in Los Angeles County jurisdictions:

Example Zoning Code Provision	Compliance with SB 2?
Limiting By-Right Sites to M-1: Zoning code allows development of shelters by right in the Manufacturing Light (M-1) zone for shelters with less than 10 beds. The City has an unmet homeless need of 80. There are only 6 sites in the M-1 zone, and the 6 sites are each only permitted 9 beds by right.	Not compliant. M-1 zone may not be suitable or appropriate. Also, jurisdiction cannot demonstrate capacity to meet the need of 80 beds, with only 6 sites that permit 9 beds by right per site.
Burdensome Parking: Zoning code requires that shelters provide street parking at a rate of 1 space per 4 beds, 1.5 spaces per bedroom intended for families with children, 1 space per employee, and 2 additional guest parking spots. The number of parking spaces may be reduced by 25 percent if the shelter is located within one thousand feet (1,000') of a public transit stop.	Likely not compliant without documentation demonstrating need, especially if this is more than what is required of other residential or commercial developments.
Supportive Housing for Six or Fewer People: Zoning code provides that supportive housing is permitted in all zones if it serves six or fewer residents. The same limitation does not apply to single or multi-family housing. (This "six or fewer" resident standard is similar to the required treatment of licensed residential facilities pursuant to Health and Safety Code Section 1566.2, which states that licensed residential facilities serving six or fewer residents must be treated as a residential use).	Not compliant. Conflates supportive housing with a licensed residential facility. Supportive housing cannot be treated differently than other residential housing, regardless of the number of residents.
Confusion with SRO Use: Zoning code includes a definition of "single room occupancy (SRO) facility" that overlaps with the definitions for transitional housing and supportive housing. SROs are only permitted in a special overlay zone, require a conditional use permit, and are subject to other placement restrictions.	It depends on how clear the definitions of supportive and transitional housing are, and the extent of overlap with the definition of SRO. The jurisdiction should remove the code provisions referring to SROs or redefine SRO to exclude projects that meet the state law definitions of transitional or supportive housing.
Defining Family to Exclude Supportive and Transitional: Zoning code defines "family" in connection with permitted uses in single-family zones by referring to relations by blood, marriage, or adoption.	Not compliant. By requiring occupants to be related in the traditional sense of "family", this definition may be interpreted to prohibit transitional or supportive housing in single-family zones.
Prohibiting Use in Single-Family Zones: Zoning code states that transitional housing and supportive housing are residential uses subject only to the restrictions that apply to other residential dwellings of the same type in the same zone. However, the zoning code also includes a table of permitted uses indicating that transitional housing and supportive housing is prohibited in R1 zones (single-family).	Not compliant. Supportive and transitional housing can be found in single-family homes and must be treated no differently than other single-family homes in that zone.

Looking beyond SB 2 – exploring zoning issues associated with other modes of shelter and supportive housing

Beyond the requirements of SB 2, which explicitly protects shelters and transitional and supportive housing, a number of jurisdictions have taken the initiative to explore additional modes of shelter, or methods of streamlining of shelter. Some initiatives are described below.

Encouraging the provision of shelter through accessory or ancillary uses

With 58,000 people that are homeless in Los Angeles County, zoning for shelters in compliance with SB 2 is a good start, but not nearly enough.⁸⁵ A number of jurisdictions have been exploring allowing shelters as ancillary or accessory uses to existing uses. This recognizes the important role that nonprofits and faith-based organizations play in providing shelter to those in need. Jurisdictions vary in how they manage shelter as an accessory use.

Some jurisdictions manage accessory uses by requiring a conditional use permit or an amendment to the facility's conditional use permit. For example, City of Burlingame requires religious and non-profit institutions to apply for a conditional use permit to provide temporary shelter for homeless individuals or families, if the facility is located within a transportation corridor and the use does not occur continuously at any one location for more than six (6) months of any twelve (12) month period. The process involves applying to the planning commission, which then determines through a public hearing process whether the proposed use is consistent with the general plan. CUPs in Burlingame were granted for the Home and Hope program at numerous local churches, and the program operates in these churches on a rotating basis.

Other jurisdictions allow religious institutions to provide shelters through a non-discretionary process with certain limitations. For example, the City of San Diego allows religious institutions to provide emergency shelters as an accessory use (without subjecting them to common regulations for shelters). However, religious institutions are restricted to operating accessory shelter for 30 days or less in any 365-day period. No approvals are necessary as long as this restriction is not exceeded.

