Housing is a municipal service: Opportunities and challenges for LAFCOs in addressing the housing call

HOUSING CHALLENGES IN A BUILT-OUT COMMUNITY

CALAFCO ANNUAL CONFERENCE
OCTOBER 31, 2019

CONTEXT

CALAFCO Annual Conference
October 31, 2019
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

**EVOLUTION**
- **California Mission City** (founded mid-1817)
- Incorporated in 1870 = charter city
- Greatest growth/expansion = 1950's-1970's (22.5 sq mi)
- City incorporation of large developing neighborhoods in 1960's... geographically divided
- Four remaining unincorporated "islands"
- Served by MMWD and two Sanitation Districts
- 7,300 acres of public/secured open space (1970-2000s)
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

**POPULATION & HOUSING**

- Population = 60,651
- Housing Units = 23,906
- Mean household size = 2.3/hh (owners); 2.68/hh (renters)
- Median age = 40.2 years (lower than County = 44.5 years)
- Average home price = $1 million+
- Average apartment rent (7/2018) = $2,531/mo

**AGING POPULATION**

- <18: 22%
- 18-34: 18%
- 35-44: 15%
- 45-54: 14%
- 55-64: 11%
- 65+: 18%

**POPULATION GROWING MORE DIVERSE**

- 1960: 99.1%
- 1970: 97.5%
- 1980: 92.8%
- 1990: 83.8%
- 2000: 75.8%
- 2010: 70.6%

**INCOME**

- Under $20,000: 13%
- $20,000-$49,999: 21%
- $50,000-$99,999: 24%
- Over $100,000: 42%

**TENURE – OWNER VS RENT**

- Owners: 52%
- Renters: 48%

---

CALAFCO Annual Conference
October 31, 2019
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

**HOUSING STOCK**

- 46% 1-unit, detached
- 10% 1-unit, attached
- 9% 2-4 units
- 33% five plus units
- 2% mobile homes

**2019 COMMUNITY SURVEY**

**Question:**
"What is the single largest problem facing the City of San Rafael?"

**Response:**
Affordability of Housing

**TODAY’S CONDITIONS**

- Set Sphere of Influence/Urban Service Area = no expansion outward
- 7,300 acres of secured, undevelopable open space
- Aging population – “aging in place” affluent and White
- Growing Latino population (30%) – priced out of housing
- Homelessness
- Need for housing but community resistance to growth
- State mandates to provide housing (many new laws)
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

STATE HOUSING MANDATES
- Housing Element required for each local jurisdiction
- Must incorporate “RHNA”
- RHNA = demonstrate zoning/property inventory can accommodate local allocation
- Housing Element cycle = 8 years (2015-2023)
- SB 375 = “Sustainable Communities Strategy” (aka SCS) = concentrate growth in the urban centers

REGIONAL PLANNING
- Council of Governments (“COG”) for Bay Area = ABAG/MTC
- COG responsible for distributing RHNA provided by State
- COG responsible for “SCS” = Plan Bay Area 2040
- Plan Bay Area= projects growth + promotes concentrated growth around transit through Priority Development Areas
- San Rafael has one Priority Development Area (Downtown)

HOUSING ELEMENT – GOALS & POLICIES
- Accommodate citywide housing need (Goal 3)
- Promote diverse housing supply (Goal 4)
- Support/encourage affordable housing citywide (Policy H-1)
- Support special needs housing (Policies H-9, H-12)
- Support “aging-in place” (Policies H-11, H-13)
- Promote fair housing practices (Policy H-5)
- Encourage higher density housing near transit (Policy H-15)
- Enforce inclusionary housing requirements (Policy H-18)
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

AFFORDABLE HOUSING POLICIES
- Inclusionary housing requirement since 1986
- Requirement = 10-20%
- On-site development of “BMR” units = first priority
- Affordable housing in-lieu fee + commercial linkage
- Affordable housing in-lieu fee Fund 243
- Density bonus provisions

