



Duplex: Not Manhattan

[I wrote a few weeks ago on a Turner Center report concerning SB 9](#), California's law allowing single-family lots to split and put in duplexes as a matter of right throughout the state. Essentially, the message was simple: localities were engaged in a Massive Resistance to the state mandates, throwing sand in the gears at every opportunity. *Manhattanization!!*, the NIMBYs cried – because as we all know, Manhattan is known as the City of Duplexes.

Well, the Legislature has heard and it is not having it. Thus, [SB 450 \(Atkins\)](#) – what might be called a major Cleanup Bill to make SB 9 work better. It is tired of local NIMBY whining about building more housing, and is not interested in waiting. Here is what SB 450 will do, in italics, with comments from me:

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*The bill would prohibit a local agency from imposing objective zoning standards, objective subdivision standards, and objective design standards that do not apply uniformly to development within the underlying zone.*

This has been a way that localities have been skirting the law: putting in a whole bunch of requirements to make a lot-split financially impossible. To be sure, the original SB 9 forbade such requirements *if* they made the lot-split financially impossible, but never defined that, leaving a gaping hole for local governments to block it.

*This bill would specify that objective zoning standards, objective subdivision standards, and objective design standards imposed by a local agency must be related to the design or improvements of a parcel.*

See above. This has been part of Massive Resistance, and the Legislature is going to put a stop to it.

*This bill would remove the authorization for a local agency to deny a proposed housing development if the building official makes a written finding that the proposed housing development project would have a specific, adverse impact upon the physical environment.*

Allowing these sorts of findings has been a standard compromise in many housing bills over the last few years. Essentially, the Legislature has said, “okay: if there *really* is an environmental problem, then you can reject the project, but you have to make findings.” The problem is that localities are just making the “findings” regardless and daring applicants to sue. So the Legislature has removed this power. Perhaps a better way is to use the approach in the Housing Accountability Act, which allows these findings but also allows judges to review them *de novo*, with an accelerated litigation schedule and a judicial ability to award attorneys’ fees and a builder’s remedy. This provision will probably be amended.

*The bill would require the local agency to consider and approve or deny the proposed housing development application within 60 days from the date the local agency receives the completed application, and would deem the application approved after that time.*

As a purely legal matter, this provision uses language from California’s [Permit Streamlining Act of 1977](#), and basically includes SB 9 as a protected law under those provisions. So if you hear localities whining that this puts too much pressure on them, it’s nonsense.



Franz Kafka: Not A Model

More to the point, this provision scotches another key way in which local governments have evaded the law. Kafka's *The Castle* might be a powerful metaphor for modern bureaucracy, but it shouldn't be the model for modern planning agencies. [There is precedent for delays violating the Takings Clause](#), but this is more effective way to handle the problem.

*The bill would require a permitting agency, if it denies an application, to provide a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.*

We might call this the Calvinball Amendment. If the locality tells the applicant what to do, it does it, and then is denied, it is practically begging for a lawsuit and an award of attorneys' fees.

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And there is a very small carrot for localities:

*This bill would remove the requirement that a proposed housing development does not allow for the demolition of more than 25% of the existing exterior*

*structural walls to be considered ministerially.*

This provision allows discretion for a planning agency to require modifications and mitigations, which puts it into the CEQA process.

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Senate President Pro Tem Toni Atkins: Don't Mess With The Boss

Perhaps the most important thing about the bill is its author: state Senate President Pro Tem Toni Atkins (who wrote SB 9). Atkins is effectively the Boss of the Senate: if she wants this, it will happen (and the Assembly and Governor will go along).

But there is one thing that I believe is important to add: more funding for local planning departments. Planners will have to process these things more quickly. They can do it, but should have the personnel to make it easier. They should also have the funds to do the sort of professional development to make the profession more rewarding. A former student of mine who works with local planner says that many are demoralized because the new state legislative push for housing means that they are just turning into application-processors, instead of real planners. That isn't the Legislature's fault: for decades, it pleaded, cajoled, begged, and incentivized local governments to plan for the future, and were greeted with, well, Massive Resistance. But that doesn't mean we shouldn't be working to plan better cities in the future.

For now, though, the message from Sacramento is clear to localities: Resistance Is Futile. We will see if and how NIMBYs will try to change this at the ballot box.