County of Santa Clara permits County-authorized non-profits and religious institutions⁸⁶ to operate small-scale emergency shelters (serving 7 – 14 people) by-right. These small-scale shelters are not subject to most of the County's emergency shelter operation standards.⁸⁷ "By-right" here means that County-authorized non-profits and churches are able to provide shelter for 7 to 14 people *without* going through a public approval process, regardless of any underlying zoning restrictions.

San Jose's City Council recently voted to amend its zoning code to make it easier for religious institutions and assembly use buildings to provide shelter as an incidental (i.e. ancillary) use.⁸⁸ The amended ordinance will eliminate the need for a CUP or special permit⁸⁹ and will apply to any assembly use building (a building that is used primarily for the gathering of persons to participate in a group or common activity or to observe a presentation, performance, or exhibition).⁹⁰ Incidental shelters will also be subject to several requirements such as a maximum occupancy of 50 persons (or as set forth by the city's Fire Code); a minimum lot size of 3,000 square feet; registration with the Housing Department; and must be located within the city's Urban Service Area.⁹¹ The sites envisioned for incidental shelter include religious assemblies, gymnasiums, libraries, theaters, schools, and community centers.

Sanctioned Urban Communities and Villages

The urgency of the homelessness crisis in some jurisdictions has spurred efforts to utilize available property to house people quickly, adopting innovative approaches to regulation of these temporary and permanent structures.

Los Angeles - Temporary Trailers on Private Property

The City of Los Angeles, under Los Angeles Municipal Code 14.00 A.9, allows governments, non-profits and religious institutions to place up to six temporary trailers on their property to use for temporary accommodations for homeless persons. These sites must be located at least 300 feet from any nearby homeless shelters and at least 500 feet from any residential zone or use.⁹²

San Jose - Unconventional Housing Structures

Assembly Bill 2176, authored by Assemblywoman Nora Campos, D-San Jose, and signed by Gov. Jerry Brown on Sept. 27, 2016, allows the City of San Jose to temporarily suspend state building, safety and health codes for the purpose of building “unconventional” housing structures to house its homeless population. Under the law, if the City of San Jose declares a “shelter crisis,” which it did in December 2015, it may use city-owned or city-leased land for unconventional housing structures.⁹³ Minimum standards for these structures include the presence of a vacant or minimally developed (i.e., paving only) site of at least 0.50 to 0.75 acres; a 10,000 square-foot building plus parking for 16 vehicles and a dumpster enclosure; access to transit; ready access to utilities (electricity, water and sanitary sewer); and city ownership or leasing of sites. Sites meeting these minimum standards would allow for a community of up to twenty-five individuals living in either a converted existing structure or an emergency housing cabin.⁹⁴

The housing structures must be insulated, have weather-proof roofing, lighting and electrical outlets.⁹⁵ They may consist of accommodations such as emergency sleeping cabins.⁹⁶ Furthermore, “reasonable local standards” for emergency bridge housing communities may be adopted in lieu of compliance with state and local building, housing, health, habitability, or safety standards and laws.⁹⁷ Currently a research team working with local council members is gathering data on proposed sites deemed eligible to house homeless communities. The City of San Jose has proposed 300 potential sites, and each district in San Jose would house one “microvillage” of emergency homeless housing.⁹⁸

Seattle - Tents and Tiny Homes

The city council of Seattle, Washington approved the construction of tents and tiny homes on privately owned and city-owned properties for people in need.⁹⁹ Each tiny home, built by volunteers, costs about \$2,200 to produce.¹⁰⁰ Othello Village, one of Seattle’s tiny home villages, opened in March 2015 and hosts eight 100-square-foot tiny houses as short-term housing for up to 100 people.¹⁰¹ The city pays about \$160,000 each year to supply the village with water, garbage services, and on-site counseling. Othello Village moved 68 individuals into either permanent or two-year housing; gave bus tickets to fourteen individuals to rejoin family members in other states, and moved thirteen individuals into transitional shelter.¹⁰²

Finding additional sites to build tiny houses in Seattle is difficult due to community opposition.¹⁰³ The city’s ordinance requires each site to close after two years and not return to the same location for another year.¹⁰⁴ Some commentators argue that moving homeless people into tiny houses is an alarming shift in urban planning that could pave the way for the creation of shantytowns, advising against funding tiny house encampments and arguing the money is better spent constructing permanent affordable housing.¹⁰⁵

Safe Parking Programs

To serve residents that use their vehicles as dwellings, several cities have adopted, or are exploring, “safe parking” programs that allow these residents to park their cars in designated lots overnight. Santa Barbara, in collaboration with a nonprofit organization, has operated a safe parking program for the last 12 years.¹⁰⁶ The program provides safe overnight parking to individuals and families living in their vehicles. The city provides 115 confidential, daily-monitored parking places¹⁰⁷ in 20 city, county, church, nonprofit agency and industrial lots for homeless individuals living in their vehicles.¹⁰⁸ Individuals are allowed to stay overnight, but must leave by morning.¹⁰⁹ New Beginnings Counseling Center, which runs the \$270,000 program on a city contract, furnishes bathrooms and spot monitoring, and works to connect those individuals using the Safe Parking Program to more stabilized shelter and services.¹¹⁰

In the City of San Diego, under the Dreams for Change Safe Parking Program, a non-profit organization manages the parking lot overnight, while a church provides the space to park.

