

# New Housing Laws Will Allow “By Right” Housing in Commercial Zoning Districts in California

By Caroline Guibert Chase\*

*In this article, the author explains how two new California laws will enable the approval of qualifying housing projects in commercial zoning districts.*

California Governor Gavin Newsom has approved Assembly Bill (AB) 2011,<sup>1</sup> providing for “by right” streamlined ministerial (i.e., no California Environmental Quality Act (“CEQA”)) approval of qualifying mixed-income and affordable housing projects along commercial corridors in commercial zoning districts. This new law will be a game-changer for multi-family housing developers providing on-site affordable housing. The new law will become operative on July 1, 2023 and will be in effect until at least January 1, 2033.

The following is a summary of the requirements that must be met under AB 2011 for mixed-income housing projects, along with a summary of the key differences between AB 2011 and Senate Bill (SB) 6,<sup>2</sup> which Governor Newsom also approved and which also will create a pathway for the approval of qualifying housing projects in commercial zoning districts.

## AB 2011 REQUIREMENTS: MIXED-INCOME HOUSING PROJECTS

### Threshold Requirements

- The project must be a multi-family housing project (five or more dwelling units).
- The project must consist of:
  - (i) Residential units only;
  - (ii) Residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; or
  - (iii) Transitional housing or supportive housing.
- Minimum density requirements must be met (see below).

### Affordability Requirements

- For rental projects, either (i) 15% of the units must be lower income (as defined), or (ii) 8% of the units must

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be very low income and 5% of the units must be extremely low income (as defined), unless different local requirements apply.

- For ownership projects, either (i) 15% of the units must be lower income (as defined), or (ii) 30% of the units must be moderate-income (as defined), unless different local requirements apply.
- Where different local requirements apply, the project must include the higher percentage requirement and the lowest income target, unless local requirements require greater than 15% lower income units (only), in which case other specified requirements apply.
- For rental projects, the affordable units must be restricted for 55 years and for ownership projects, the affordable units must be restricted for 45 years.
- Affordable units in the project must have the same bedroom and bathroom count ratio as the market rate units, be equitably distributed within the project, and have the same type or quality of appliances, fixtures, and finishes.

### Site Requirements

- The project must be located on a site:
  - 20 acres or less;
  - Within a zoning district where office, retail or parking are a principally permitted use;
  - In an urbanized area or urban

cluster (as defined and specified);

- That abuts a commercial corridor (as defined) and has at least 50 feet of frontage along that commercial corridor; and
- Where at least 75% of the perimeter adjoins (as defined) parcels that are developed with urban uses.

The project must not be located on a site:

- Where the proposed housing would be located within 500 feet of a freeway (as defined);
- Where (or adjoins a site where) more than one-third of the square footage is dedicated to industrial use (as defined);
- That is prime farmland, a wetland, a very high fire hazard severity zone, a hazardous waste site, a delineated earthquake fault zone, a special flood hazard area, a regulatory floodway, conservation land, or habitat for protected species (as each is defined);
- Currently occupied by existing restricted affordable units, restricted rent/price controlled units, or units occupied within the past 10 years (as each is defined) that would be demolished;
- Previously used for occupied permanent housing that was demolished within the past 10 years;
- Currently occupied by a historic structure listed on the national, state or local historic register that would be demolished;
- Currently occupied by one to four existing dwelling units;
- That is vacant and:

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- (i) Zoned for residential but not multi-family housing;
  - (ii) Contains tribal cultural resources and potential impacts cannot be mitigated (as specified); or
  - (iii) Is within a very high fire hazard severity zone (as defined);
- That is a designated mobile home, RV or special occupancy park (as specified);
  - Within a neighborhood plan area, unless that neighborhood plan permits multi-family housing and (i) was effective as of January 1, 2022, or (ii) was proposed (as specified) before that date and is adopted before January 1, 2024; or
  - Where the proposed housing would be located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.

### Labor Requirements

- All construction workers must be paid at least the general prevailing wage of per diem wages for the type of work in the geographic area (as specified), except that apprentices registered in approved programs (as specified) may be paid at least the applicable apprentice prevailing rate.
- The prevailing wage requirement must be included in all construction contracts, and all contractors and subcontractors must comply with specified requirements.
- If the project would include 50 or more dwelling units, additional re-

quirements would apply (as specified), including but not limited to participation in an approved apprenticeship program and health care expenditures for any construction craft employees.

### Housing Replacement and Relocation Assistance Requirements

- If the project would demolish one or more dwelling units, the project must replace those units.
- If any vacant or occupied protected dwelling units (as defined) would be demolished, specified requirements must be met, including but not limited to relocation assistance.
- Any applicable objective local regulations that are more protective of lower income households shall control, as specified.

### Applicable Zoning, Subdivision and Design Review Standards

- Must be objective (i.e., standards that involve no personal or subjective judgment and are uniformly verifiable to an external and uniform benchmark or criterion).
- The standard of review shall be whether there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective standards.
- Applicable standards shall be those standards in effect at the time that the development application is sub-

mitted to the local agency pursuant to AB 2011.

