™

Skip Daum, President
Registered Legislative Advocate
Since 1974

October 2019

This is my ***half-time report*** as the California Legislature has recessed until January. This is known as a biennial (2 year) session. And, this will be my last report that is viewable to the public; future monthly reports will only be viewable to subscribers. (Thank you!)

In the interim, legislators take a breather, campaign, and meet with constituents. Lobbyists and staff begin working on bills they wish to pursue in 2020. Signed bills will become law on January 1, 2020 unless they have language in them that prescribes a different effectiveness date.

Governor Gavin Newsom signed 870 bills and vetoed 172, for a veto rate of 16.5%. In the last hours of session human blood was thrown from the Senate gallery by a vaccination protestor and thousands of independent contractors ringed the Capitol protesting Assembly Bill 5 which makes millions of them 'employees', codifying the holding in the Dynamex Case.

Signed into law are measures that directly effect HOAs and are outlined below. This information is from Senate and Assembly staff analyses.

SB 323 (Wieckowski) New HOA Election Rules. The Senator's bill last session on this topic was vetoed by Governor Brown saying "one size doesn't fit all" in his veto message. However, Governor Newsom saw it differently and he signed the bill. Here are the major provisions:

"1) Requires an HOA to hold elections for a seat on the board of directors at the end of each expiring term and in any event at least once every four years.

2) Prohibits an HOA from amending its elections operating rules within 90 days of an election.

3) Requires an HOA to disqualify a nominee from becoming a candidate for the board of directors if the nominee is not a member of the association at the time of the nomination, except that a developer may make a nomination of a nonmember candidate consistent with the voting power of the developer and a legal entity that is not a natural person may appoint a natural person to be a member stand-in for that legal entity.

4) Sets forth the following grounds on which an HOA *may* disqualify a nominee from becoming a candidate for the board of directors, provided that the rule is part of the association's by-laws or is part of the HOA's elections operating rules:

a) all of the following are true:

i) the nominee is not current on the payment of regular and special assessments, as defined;

ii) the nominee has been given the opportunity to engage in an internal dispute resolution process, as specified;

iii) the association also requires an incumbent to be current on the payment of regular assessments; and

iv) none of the following exceptions apply:

(1) the nominee paid the regular assessments under protest;
(2) the nominee has entered into a payment plan; or
(3) the nominee has not been provided with the opportunity to engage in internal dispute resolution, as specified;

b) the nominee, if elected, would cause a violation of an association by-law prohibiting two or more joint owners of the same HOA parcel from serving on the board simultaneously;

c) the nominee has been a member of the association for less than one year; or

d) the HOA becomes aware that the nominee has a past criminal conviction that would, if the person was elected, prevent the HOA from obtaining or retaining fidelity bond coverage.

5) Provides that an HOA's election rules must require:

a) retention, as association elections materials, of:

i) a voter list with name, parcel number, and voting power; and

ii) a candidate registration list;

b) the HOA to permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed;

c) correction of any identified errors in the voter or candidate lists within two business days.

6) Requires an HOA to provide general notice of all of the following, unless individual notice is requested, on the following timelines:

a) at least 30 days before any deadline for submitting a nomination:

i) the procedure and deadline for submitting a nomination at least 30 days before the deadline for submitting a nomination.

b) at least 30 days before distribution of ballots:

i) the date and time by which, and the physical address where ballots are to be returned by mail or handed to the inspector;

ii) the date, time, and location of the meeting at which ballots will be counted; and

iii) the list of all candidates names that will appear on the ballot.

7) Requires an HOA's election operating rules to:

a) prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed;

b) prohibit the denial of a ballot to a person with power of attorney for a member;

c) require the ballot of a person with power of attorney for a member to be counted if returned in a timely manner; and

d) require the inspector or inspectors of elections to deliver to each member, at least 30 days before an election and by individual delivery or posting to an Internet Web site in the specified fashion, both of the following documents:

i) a copy of the election operating rules; and

ii) the ballot or ballots.

8) Prohibits an HOA's election rules from permitting any person, business, or subdivision of a business entity to serve as the inspector of elections if currently employed or under contract with the HOA for any compensable services other than to serve as an inspector of elections.

9) Adds signed voter envelopes, voter list, proxies, and a candidate registration list to the enumerated items that shall be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote and until the time allowed for challenging the election has expired.

10) Provides that a cause of action for a violation of member elections may be brought within one year of the date that the inspector or inspectors notify the HOA board and membership of the election results or the cause of action accrues, whichever is later.

11) Requires a court to void the results of an election if the member challenging the election shows, by a preponderance of the evidence, that the election procedures were not followed, unless the association shows, by a preponderance of the evidence, that its noncompliance with this article or the election operating rules did not affect the results of the election.