The City of Los Angeles included a safe parking program as one component of its “Comprehensive Homeless Strategy.”¹¹¹ In the City of Los Angeles, there were over 4,700 vehicles identified as being used as shelter by homeless residents during the 2017 homeless count.¹¹² As of June 20, 2017, the City’s recently initiated safe parking program was operating in a single parking lot with capacity to serve up to 10 households living in their vehicles. The program rules allow participants to park overnight in the designated lot with onsite case management, showers, and trash receptacles. Under the program rules, cars must be registered and operational, and participants must have a valid driver’s license.¹¹⁵ The pilot program will expire in July 2018, unless renewed.

Safe Parking is not a cure-all

Despite the interest in “safe parking” programs, jurisdictions that have such programs may unlawfully prohibit homeless residents from living in their cars on public streets. For over 30 years, the City of Los Angeles restricted the use of vehicles as living quarters on any city street or city-owned parking lot. In 2014, the 9th Circuit Court of Appeals struck down this law as unconstitutionally vague, finding that it “provide[d] inadequate notice of the unlawful conduct it proscribe[d], and open[ed] the door to discriminatory enforcement against the homeless and the poor.”¹¹³ In response, Los Angeles recently adopted an ordinance prohibiting the use of vehicles as dwellings on most city streets, except for a small portion of streets in commercial and industrial zones. Among the issues with the new ordinance, advocates have asserted that it may be applied in a discriminatory manner to target homeless residents.¹¹⁴

Recommendations for implementing a successful SB 2 program

Jurisdictions in Los Angeles County may have different approaches to implementing SB 2 in their zoning codes, but certain broad principles apply across the board. The following recommendations derive from our analysis of zoning codes across Los Angeles County, and are intended to be a starting point for jurisdictions working to implement SB 2 appropriately and meaningfully in both code and practice. In addition to the below recommendations, jurisdictions should be sure to conduct an individualized analysis of their zoning codes to evaluate compliance with SB 2 and other state-wide planning and zoning requirements.

Recommendations for advancing emergency shelters:

- **Identify unmet need and propose realistic and suitable sites for shelter:** To comply with SB 2, a jurisdiction should include in its housing element an identification and analysis of unmet need for emergency shelters and propose realistic and suitable sites zoned “by-right,” with sufficient capacity to meet the unmet need.
- **Define emergency shelter consistent with SB 2, and ensure standards applicable to shelters facilitate development of shelter:** In the zoning code, properly define emergency

shelters, incorporate only management standards that are consistent with SB 2 or otherwise equally applicable to residential or commercial development within the zone, and ensure that any standards encourage and facilitate the development of shelters.

- **Develop a site plan application specific to emergency shelters:** There needs to be some mechanism to ensure that the objective standards required of shelters for by-right treatment under SB 2 are met. A specific site plan application for emergency shelters listing these standards can be a useful tool to streamline the process and to enable zoning enforcement.

Recommendations for advancing supportive and transitional housing:

- **Define transitional and supportive housing in the zoning code consistent with SB 2, and include an affirmative provision treating supportive and transitional housing as residential uses:** Explicit language in the zoning code should be present to ensure that supportive and transitional housing are treated like any other residential use. In zoning code and in practice, do not require additional approvals for, or put conditions on, transitional and supportive housing that do not also apply to residential developments of the same type in the same zone.
- **Remove constraints to multi-family housing in the zoning code:** Supportive and transitional housing are often configured as multifamily apartments, and even if treated as a residential use, may not be advanced if unreasonable constraints to multifamily housing appear in the zoning code. Examples of unreasonable constraints might be: the requirement of a conditional use permit on any housing over two units; excessive landscaping requirements; failing to streamline affordable housing developments, either generally, or as they interact with CEQA; buildable lot area limitations and density limitations.
- **Review the zoning code for definitions that might overlap with, or be confused with, transitional and supportive housing:** Consider amending definitions that indirectly impact siting of supportive and transitional housing. For example, the definitions of residential care facility and boarding house in the code may need to be defined or updated to ensure no overlap or confusion with the definitions of transitional and supportive housing.
- **Allow transitional and supportive housing by-right in all zones that allow residential uses:** Affirmatively permit transitional and supportive housing in all zones that allow residential uses as long as it complies with requirements of the zone (regardless of how residential is treated within that zone), and consider permitting transitional and supportive housing in other zones.
- **Do not define “family” to exclude common transitional and supportive housing arrangements:** Some jurisdictions use overly restrictive definitions of “family” in connection with permitted uses in single-family zones that refer to relations by blood, marriage, or adoption, or are otherwise inconsistent with common transitional and supportive housing arrangements. Jurisdictions should remove outdated definitions of “family” that restrict occupants of single-family homes.