HOUSING DEVELOPMENT ACTIVITY
- Units built in last RHNA cycle (2007-2014) = 171 units
- Units built in current RHNA cycle (2015-2022) = 108 units
- Current RHNA = 1,007 units (27% met)
- No shortage of housing interest...housing development approved and under review; several potential housing developments

ACCESSORY DWELLING UNITS
- ADUs (Second Units) regulated since 1983
- Approximately 200 citywide
- Major change to State-mandated ADU laws in 2017 (relaxed)
- Trend prior to 2017 = 4-6 ADUs approved/year
- Trend after 1/2017 = 30 ADUs in 2017; 36 ADUs in 2018
- Continuous changes in State laws
- Updated local ordinance forthcoming
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

**Housing Projects**
- 360 units approved;
- 177 senior assisted living unit
- 300+ units under review

**WHAT ARE WE DOING TO ADDRESS THE HOUSING CHALLENGES?**

**IDENTIFIED THE CHALLENGES**
1. Need to renter protection & short-term rental regulations
2. City and Entitlement Review Process
3. Design Review Board (DRB) Process
4. CEQA/Environmental Review Process and Practices
5. City Affordable/Inclusionary Housing Requirements
6. Downtown Property Constraints and Zoning Density Limits
IDENTIFIED THE CHALLENGES

7. Parking Requirements
8. Loss of Other Governmental Sources for Housing Subsidies
9. Layers of Regulatory Requirements
10. Development and Impact Fees
11. Land and Construction Costs
12. Public Controversy and Opposition

RENTER PROTECTION

- Source of income discrimination
  (rejecting vouchers)
- Mandatory mediation
  (when rent increases by +5%)
- Just cause eviction
  (strong purpose vs. retaliation)

SHORT-TERM RENTALS

- Currently do not regulate, enforce or tax
- Draft ordinance moving forward to establish regulations...
  - Owner occupancy
  - Cannot use an ADU for short-term rental
RECOMMENDED ACTIONS

- Changes to Planning Process - PLANNING COMMISSION FIRST
- Downtown “PDA” – Precise Plan + Form-based code
- CEQA review = streamlining + Downtown Precise Plan
- Onerous studies required = reduce/eliminate traffic studies and historic resource assessments
- Reduce parking requirements + innovative parking solutions = Downtown Parking & Wayfinding
- Density limits = eliminate – Downtown Precise Plan

RECOMMENDED ACTIONS

- Inclusionary Housing requirement = assessing changes – menu of options including “buy-out”
- Waiving and reducing development impact fees = temporary
- Adopt an updated ADU Ordinance – recent State legislation, “tiny homes,” multi-family residential
- Cost and availability of land = Air Rights Parking Lot Study
- Public controversy = sustained political will

Lot #1
5th Avenue at Loosens Place
Estimated 11-12 units without a density bonus
Pursue State Funding Opportunities

- SB 2 Planning Grant filed with HCD
- SB 5 (in process) - access to tax increment revenues to fund affordable housing (similar to former RDA)
- SB 102/AB 101 - $300K allocated to San Rafael for more planning grants + awards for "pro-housing" communities
- AB 73/SB 540 - establishing Housing Sustainability Districts and Workforce Housing Opportunity Zone

Adopt “By-Right” Zoning for Affordable Housing Projects

- SB 2 Planning Grant –
- Establishing “by-right” zoning for 100% affordable housing projects in High Density Residential (HR-1) Districts
- Pilot development project covered under this effort = Homeward Bound's new emergency shelter + 32 housing units (very low income) 190 Mill Street

Consider Raising Appeal Fee and Change Scheduling Process

- Appeal fee has not been adjusted in decades + appeal process can add significant time to process
- Current appeal fee for resident (non-applicant) = $300
- Study raising appeal fee as part of Master Fee Schedule Update
- Amend code to require that appeal hearing date be set within five working days of appeal filing
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

Questions

LAFCO and Housing

CALAFCO Annual Conference
October 31, 2019
Michael G. Colantuono, Esq.