12) Requires a court review a cause of action brought under 11) above, to state its findings in writing as part of the record.

13) Requires a member to be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action if the member prevails in a civil action in small claims court.

14) Permits a cause of action alleging failing to comply with association election laws or rules in either superior court or, if the amount of the demand does not exceed the jurisdictional amount of the small claims court, in small claims court.

15) Defines "association election materials" to mean returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were sent, proxies, and the candidate registration list, and adds such materials to the enumerated "association records" to which members are entitled access under specified procedures.

16) Provides that signed voter envelopes may only be inspected, but not copied.

17) Prohibits an HOA from filing a civil action regarding a dispute in which a member has requested internal dispute resolution unless the association has engaged in specified internal dispute resolution procedures in good faith."

The bill was strongly opposed by the Community Associations Institute's California Legislative Action Committee (CAI-CLAC) for which I lobbied 24 years before retiring in 2017. HOAs are constantly under attack by the anti-HOA interests who garner support from a large majority of legislators, many of whom own condos. It's interesting that one out of four Californians own property in an HOA. You'd think 9,000,000 owners would chime in on such bills. It is prudent that your HOA obtains legal advice on these changes as revisions to governing documents may be needed.

SB 754 (Moorlach) Elections by acclamation. Another measure seeking efficiency and cost savings in HOA elections was defeated years ago, but this bill was signed. Here are its most important provisions:

1) Requires an HOA to hold an election for a seat on the board of directors at the expiration of the director's term and at least once every four years.

2) Provides that if, at the close of the nomination period, the inspector or inspectors of elections determines that the number of nominees is not more than the number of vacancies on the board, the nominees shall be considered elected by acclamation if all of the following are true:

   a) The HOA includes 6,000 or more units.
   b) The HOA provided individual notice of the election and the nomination procedure at least 30 days prior to the close of nominations.
   c) The HOA allows all qualified candidates to run if nominated.

3) Requires an HOA to disqualify a person from nomination if either of the following applies:

   a) The person is not a member of the HOA at the time of the nomination, unless a developer nominates a non-member candidate consistent with its voting power under existing regulations.
   b) The person has a criminal conviction that would prevent the HOA from purchasing fidelity bond insurance.

4) Allows an HOA, through its bylaws or election operating rules only, to disqualify a person from nomination based on any of the following:

   a) The nominee has failed to be current in the payment of regular or special assessments, as specified. An HOA may not disqualify a nominee if the nominee has paid the regular or special assessment under protest, has entered into a payment plan, or has not been provided the opportunity to engage in internal dispute resolution, as specified.
   b) The nominee holds a joint ownership interest in the same parcel as another nominee or incumbent board member.
   c) The nominee has been a member of the HOA for less than one year."

While affordable housing (AH) is a most pressing issue, and is addressed in more than 150 bills (!), a consensus among landlords, HOA and non-HOA property owners, NIMBY (Not In My Backyard) and YIMBY (Yes In My Backyard) parties, city and county planners, zoning commissions, renters, and a coalition of persons in need of "accessory dwelling" small housing was not always obtained. The Governor has made AH one of his primary concerns.

AB 670 (Friedman) Accessory Dwelling Units in HOAs: This bill makes "any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development instrument and provision in a governing document or an amendment to a governing document of a common interest development (HOA) that either effectively prohibits or unreasonably restricts the installation of an accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) in a single-family, planned development void and unenforceable. Allows for "reasonable restrictions" on ADUs and JADUs."

AB 671 (Friedman) ADU's: "Requires a local government to include a plan in their housing element to incentivize and promote the creation of accessory dwelling units (ADUs) that can be offered at an affordable rent for very-low, low-, and moderate-income households."

AB 587 (Friedman) Conveying ADU's: The author stated: "Due to the limited availability of land, particularly in coastal communities, land costs have reached an all-time high. This bill would better utilize single family lots by providing two homes for low-income families in need; one being the primary residence and the second, an ADU on the same parcel of land." The measure also is intended to allow nonprofit organizations to construct and convey ADUs separately from the main house. The bill, as amended, specifies that:

1) The affordability covenant for ADUs conveyed separately from the primary unit must be 45 years.

2) A condition for the conveyance of an ADU separate from the primary unit that if requested by a utility providing service to the primary residence, the ADU has a separate water, sewer, or electrical connection to that utility.