General recommendations:

- **Do not use the word “facilities” to describe housing or shelter:** Referring to shelters and transitional and supportive housing¹¹⁶ as “facilities” implies a clinical approach requiring licensing, as opposed to simply a dwelling or shelter. Developers have advised us that staff coining a project as a “facility” increased public opposition to the project.¹¹⁷
- **Do not incorporate funding requirements as a proxy for zoning standards:** Many jurisdictions incorporate Title 25 or local shelter funding requirements into the zoning code. This

is not permitted for sites that the jurisdiction is relying on to meet SB 2 “by-right” requirements, as discussed earlier, and there would be no reason to duplicate such requirements in the zoning code as any such program requirements are monitored by the funding agency. In addition, funding requirements for shelters and transitional and supportive housing may overlap or conflict with the zoning code, causing ambiguity and delay in processing. Finally, jurisdictions should ensure that funding requirements do not themselves act as an unnecessary barrier and carefully weigh the costs and benefits.

- **Create fee waivers for nonprofits:** Many jurisdictions already reduce or waive fees for nonprofits for certain uses, e.g., large childcare facilities, and waive fees for development of affordable housing. Nonprofits are subject to a myriad of other regulations required by funding sources, so fee waivers and other ways to reduce requirements on nonprofits could help speed up the process of developing adequate shelter and housing.
- **Educate staff and decision-makers on compliance with the Housing Accountability Act (HAA):** Educate planning staff and decision-makers on the HAA’s mandates and consequences; maintain objective, quantifiable, written development standards for project approvals; do not place unreasonable conditions on protected housing developments.
- **Educate staff and decision-makers on compliance with fair housing laws:** Educate planning staff and decision-makers on the intersection of fair housing and land use. Among other things, a local jurisdiction must not base its land use and zoning decisions, in total or in part, on animus towards, or stereotypes about, people based on characteristics against which it is unlawful to discriminate.
- **Reasonable accommodations:** Develop a reasonable accommodation policy that allows changes to, or flexible application of, land use policies necessary to afford a person or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- **Accessory uses:** Minimizing restrictions on accessory/ancillary uses for religious and non-profit organizations as a means of increasing a community’s capacity to meet its shelter needs offers an efficient, cost-effective approach.

¹ <http://www.scpr.org/news/2017/04/24/71120/la-to-spend-some-737-million-to-combat-homelessness/>

² Cal. Gov’t Code §65583 et seq.

³ Cal. Gov’t Code §65589.5—the Housing Accountability Act.

⁴ Cal. Gov’t. Code § 65582 (i) defines “target population”; this definition is discussed in detail in section “How does SB 2 protect siting of transitional and supportive housing?” of this guide.

⁵ A complete list of state funds that require housing element compliance is published by the State Department of Housing and Community Development (HCD), available at http://www.hcd.ca.gov/community-development/housing-element/docs/loan_grant_hecompl011708.pdf

⁶ Consequences for non-compliance with state laws can be stiff. In addition to being ineligible for certain funding streams, as discussed in Section “Why should we care about implementing SB 2 in our jurisdiction?”, *infra*, jurisdictions can be challenged in court for failure to comply with State Housing

