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OPINION

YIMBYs are about to sue the daylights out of cities across the Bay Area. Here's why



Emily Hoeven

Feb. 7, 2023



Workers construct two affordable housing developments, one for seniors and one for multi-family use, on the Embarcadero near Broadway in San Francisco in 2020.

Jessica Christian/The Chronicle 2020

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Housing advocates are about to deliver a message to the Bay Area: Comply with state housing law or face the consequences.

The message is being delivered in the form of 12 lawsuits, most of which will be publicly unveiled for the first time Tuesday by three pro-housing legal nonprofits: YIMBY Law, the California Housing Defense Fund and Californians for Homeownership, which was founded and is financially supported by the California Association of Realtors.

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The three groups are suing Belvedere, Burlingame, Cupertino, Daly City, Fairfax, Martinez, Novato, Palo Alto, Pinole, Pleasant Hill, Richmond and Santa Clara County for failing to follow state law, which required them to adopt by Jan. 31 a blueprint — called a housing element — outlining how they plan to accommodate their share of the 2.5 million homes California is asking cities to prepare for by 2030.

Most of the local governments targeted by these lawsuits didn't adopt plans at all, the groups' legal counsel told me, while others gave the illusion of compliance by greenlighting their own blueprints, even though these plans hadn't been reviewed by the state Department of Housing and Community Development.

Among the lawsuits' main goals: Force local jurisdictions to comply with state law by developing and adopting a plan for building the required number of homes and reminding them that they're subject to what's known as the builder's remedy while they're out of compliance.

The builder's remedy — an as-yet relatively untested provision of California law — allows developers to bypass local zoning standards in noncompliant cities to build residential projects with a certain percentage of low-income or moderate-income units.

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So why are the lawsuits necessary, given that the builder's remedy technically goes into effect the moment a city's housing element falls out of compliance?

“The thing we hear from a lot of cities is, ‘We’re working on (the housing element). We’re trying,’ ” said Matthew Gelfand, attorney for Californians for Homeownership. “But while you’re working on it (past the deadline) you have to understand that you’re subject to certain penalties. ... And that’s when we end up suing because they don’t want to acknowledge the penalties that come from the fact that they didn’t do their jobs earlier.”

He added, “It’s particularly frustrating in the Bay Area, because ... they saw what happened in Southern California.”

What happened in Southern California was more lawsuits. Cities there had been required to adopt housing elements by Oct. 15, 2021 — but many failed to do so, prompting a spate of similar lawsuits from Californians for Homeownership. These largely resulted in settlements that required the cities to adopt compliant housing plans by a certain date, with state reviews along the way, and forced them to acknowledge they were subject to the builder's remedy, Gelfand said.

“I definitely think cities thought they could get away” with drafting sham housing plans or missing the state deadline, said Greg Magofña, director of development and outreach for the California Housing Defense Fund. “And I still think cities still think they can get away with things. ... Governments in general are made to operate in the status quo, so if you change them very drastically, there’s always resistance to that.”

John Goodwin, a representative for the Association of Bay Area Governments, which [helped develop the region's overall housing plan](#), told me in an email, "More than 90 of the Bay Area's 109 cities, counties and towns had at least submitted a first draft of their housing element to (the state housing department) by the Jan. 31 deadline. That's no small feat, given the many changes in state law and the myriad requirements local governments are obliged to meet. We expect a lot of communication back and forth between Bay Area jurisdictions and the (state) over the next few months, at which point it will become clearer if there really is any foot-dragging, what the consequences might be and where we might see those consequences play out."

Housing advocates say more lawsuits are on the way.

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"From my perspective, this is just the first step in a kind of generational campaign to completely change the way land-use regulation gets done," Keith Diggs, an attorney for YIMBY Law, told me.

While it is indeed frustrating that Bay Area governments didn't learn from their counterparts in Southern California, what is especially frustrating is that lawsuits are necessary at all.

We are talking, after all, about enforcing that simplest of concepts: the deadline. It's baked into us in elementary school; if you don't turn in your homework on time, there will be consequences.

Like kids arguing over whether they should have to do homework, many California cities seem intent on arguing about whether they should have to plan for and build housing. But, regardless of their thoughts on homework or housing, the deadline exists. And if they don't meet it, that's on them.

The state gave local governments a deadline. They knew about the deadline years in advance. They knew about the consequences. They chose not to meet the deadline.

Taxpayer resources shouldn't have to be spent on lawsuits to remind governments of their responsibilities. But here we are.

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Emily Hoeven is an Opinion columnist at The Chronicle. She wrote CalMatters' daily WhatMatters newsletter on California politics and policy from March 2020 to January 2023. She makes frequent appearances on TV, radio, podcasts and panels, and helped launch a weekly political segment on ABC 10. Emily has reported across the West, from California to Utah to Montana, and got her start writing opinion columns for the Mercury News and the Daily Pennsylvanian. A Fremont native, Emily graduated from the University of Pennsylvania with a degree in English and French and taught English for a year in Châteauroux, France.

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BY JORDAN PARKER

Bay Area earthquake risk: Map shows danger zones, expected damage