AB 68 (Ting) Land Use: Numerous cities and counties opposed this bill which would make major changes to the ADU statute to facilitate the development of more ADUs and addressed perceived barriers to ADUs, by including the following:

1) Increases the number of ADUs allowed to be constructed per lot by potentially allowing two ADUs on lots with single-family homes, and multiple ADUs on lots with multi-family dwellings;

2) Enables ADUs and JADUs to be approved ministerially if there is an existing or proposed primary residence;

3) Prohibits a local ADU ordinance from:

   a) Imposing requirements on minimum lot size to allow ADUs;

   b) Setting a maximum ADU dimensions that do not permit an ADU of 850 square feet for an ADU or one or fewer bedrooms and 1,000 square feet for two or more bedrooms, 16 feet in height, with four-foot side and rear yard setbacks;

c) Requiring replacement parking when parking is demolished in the creation of an ADU;

d) Requiring a setback for an ADU that is built within an existing structure or in the same footprint as an existing structure, and require more than a four-foot setback for all other ADUs;

4) Allows no more than 60 days to ministerially consider a completed ADU permit application; and

5) Increases enforcement, including enabling HCD to notify the Attorney General when a local agency is in violation of this law.

AB 622 (Chen) Process Serving: "This bill applies to a gated community or a covered multifamily dwelling that is staffed at the time service of process is attempted by a guard or other security personnel assigned to control access to the community or dwelling. "Covered multifamily dwelling" means either of the following:
(1) An apartment building, including a timeshare apartment building not considered a place of public accommodation or transient lodging, with three or more dwelling units.
(2) A condominium, including a timeshare condominium not considered a place of public accommodation or transient lodging, with four or more dwelling units."

SB 13 (Wieckowski) Housing Supply: The bill authorizes the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. It would also revise the requirements for an accessory dwelling unit by providing that the accessory dwelling unit may be attached to, or located within, an attached garage, storage area, or other structure, and that it does not exceed a specified amount of total floor area.

According to the staff report, this bill:

1) Provides that when a garage, carport, or covered parking structure is demolished in conjunction with an ADU or converted into an ADU, a local agency shall not require that those off-street parking spaces be replaced.

2) Reduces the application approval timeframe to 60 days and provides that if a local agency has not acted upon the submitted application within 60 days, the application shall be deemed approved.

3) Prohibits a local ordinance from requiring an applicant for an ADU to be an owner occupant.

4) Provides that a local ADU ordinance that establishes minimum or maximum ADU size must allow an ADU of up to 850 square feet, or up to 1,000 square feet if the ADU provides more than one bedroom. Provides that any other minimum or maximum size imposed by a local ordinance must allow for an ADU of at least 800 square feet and 16 feet in height, with four-foot side and rear yard setbacks.

5) Provides for a tiered schedule of impact fees based on the size of the ADU as follows:

a) Zero fees for an ADU of less than 750 square feet
b) 25% of impact fees for an ADU of 750 square feet or more.

6) Revises the definition for when a local agency, special district, or water corporation may require a separate utility connection.

7) Requires HCD, after a local ADU ordinance is adopted, to submit findings to the local agency as to whether it complies with ADU law. If HCD finds it does not, HCD shall provide the local agency up to 30 days to respond before taking any other action. The local agency shall consider HCD's findings and may either change the ordinance to comply or make findings as to why the ordinance complies despite HCD's findings. Authorizes HCD to notify the Attorney General but requires HCD to first consider whether a compliant local ordinance was adopted between January 1, 2017 and January 1, 2020.

8) Authorizes HCD to review, adopt, amend, or repeal guidelines to implement uniform standards and criteria that supplement or clarify the terms, references, and standards in ADU law.

9) Authorizes, explicitly, a local agency to count an ADU for purposes of identifying adequate sites for its housing element.

10) Requires a local agency notice of a violation of any building standard to an ADU owner to include a statement of the owner's right to request a delay in enforcement. Requires a local agency, upon request of the owner, to delay enforcement for five years if correction is not necessary to protect health and safety and the ADU was built before January 1, 2020 or the ADU was built prior to that date in a local jurisdiction that had a compliant ADU ordinance at that time. Sunsets this provision on January 1, 2025.

SB 330 (Skinner) Housing Supply: Perhaps the most comprehensive bill on affordable housing. This bill was "HUGE" in terms of hundreds of organizations lobbying in favor and in opposition (mostly cities). (The bill's provisions are so comprehensive that I will address them in a separate report next month.)

It establishes the Housing Crisis Act of 2019, which, until January 1, 2025, places restrictions on certain types of development standards, amends the Housing Accountability Act (HAA), and makes changes to local approval processes and the Permit Streamlining Act.

SB 434 (Archuleta) Records and Property: This measure did **NOT** pass due to poor wording that allowed parties to evade its terms which would have required a managing agent whose management agreement has been terminated to produce an HOA's property and records within 30 days of termination in a format that the association can reasonably use, whether on paper or in digital form.

END

Be sure to subscribe so that you will stay abreast of changing HOA laws!

To see more HOA information, including association service providers, go to www.HOALaws.com or contact Skip Daum by phone: 916- 662- 0009.