Element Law, SB 2, and associated land use and fair housing laws. For more information on the types of suits that could be brought, a good resource is Public Interest Law Project's Housing Element Manual. There have been several notable lawsuits addressing SB 2 compliance filed recently. In *Gamble v. Fullerton* (Orange County Superior Court Case No. 30-2013-00675291), individuals experiencing homelessness sued the City of Fullerton for rejecting a year-round shelter that had been proposed by the Fullerton Task Force on Homelessness and Mental Health Services and unanimously recommended by the Fullerton Planning Commission. The case was based on allegations that Fullerton, motivated by discriminatory reasons, failed to establish proper by-right zones, required excessive development standards, and selected a zone that did not provide a suitable living environment. The claims included violations of SB 2, inconsistency with the housing element, unlawful land use discrimination, unlawful housing discrimination, and disability discrimination. In *Emergency Shelter Coalition v. San Clemente* (Orange County Superior Court Case No. 30-2014-00758880), a group of advocates for homeless persons sued the City of San Clemente for failing to adopt a zoning ordinance that complies with SB 2, which had rejected its planning commission's proposed ordinance to zone 162 commercial and industrial lots as possible sites for emergency shelters. San Clemente allegedly designated city-owned water towers, beach parking lots, civic buildings, and other public facilities to serve as shelter sites. The city also allegedly waited well past a year after adopting a housing element to adopt an SB 2 compliant zoning ordinance; set forth improper development standards such as a minimum floor area for each bed; and required shelter operators to provide onsite kennels, install surveillance equipment, and excessive amounts of landscaping. In addition to agreeing to provide zoning for by-right emergency shelter development, Fullerton also agreed to dedicate \$1 million to the development of rapid rehousing and extremely low income housing. San Clemente's non-compliance resulted in a court order prohibiting the city from issuing building permits or zoning entitlements in key commercial areas until it complied with state law.⁷ California Housing and Community Development- Building Blocks, People Experiencing Homelessness, found at: <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/people-experiencing-homelessness.shtml>

⁸ *Outcome From Housing High Cost Homeless Hospital Patients*, found at: <https://economicrt.org/publication/getting-home/>

⁹ Disability Rights California. *Each Mind Matters: California's Mental Health Movement (2014)* at 8.

¹⁰ See, e.g., *Everyone's Neighborhood: Addressing "Not in My Backyard" Opposition to Supportive Housing for People with Mental Health Disabilities*, found at:

<http://www.disabilityrightsca.org/pubs/CM5301.pdf>, and *Anti-Nimby Tools*, found at: <http://www.housingadvocates.org/docs/antinimbytools.pdf>.

¹¹ Williams, Brad. *Assembly Committee on Appropriations* (August 22, 2007).

¹² Cal. Gov't. Code 65583(a)(4)(A).

¹³ HCD Technical Assistance Paper at 9.

¹⁴ Cal. Gov't. Code § 65582(d); Cal. Health & Safety Code § 50801(e).

¹⁵ Cal. Gov't. Code § 65583(a)(4)(A).

¹⁶ HCD Technical Assistance Memo.

¹⁷ Los Angeles Homeless Services Authority 2016 Data and Reports, found at: https://documents.lahsa.org/Planning/homelesscount/2016/dataSets/HC2016_Total_Counts_by_Census_Tract_LA_CoC_07132016.xlsx

¹⁸ Cal. Gov't. Code § 65583, subd. (a)(7).

¹⁹ If the jurisdiction has adopted a 10-year plan to end chronic homelessness, it may further reduce its unmet need for emergency shelter beds by the number of supportive housing units identified in the 10-year plan *and* that are either vacant, or in the pipeline for development in the housing element planning period (i.e., funding has been identified for construction). Cal. Gov't. Code § 65583, subd. (a)(7); HCD Technical Assistance Paper at 7.

²⁰ Cal. Gov't. Code § 65583, subs. (a)(4)(C), (d)(1).

²¹ Cal. Gov't. Code § 65583 (a)(4)(A).

²² Cal. Gov't. Code § 65583.2(i); HCD Technical Assistance Memo at 10.

²³ An overlay zone is a zoning district which is applied over one or more previously established zoning districts, establishing additional or stricter standards and criteria for covered properties in addition to those of the underlying zoning district. Communities often use overlay zones to protect special features such as historic buildings, wetlands, steep slopes, and waterfronts. Overlay zones can also be used to promote specific development projects, such as mixed-used developments, waterfront developments,

housing along transit corridors, or affordable housing. See American Planning Association, Property Topics and Concepts, found at <https://www.planning.org/divisions/planningandlaw/propertytopics.htm#Overlay>.

²⁴ HCD Technical Assistance Memo at 9.

²⁵ Cal. Gov't. Code § 65583(a)(4)(A)

²⁶ Cal. Gov't. Code § 65583(a)(4)(C) (“A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction’s need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.”) See also HCD Technical Assistance Memo at 9 (“The only exceptions permitted to the non-discretionary zoning requirement are where a jurisdiction demonstrates their homeless needs can be accommodated in existing shelters; or where the jurisdiction meets all of its need through a multi-jurisdictional agreement...”)

²⁷ *Id.*

²⁸ HCD Technical Assistance Memo at 9.

²⁹ *Id.*

³⁰ Cal. Gov't. Code § 65583(a)(4)(A)(i)-(viii).

³¹ The identified zone or zones must also demonstrate that “existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters.” Cal. Gov't Code 65583(a)(4)(A).

