

Housing Delivery Streamlining

AIA California's Housing Steering Committee Offers an Overview of Key Issues Affecting Housing Delivery in California

1. Condominium Liability and Permitting Reform

Background:

California's homeownership rate of 44% is significantly lower than the national average of 65%, largely due to the barriers and risks associated with condominium development. Between 2012 and 2022, only 3% of the 987,476 multifamily units built in California were offered for sale, whereas 38% of the 1.66 million multifamily units produced in Canada were condominiums. Reform is necessary to increase homeownership opportunities in California, particularly through the expansion of condominiums.

The Challenge:

The current 10-year liability period for construction defects, regardless of wear and tear, substantially increases legal exposure for those involved in development. For instance, in the Market Lofts project in Downtown Los Angeles, individual condo owners faced aggressive litigation campaigns. On an \$85 million condominium project, architects were required to secure a \$25 million insurance policy solely for defect claims. Developers often use LLCs to limit their liability to individual projects, while architects, engineers, and contractors (AEC) are left to bear the full risk across projects, threatening their financial stability. Moreover, a 2014 California Supreme Court ruling increased the standard of care for architects on residential projects, further increasing liability. Reducing litigation risks would also benefit the construction labor industry by supporting labor stability and growth.

Considerations:

To address these challenges, the statute of limitations for defect liability could be adjusted by reducing it from 10 years to 4 years, similar to rental properties, with an option for owners to purchase extended warranties. Alternatively, a graduated statute of limitations could be introduced, offering shorter warranties for workmanship, materials, and systems, and longer warranties for structural and roof components. Developing effective and affordable warranty programs would help enhance homeowner protection. The Right to Repair could be strengthened by mandating mediation before litigation, which could help resolve issues more efficiently. Finally, steps could be taken to make it more difficult for opportunistic lawyers to pursue frivolous litigation.

Addressing these challenges through condominium reform could increase homeownership opportunities in California, stabilize construction-related professions, and create a more equitable environment for all stakeholders in the condominium market.

2. Commercial to Housing Adaptive Reuse Policy and Code Support

Background:

According to the WSJ, there will be close to a billion square feet of empty office space over the next decade nationwide. In San Francisco and Los Angeles, office vacancy rates were recently reported as 36.8% and 23.3%, respectively. There is also in many communities an abundance of underused or empty retail space, especially on the older commercial corridors. These trends away from some traditional real estate uses for older properties are expected to continue.

Concurrent with these underperforming commercial property assets is a pressing need for more housing. It's notable that often the need for housing is greatest in the same locations where excessive vacancies occur. Adaptive reuse for housing is an obvious potential 'second life' for these non-performing real estate assets.

The benefits when these conversion projects are successful are multidimensional. From a sustainability perspective, conversions use 60-80% less embodied carbon than new construction and eliminate millions of tons of construction waste from landfills. These projects are often relatively easy to entitle, since the building is already in place. For example, Studio One Eleven recently entitled a 14-story tower conversion to 275 units in a coastal zone with no appeals. Many of these structures are in central business districts that are lifeless in the evenings and weekends; conversions can support vibrant mixed-use districts, bringing customers back to support the urban areas that are currently withering, some even suffering from what has been called the 'urban doom loop' where reduced public revenue results in lower public service, which leads to deteriorating conditions, which drives lower activity and further revenue reductions.

Saving older buildings can preserve a continuity of history and bring architectural diversity to neighborhoods, along with well-paying jobs in the same locations where the housing is. Conversion can also result in unique design solutions that bring vitality and energy back to what are now tired and run-down urban areas.

The Challenge:

So why aren't we seeing more conversions? Potential buildings often have too much uncertainty when it comes to code compliance and sometimes the bar for entitlements is set so high that the risks cannot be overcome. Cost, financing, and technical issues can also present major obstacles. A major step forward would be a more focused effort to adjust codes and policies that can better support these conversions, along with more clear and functional methods for risk equivalency evaluation.

Considerations:

The Los Angeles 1999 Adaptive Reuse Ordinance (ARO) serves as an important policy model. It resulted in over 12,000 dwelling units via conversion since inception. Versions of this policy have been adopted by other cities such as Long Beach and Santa Ana. These policies have led to more interest by developers and more adaptive reuse in the pipeline. Los Angeles is looking to expand the ARO citywide with new concepts, such as reduced or eliminated unit size requirements, and more latitude in balancing current code with existing

building constraints. These cities have effectively found means to solve what would otherwise be potential deal killers such as elevator cab sizes not complying with gurney dimensions, major structural upgrade triggers, and restrictions on reuse of existing exiting systems. It's been said that no building over a decade old can be cost effectively brought up to current prescriptive code measures fully, but using logical and rational risk equivalency can allow these projects to be vetted via performance methodologies cost effectively. Additional support for the changes in policy, code, local entitlement and permitting requirements, and other measures are needed to fully capitalize on the housing that can be created in our urban areas. Studies by the Rand Corporation and HCD/Calthorpe have indicated potential for many hundreds of thousands of new housing units in all of California's urban areas via adaptive reuse.

3. Adjustment of the Height Limit for Residential Prevailing Wage

Background:

Publicly funded affordable housing construction is subject to prevailing wage rates, which makes sense given the source of the funding. At the state level, these rates are divided into two tiers based on the number of stories built. For buildings with four stories or fewer, "Prevailing Wage" applies, adding a 20% premium to labor costs. However, the challenge arises when a project exceeds four stories, triggering "Commercial Prevailing Wage," which adds an additional 10-15% premium.