GC 56001(a): The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in promoting orderly development. Therefore, the Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible.
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

CKH Provisions re Housing

GC 56742(f): Noncontiguous portion of City must be detached if developed: "If, however, a city enters into a lease on and after April 24, 2002, pursuant to Section 37395, 37396, or any other provision of law, that would authorize the development of a shopping center, hotel, motel, or lodging house on territory annexed pursuant to this section, the affected territory shall cease to be a part of the city."

10/26/2019
(c) 2019 Colantuono, Highsmith & Whatley, PC

CKH Provisions re Housing

GC 56668: Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

(a) Population and population density; land area and land use; assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.

10/26/2019
(c) 2019 Colantuono, Highsmith & Whatley, PC

CKH Provisions re Housing

GC 56668:

(g) A regional transportation plan adopted pursuant to Section 65080.

(h) The proposal’s consistency with city or county general and specific plans.

(m) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.

10/26/2019
(c) 2019 Colantuono, Highsmith & Whatley, PC
Court Interpretations of CKH


Upheld LAFCO’s denial of larger SOI to suburban City because adequate record evidence supported it. Among that evidence was expressed concern re dearth of affordable housing in the community (i.e., the County would allow more density than the City would).

CKH Provisions re Growth

GC 56685: The commission may, but is not required to, consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis.

CKH Provisions re Growth

GC 56430: (a) The commission shall include in the area designated for [a municipal] service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:

1. Growth and population projections for the affected area.
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

CKH Provisions re Growth

GC 56375.3(d)’s Island annexation rule"

The Legislature finds and declares that the powers set forth in subdivision (a) for territory that meets all the specifications in subdivision (b) are consistent with the intent of promoting orderly growth and development pursuant to Section 56001 and facilitate the annexation of disadvantaged unincorporated communities, as defined in Section 56033.5.

2019’s Housing Legislation

SB 330 (Skinner, D-Berkeley) amending the Permit Streamlining Act, restricting development standards, limiting fees, restricting down-zoning

AB 1483 (Grayson, D-Concord) – requires cities and counties to share land use regulations and fee studies on the web and in annual housing reports to HCD

2019 Housing Legislation

SB 13 (Wieckowski, D-Fremont) – restricts fees on ADUs

AB 68 (Ting, D-SF), AB 881 (Bloom, D-Sta Monica), AB 587 (Friedman, D-Glendale) – incentives for ADU development
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

2019 Housing Legislation

AB 1486 (Ting, D-SF) – expands application of the Surplus Land Act, including new reporting requirements and potential penalties for non-compliance, including notice to housing sponsors and HCD
AB 1255 (Rivas, D-Hollister) – locals must report to the state an inventory of their surplus lands in urbanized areas
SB 6 (Beall, D-San Jose) – HCD reports inventory to Statement Department of General Services to create a database of this information

2019 Housing Legislation

AB 1763 (Chiu, D-SF) density bonuses
SB 5 (Beall, D-San Jose) – Vetoed – funding for infrastructure to support housing development

The Big Picture

• Housing affordability is a huge issue for Californians, perhaps in the same way Prop. 13 was in the mid-1970s
• Middle-class Californians can’t afford to buy homes near where they grew up
• Commute grow longer, outflows to other states continue
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

If Government Fail to Act, Others Will
- An initiative like Prop. 13?
- Except governing does not control housing supply as it did property taxes
- People will continue to “vote with their feet” leaving unbalanced communities behind – who flips burgers in Silicon Valley?

The Bottom Line
- LAFCOs have discretion to be part of the solution
- LAFCOs are obligated to consider growth and development issues, which necessarily include housing
- LAFCOs may consider regional housing goals
- MSRs must evaluate growth and population projections
- But cities and counties jealously guard local control

Questions?
Housing is a municipal service: Opportunities and challenges for LAFCo in addressing the housing call

Colantuono, Highsmith & Whatley, PC

Southern California
790 E. Colorado Blvd, Ste. 850
Pasadena, CA 91101-2109
(213) 542-5700

Northern California
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
(530) 432-7357

www.chlaw.us