³² HCD Technical Assistance Memo at 10.

³³ For example, the City of Oakland sets a maximum bed limit of 100 beds per shelter in by-right shelter zones. Oakland Mun. Code, § 17.103.015, subd. (B)(2) (“A maximum of number of one hundred (100) beds or persons are permitted to be served nightly by the facility.”)

³⁴ See <http://nationswell.com/star-apartments-los-angeles-housing-amenities-homeless/as> as an example.

³⁵ <https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf>

³⁶ Los Angeles Ordinance No. 184836

³⁷ Los Angeles Mun. Code § 91.8605.

³⁸ Shelters must still comply with Los Angeles Fire Department requirements. Under current such requirements, shelters with more than 49 beds require additional permits from Los Angeles Department of Building and Safety, found at: <http://elninoshelter.lacity.org/PDFDocuments/LAFDDIRECTIVE.pdf>

³⁹ *Id.*

⁴⁰ Los Angeles Ordinance No. 184836.

⁴¹ See Council File No.: 15-1138-S24 available at

<http://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=15-1138-S24>

⁴² Cal. Gov't. Code § 8698.1(b).

⁴³ Cal. Health & Safety Code § 50801(e) (“Emergency shelter” means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.”)

⁴⁴ Cal. Gov't. Code § 65583(a)(7).

⁴⁵ Cal. Gov't. Code § 65583(a)(3) and (4)(A).

⁴⁶ Cal. Gov't. Code § 65583(a)(4)(A)(i)-(viii).

⁴⁷ Cal. Gov't. Code § 65583(a)(4)(A)(v).

⁴⁸ Cal. Gov't. Code § 65583(a)(4)(A)(i). See, HCD Technical Assistance Memo at 11. (“A standard establishing the maximum number of beds should act to encourage the development of emergency shelter.”)

⁴⁹ Cal Gov't. Code § 65582, subs. (g), (i), (j). As described in the HCD SB 745 memo, in 2014, the legislature amended section 65582 of the Government Code to replace prior Health and Safety Code definitions of “supportive housing,” “target population,” and “transitional housing” with definitions within the Government Code (in housing element law). Section 65582 was subsequently amended to add other definitions; while there are no substantive changes to the definitions used herein, the citations were changed. (Assem. Bill No. 1403 (2015-2016 Reg. Sess.)).

⁵⁰ State law defines “community care facility” as “any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically

handicapped, mentally impaired, incompetent persons, and abused or neglected children.” (Cal. Health & Saf. Code § 1502. Community care facilities are licensed by the Community Care Licensing Division of the State Department of Social Services, and include residential care facilities and group homes, among other uses. (*Id.*) The California Community Care Facilities Act explicitly exempts supportive housing from state licensing requirements. (Cal. Health & Saf. Code § 1504.5.)

⁵¹ Definitions of boarding, or rooming, houses are often found in municipal codes. For example, Los Angeles County’s Planning and Zoning Code defines “boarding house” as “a lodging house or other facility maintained, advertised or held out to the public as a place where sleeping or rooming accommodations are available, with or without meals,” may also be confused with transitional or supportive housing. (LA Co. Zoning Code § 22.08.180.)

⁵² <http://www2.oaklandnet.com/government/o/CityCouncil/o/AtLarge/Issues/responding-to-homelessness/index.htm>

⁵³ <http://www.sfgate.com/bayarea/article/Instead-of-clearing-homeless-camps-Oakland-is-9981956.php>

⁵⁴ http://everyonehome.org/wp-content/uploads/2016/02/EOC_Full2.pdf

⁵⁵ It is outside the scope of this Guide to assess the legal implications of funding requirements.

⁵⁶ Cal. Gov’t. Code § 65583(a)(5).

⁵⁷ Sen. Bill No. 2 (Chapter 633, Statutes of 2007). Approved by Governor, Oct. 13, 2007 (2006-2007 Reg. Sess.).

⁵⁸ Cal. Gov’t. Code § 65589.5, subd. (b).

⁵⁹ Under the Act, qualifying projects are emergency shelters and transitional and supportive housing, and residential or mixed-use projects containing at least 20% of total units sold or rented to lower income households or 100% of units sold or rented to moderate income households. Housing units targeted for lower income households must be made available at a cost that does not exceed 30% of 60% of the area median income, and housing units targeted for moderate-income households must be made available at a cost that does not exceed 30% of 100% of the area median income. Cal. Gov’t. Code § 65589.5(h).

⁶⁰ Conditions that could have a substantial impact on the viability of the project include design changes, buildable lot size reductions, or a reduction of allowable densities. Lindgren and Mattas, California Land Use Practice (1st ed. 2016 update), §6:16.