The Challenge:

This double premium significantly increases the cost of constructing taller buildings—the very strategy intended to take advantage of new state zoning laws and local incentives aimed at boosting affordable housing. As a result, many affordable housing developers forgo the added density in areas that desperately need more housing because they cannot absorb the increased costs of "Commercial Prevailing Wage."

Consideration:

We often see identical construction methods and trades used for both 4-story and 8-story residential buildings that remain below the "high-rise" classification of no more than "75' to the highest occupiable floor."

A possible concept that could address this challenge would be to raise the threshold of "Prevailing Wage" to align with the building code limit for a conventional 3-level concrete podium with 5 levels of Type IIIA wood construction, allowing a total of 8 stories.

4. Expanding the Scope of Projects That Can Use the California Residential Code (CRC)

Background:

The California Residential Code (CRC) currently applies to single-family homes, two-family homes, and townhouses. The ability to construct these typologies under the CRC results in

an easier permit process and reduced construction costs. Townhouses specifically offer the ability to add much needed density in communities. These units could be built as apartments, condominiums or individual for-sale units, but certain jurisdictions may not agree.

In addition, in most older cities, in older codes it was not unusual that triplexes and fourplexes could be built using the Residential code provisions. There is no indication that these small projects require the additional costs and complexities of the commercial code to be effective and safe, and avoiding bringing all the inherent complexities of commercial code can result in major time and cost savings.

The Challenge:

A new view of risk equivalency for triplexes and fourplexes is warranted, as these kinds of small developments can be implemented by the many small development entities, which are well suited for creating missing middle housing.

For townhouses, having a consistency in code interpretation would reduce risk, cost and timelines for development. As a recent example, a project, when switched from condominium to apartment during the permit process, led to a jurisdictional determination that the same structure now needed to conform to commercial code. This added significant delays, permit costs, and approximately one million dollars in increased construction costs.

Consideration:

Provide additional clarity in the California Residential Code that extends the definition of a townhouse to include apartments, condominiums, and for-sale units.

5. State-level Code Appeals Process Refinement

Background:

There is a pressing need for a working California code appeals framework. While there are provisions for such a body in existing law, the system is broken – with use of the existing process estimated by the California Building Standards Commission staff of “perhaps 1 or 2 times in the past 15 years”. This lack of use is not due to a lack of need for coordination, consistency and interpretation of the code; but rather it indicates the process needs to be updated. By way of example, there is a working code appeals process for the State Fire Code which results in a published body of code interpretations at the state level that add consistency and reduce cost and uncertainty at the local fire department level. The California Historic Code has a multilevel appeals process that is very workable and cost effective. There is nothing comparable for the new and existing building codes in California. In other west coast states, there are functional state level bodies. In Oregon for example there are code interpretations and even plan review that is conducted at the state level, which can take approvals of new design approaches such as “Tall Wood provisions which allow high rise wood structures” to statewide scale more effectively and efficiently than if

those projects were reviewed by individual jurisdictions. With over 500 separate jurisdictions in California, a workable appeals body would bring greater certainty, lower cost, more consistency, and more thorough vetting of complex issues. This in turn would lead to lower costs and faster delivery of California housing.

The Challenge:

There is inconsistency in code interpretation across the state. For example: how does one calculate the area of a building – a critical number used for everything from code requirements to assessment of impact fees? Or building height? These are determined by each of California's 500+ building officials independently, meaning that a project on one side of a street could have a different set of processes and standards than the other side of the street.

A bigger, more pressing example: conversion of underused commercial buildings to housing. This concept has wide support across both public sector and private sector – including recently issued executive order N 2 24 - but the code that is required turns out to be varied, depending on what local building department your building happens to fall in. A recent study by the Statewide Codes and Standards team found huge variations on the triggers that can turn a building reuse project into an impossible mandate to meet the code as applied to new construction.

In the current milieu, each building official decides individually to adopt measures locally – as long as they are **stricter** than the state code. With our desperate need for more housing, local standards need to align with state level goals, policies and needs. There is currently no mechanism to do that. As a result, for example in the city of Sacramento, a 1970's empty bank building can be used for offices with no structural upgrade but due to local ordinance, cannot be used for housing without a completely updated structural system from the roof all the way through the foundations, effectively killing any opportunity for housing use.

Consideration:

Interestingly, a few of California's codes do have workable appeals and interpretation frameworks. For example, under current law any person can request an interpretation of the State Fire Code from the State Fire Marshal's office. These requests, which happen regularly, are published online so they can be referenced by the many hundreds of individual fire districts that implement and interpret code. Another California code that has a robust interpretation and appeals process is the California Historic Building Code which offers three levels of appeal, ranging from a quick staff level response to a full Board hearing.

Other interpretations can affect local communities harshly, such as a northern California jurisdiction where a building official is reported to have refused to issue street addresses to

some 500 constructed accessory dwelling units after they were completed. This hampers everything from home deliveries to emergency response to medical emergencies.

The California Building Standards Commission (CBSC) working with the Division of the State Architect (DSA)'s professional architects and engineers already have resources and expertise in place. What is missing is a functional framework at the state level that could support code consistency and promote streamlined and efficient housing delivery statewide.