- Applicable standards shall be those for the closest zoning district that allows multi-family residential at the residential density described below. If no such zoning district exists, the applicable standards shall be those for the zoning district that allows the greatest density in the applicable city, county or city and county.
- The local agency may require that up to one-half of the ground floor of the project be dedicated to retail use, in which case that requirement cannot be modified through the density bonus process.
- If the project is deemed to be in conflict with applicable objective standards, the local agency must notify the project sponsor within 60 to 90 days of submittal of the development proposal, depending on whether the project contains more than 150 dwelling units. If the local agency fails to provide the required documentation (as specified), the project shall be deemed to satisfy applicable objective standards.
- Design review may be conducted by the local agency but must be objective (as specified) and must be concluded within 90 to 180 days of submittal of the development proposal, depending on whether the project contains more than 150 dwelling units.

### Density Requirements and Height Limits

- The following density requirements are minimums, and may be exceeded pursuant to a density bonus under the State Density Bonus Law (“DBL”).
- In metropolitan jurisdictions (as defined), the minimum density shall be the greater of:
  - (i) The residential density allowed by local regulations (as specified);
  - (ii) 80 units/acre for sites within one-half mile of a major transit stop (as defined);
  - (iii) 60 units/acre for sites at least one acre in size and on a commercial corridor (as defined) at least 100 feet wide;
  - (iv) 40 units/acre for sites at least one acre in size and on a commercial corridor less than 100 feet wide; or
  - (v) 30 units/acre for sites less than one acre in size.

The foregoing minimum density requirements under (ii)–(v) are reduced by 10 units (respectively) in non-metropolitan jurisdictions (as defined).

The applicable height limit shall be the greater of:

- (i) The height allowed by local regulations;
- (ii) 65 feet for sites within one-half mile of a major transit stop (as defined), within a city with a population greater than 100,000, and not within a coastal zone (as defined);
- (iii) 45 feet for sites on a commercial corridor (as defined) at least 100 feet wide; or

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- (iv) 35 feet on sites on a commercial corridor less than 100 feet wide.

### Other Requirements

- Required notice to existing commercial tenants and required relocation assistance for qualifying commercial tenants, as specified.
- Required Phase I ESA and if a recognized environmental condition is found, specified requirements must be met.
- Required setback and street frontage requirements, as specified.
- Required bicycle parking pursuant to local regulations.
- Required EV and accessible/handicap parking spaces pursuant to local regulations, but off-street parking cannot otherwise be required.

### KEY DIFFERENCES BETWEEN AB 2011 AND SB 6

Having been approved by Governor Newsom, SB 6 becomes operative on July 1, 2023. It will likely serve as a fallback for housing developers where more extensive site and project requirements under AB 2011 would not be met, or where SB 35 could be utilized in conjunction with SB 6.

Similar to AB 2011, SB 6 will allow for the approval of qualifying housing projects in commercial zoning districts where office, retail or parking are a principally permitted use (i.e., without requiring a rezoning). However, it will not by its own terms provide for “by right”

streamlined ministerial approval of those projects.

Rather, SB 6 amends SB 35 to allow project sponsors to invoke that law where a housing project would not otherwise qualify due to inconsistency with the underlying commercial zoning and objective zoning and design standards, provided that specified requirements are met.

SB 35 separately provides for a streamlined ministerial approval process for qualifying housing projects in local jurisdictions that have not made sufficient progress towards their state-mandated Regional Housing Needs Allocation (“RHNA”), as determined by the California Department of Housing and Community Development (“HCD”).

SB 6 will also expressly allow project sponsors to invoke protections under the Housing Accountability Act (“HAA”) for qualifying housing projects notwithstanding inconsistency with an applicable plan, program, policy, ordinance, standard, requirement, or other similar local provision.

The HAA can be used as a tool to prevent a local agency from (i) applying its design or development standards to qualifying housing projects in a way that is overly restrictive or in a manner that is not an objective application of what the standards explicitly say in writing, and (ii) denying or reducing the dwelling unit density of a qualifying housing project.

Other key differences under SB 6 include but are not limited to:

- Extensive “skilled and trained workforce” requirements must be met in addition to

prevailing wage requirements, subject to limited exceptions.

- No on-site affordable housing requirement (but any local requirements still apply), unless SB 35 is utilized in conjunction with SB 6.
- For mixed-use projects, 50% of the project square footage must be dedicated to residential use, the remainder of which must be allocated to retail commercial or office uses (hotel uses are prohibited). Note, however, that if SB 35 is utilized, at least two-thirds of the square footage must be designated for residential use and other specified requirements must be met.

- Lower minimum density and less restrictive “urban area” requirements apply, as specified.
- The project must be consistent with any applicable sustainable community strategy or alternative plan, as described in Government Code Section 65080.

**NOTES:**

<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB2011](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2011).

<sup>2</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB6](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB6).