⁶¹ A jurisdiction cannot rely on this finding to deny a qualifying project if (i) the development is proposed on a site identified in housing element as suitable for affordable housing; or (ii) the jurisdiction failed to identify adequate sites for housing development or adequate zones for emergency shelter as required by state housing element law and SB 2. Cal. Gov’t. Code § 65589.5, subd. (d).

⁶² Cal. Gov’t. Code § 65589.5(j).

⁶³ Lindgren and Mattas, California Land Use Practice (1st ed. 2016 update), §6:16.

⁶⁴ Cal. Gov’t. Code § 65589.5(h)(5).

⁶⁵ Cal. Gov’t. Code § 65589.5(k).

⁶⁶ The Fair Employment and Housing Council of the Department of Fair Employment and Housing has proposed regulations regarding discriminatory effect, discriminatory land use practices, and use of criminal history information. See <https://www.dfeh.ca.gov/fehncouncil/>.

⁶⁷ In California, local governments must not deny equal housing opportunities on the basis of race, color, religion, national origin, sex, familial status, disability (both physical and mental), gender, gender identity, gender expression, sexual orientation, marital status, ancestry, source of income, and genetic information. (42 U.S.C. §3604; Cal Gov’t. Code §12955.)

⁶⁸ See, e.g., Cal. Gov’t. Code § 12955.8(b).

⁶⁹ Cal. Gov’t. Code § 65008(d)(1).

⁷⁰ Cal. Gov’t. Code § 65008(d)(2).

⁷¹ 42 U.S.C. §3604(f)(3); 28 C.F.R. § 35.130(b)(7), implementing Title II of the Americans with Disabilities Act (ADA), 42 U.S.C.A. § 12132 and implementing regulations (see e.g., *Pierce v. County of Orange*, 526 F.3d 1190, 1215 (9th Cir.2008).) Cal. Gov’t. Code, §§ 12927(c)(1), 12955(I). In 2001, the California Attorney General urged California Mayors to amend their zoning codes to include reasonable accommodation procedure, found at: http://ag.ca.gov/civilrights/pdf/reasonab_1.pdf.

⁷² Cal. Gov’t Code §65583(c)(3).

⁷³ 42 U.S.C. § 3602(h).

⁷⁴ Cal. Gov’t. Code §§ 12926(j), 12926(m); see also § 12926.1(c).

⁷⁵ 42 U.S.C. § 3604(a); *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 729 (1995); *Project Life v. Glendening*, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002); Cal. Gov't Code § 12955(l).

⁷⁶ <http://www.disabilityrightsca.org/news/2015NewsAboutUs/20150810ReasonableAccommodationsClearingHouse.htm>

⁷⁷ Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, as well as the California Unruh Civil Rights Act.

⁷⁸ Nisen, Fred, Schur, Dara L., and Cole, Tomasine. "Creating a reasonable accommodation ordinance that protects people with disabilities." Disability Rights California, August 10, 2015, <http://www.disabilityrightsca.org/news/2015NewsAboutUs/20150810ReasonableAccommodationsClearingHouse.htm>.

⁷⁹ See, e.g., *US ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, NY*, 668 F. Supp. 2d 548, 569 (2009).

⁸⁰ 42 U.S.C. 3608(e)(5); 24 CFR § 5.154 (b); 42 U.S.C. §§ 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C-1(d)(16)

⁸¹ 80 Fed. Reg. 42,272, 42,309 (preamble).

⁸² <https://www.lacdc.org/programs/community-development-block-grant/plans-and-reports/assessment-of-fair-housing/community-meetings>; <http://hcidla.lacity.org/public-policy-development>

⁸³ Trends identified by a review by Public Counsel attorneys of publicly available zoning codes and Housing Elements in 88 cities in Los Angeles County in March 2017.

⁸⁴ Compliance estimates are estimates only and based upon analysis of publicly available information as of March 2017.

⁸⁵ Los Angeles Homeless Services Authority, 2017 Homeless Count Results - Los Angeles County, found at <https://www.lahsa.org/documents?id=1353-homeless-count-2017-countywide-results.pdf>.

⁸⁶ Santa Clara County Code of Ordinances § 4.10.115. "County-authorized" means that the facility is operating under a valid CUP.

⁸⁷ Santa Clara County Code of Ordinances § 4.10.115. These accessory use small scale shelters have a limited duration of stay, require on-site staffing and written notice of operation to the Planning Office.

⁸⁸ Incidental shelter is defined as providing shelter inside an assembly building as an incidental use to an existing primary assembly use, which occupies less than 50% of the usable square footage of the assembly building. See the draft ordinance at:

http://sanjose.granicus.com/Viewer.php?view_id=&event_id=2690&meta_id=643038

⁸⁹ http://sanjose.granicus.com/Viewer.php?view_id=&event_id=2690&meta_id=643038, p. 6.

⁹⁰ *Id.* at 3.

⁹¹ *Id.* at 6-7.

⁹² Los Angeles Mun. Code § 14.00, subd. (A)(9).

⁹³ <http://americantinyhouseassociation.org/san-jose-assembly-bill-2176-waives-state-building-code-for-tiny-houses-for-the-homeless/>

⁹⁴ Memorandum from Jacky Morales-Ferrand, Director, San Jose Housing Department to Mayor and City Council of San Jose, October 4, 2016, Workplan for AB2176: Emergency Bridge Housing Communities, available at <http://www.sanjoseca.gov/DocumentCenter/View/68905>.

⁹⁵ <http://americantinyhouseassociation.org/san-jose-assembly-bill-2176-waives-state-building-code-for-tiny-houses-for-the-homeless/>

⁹⁶ Cal. Gov't Code § 8698.

⁹⁷ <http://americantinyhouseassociation.org/san-jose-assembly-bill-2176-waives-state-building-code-for-tiny-houses-for-the-homeless/>

⁹⁸ http://www.sjsunews.com/spartan_daily/news/article_cc3a2556-10c0-11e7-bdf8-ef4b8ebbd420.html

⁹⁹ City of Seattle Encampment Ordinance, found at

http://www.seattle.gov/dpd/vault/cs/groups/pan/@pan/documents/web_informational/s020628.pdf.

¹⁰⁰ <http://crosscut.com/2017/05/seattle-homeless-build-more-tiny-homes/>.

¹⁰¹ <https://www.curbed.com/maps/tiny-houses-for-the-homeless>.

¹⁰² <http://www.seattletimes.com/seattle-news/politics/seattles-teeny-response-to-tiny-houses-for-the-homeless/>.

¹⁰³ <http://crosscut.com/2017/05/seattle-homeless-build-more-tiny-homes/>.

¹⁰⁴ <http://crosscut.com/2017/05/seattle-homeless-build-more-tiny-homes/>.

- ¹⁰⁵ <https://www.theguardian.com/us-news/2017/mar/23/tiny-houses-solution-homelessness-seattle>
- ¹⁰⁶ <http://www.latimes.com/local/california/la-me-homeless-safe-parking-20160504-story.html>;
<http://sbnbcc.org/safe-parking/>
- ¹⁰⁷ <http://sbnbcc.org/safe-parking/>
- ¹⁰⁸ <http://www.latimes.com/local/california/la-me-homeless-safe-parking-20160504-story.html>
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- ¹⁰⁹ <http://www.citylab.com/housing/2016/05/can-parking-lots-become-a-safe-haven-for-las-homeless-santa-barbara/481623/>
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- ¹¹¹ http://clkrep.lacity.org/onlinedocs/2015/15-1138-s1_misc_03-21-2016.pdf
- ¹¹² <https://www.lahsa.org/documents?id=1403-2017-homeless-count-results-vehicles-and-encampments-by-geographic-area.pdf>
- ¹¹³ *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1157 (9th Cir. 2014).
- ¹¹⁴ <http://www.latimes.com/local/lanow/la-me-ln-vehicle-sleeping-ban-20161109-story.html>
- ¹¹⁵ http://clkrep.lacity.org/onlinedocs/2015/15-1138-S15_rpt_LAHSA_6-20-17.pdf
- ¹¹⁶ The California Community Care Facilities Act exempts supportive housing meeting certain characteristics from state licensing requirements, including being affordable, offering independent living, offering its own lease to each resident, and there are no limits on length of stay. Health & Safety Code §1504.5.
- ¹¹⁷ In March 2017, Corporation for Supportive Housing (“CSH”) and Public Counsel conducted an online survey of nonprofit organizations developing and siting supportive housing, transitional housing and emergency shelters throughout Los Angeles County in order to determine the extent to which cities are affirmatively advancing these uses in their zoning codes. There were 28 responses.

This guide was produced by the Community Development Project at Public Counsel. Public Counsel is the nation's largest not-for-profit law firm of its kind with a 40-year track record of fighting for the rights of children and youth, persecuted immigrants, military veterans, nonprofit organizations, and small businesses. Its Community Development Project builds foundations for healthy, vibrant, economically

stable communities by providing legal and capacity building services to community-based organizations in the Los Angeles area and supporting the development and preservation of affordable and supportive homes throughout Southern California.

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