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California Allows Housing on Commercial Lands and Limits Required Parking

In what has become a near-annual ritual, California Governor Gavin Newsom has signed into law a large package of bills aimed at addressing the state's glaring housing shortage. This Update summarizes two key bills in this package (AB 2097 and SB 6) that enable housing development on commercial lands, as well as another important land use bill (AB 2097) the governor signed separately that eliminates parking requirements near transit. AB 2097 and SB 6 both take effect on July 1, 2023, while AB 2097 takes effect on January 1, 2023.



AB 2097: Streamlined Approval for Multifamily Projects on Commercially Zoned Parcels

AB 2097 provides for approval of multifamily residential projects in zones that permit office, retail, and parking uses. If numerous requirements are met, including payment of prevailing wages, multifamily use is "by right," and a streamlined, ministerial approval process applies that is exempt from the California Environmental Quality Act (CEQA). This process imposes short deadlines, requiring that the local agency complete any design review using only reasonable objective standards within 90 days for a project of 150 housing units or less, or within 180 days for larger projects.

The new law applies to urban infill projects of at least five units that designate at least two-thirds of square footage for residential use. Under specified circumstances, a local agency may exempt a parcel from eligibility.

AB 2011 addresses two types of projects: those setting aside 100% of units for lower-income households and those providing mixed-income housing along a commercial corridor. For both types of projects, requirements include the following:

- The project site must be located in a zone where office, retail, or parking are principally permitted uses. If the site is subject to certain specific plans or similar plans, multifamily housing also must be permitted.
- Residential density must meet or exceed specified levels that vary between (1) 10 and 30 units per acre for 100% affordable projects, or (2) 20 and 80 units per acre for mixed-income projects.
- The project must be consistent with objective standards that apply in a zone where housing is allowed at the required density.
- The project is not located on a site that (1) contains certain agricultural lands or wetlands; (2) is a hazardous waste site, habitat for protected species, or conservation lands; or (3) is governed by mobilehome laws.
- Other limitations apply to sites that (1) contain housing units; (2) contain or are adjacent to industrial uses; (3) are within a delineated fault zone, specified fire hazard severity zone, special flood hazard area, or regulatory floodway; (4) are vacant and contain tribal cultural resources; (5) have hazardous substance exposure risks; or (6) are close to a freeway or an oil or natural gas facility.
- Payment of prevailing wages is required. (Additional labor standards apply to projects of 50 units or more.)

For mixed-income projects only, the following additional requirements apply:

- The project site must abut a street with a right-of-way of 70 to 150 feet and must have a street frontage of at least 50 feet.
- The project is not located on a site that (1) is larger than 20 acres; (2) was used for rental housing demolished within the last decade; (3) contains one to four dwelling units; or (4) is vacant and zoned for housing, but not for multifamily use.
- Affordable housing is required as follows, or as adjusted under a stricter local requirement:
 - For rental projects, either (1) 8% of units for very low-income households plus 5% for extremely low-income households, or (2) 15% of units for lower-income households.
 - For ownership projects, either (1) 30% of units for moderate-income households, or (2) 15% of units for lower-income households.
- The project cannot involve demolition of a historic structure, affordable or rent-controlled housing, or housing occupied by tenants within the past decade.
- Certain height, setback, and building location requirements apply, though AB 2011 projects are eligible for benefits under the Density Bonus Law.
- The developer must provide relocation assistance to eligible commercial tenants.

SB 6: Residential Development on Commercially Zoned Parcels

SB 6 allows housing development on parcels that are zoned for office, retail, or parking under certain conditions, including payment of prevailing wages and use of a skilled and trained workforce. The new legislation also expands eligibility for streamlined, ministerial approvals under the existing state law known as "SB 35," by generally including projects that meet the requirements of SB 6 among the projects that can qualify for the SB 35 approval process.

SB 6 provides that, where a "housing development project" meets several requirements, it shall be deemed an allowable use if located on a qualifying parcel that is within a zone where office, retail, or parking is a principally permitted use. A "housing development project" is one that includes (1) residential units only or (2) residential uses mixed with retail, commercial, or office uses where at least 50% of the new square footage is

designated for residential use, a lower threshold than applied in AB 2011. Projects are disqualified under SB 6 if any square footage is used for hotel, motel, or other transient lodging use, except for a residential hotel.

To qualify under SB 6, a project also must meet the following requirements:

- Residential density must meet or exceed specified levels that vary by jurisdiction between at least 10 and at least 30 units per acre.
- The project must comply with local standards and procedures that apply in zones where housing is allowed at the required density.
- The project site is in an urban area and is 20 acres or less.
- The development is not on, or adjacent to, any site where more than one-third of site square footage is dedicated to industrial use.
- The development is consistent with any approved sustainable community strategy.
- The developer certifies that (1) all construction workers will be paid prevailing wages and (2) with certain exceptions, a skilled and trained workforce will be used.
- The developer must provide relocation assistance to eligible commercial tenants.

Unlike AB 2011, SB 6 imposes no affordability mandate beyond any local inclusionary housing requirements that may apply.

Under specified circumstances, a local agency may exempt a parcel from SB 6.

AB 2097: Elimination of Minimum Parking Requirements Near Transit

Another major bill signed by Governor Newsom prevents public agencies, with certain exceptions, from imposing or enforcing minimum vehicular parking requirements on certain development projects within one-half mile of a major transit stop. State law defines "major transit stop" to include an existing or planned (1) rail or bus rapid transit station, (2) ferry terminal served by bus or rail transit, or (3) intersection of two or more major bus routes with service every 15 minutes or less during peak commute periods. AB 2097 applies to residential, commercial, and other development projects, including residential hotels, but does not apply to projects that include a hotel, motel, or other transient lodging.

The law provides for exceptions limited to cities and counties, which may impose or enforce minimum parking requirements near a major transit stop if the city or county makes evidence-based, written findings within 30 days of receiving a completed application, that the lack of minimum parking requirements "would have a substantially negative impact" on any of the following:

- The local agency's ability to meet its share of the regional housing need for low-income and very low-income households.
- The local agency's ability to meet any identified special housing needs for the elderly or people with disabilities.
- Existing residential or commercial parking within one-half mile of a residential project.

However, cities and counties cannot apply these exceptions to housing projects that (1) set aside at least 20% of units for very low-, low-, or moderate-income households; (2) contain fewer than 20 units; or (3) are subject to parking reductions under any other law (such as the Density Bonus Law). All such projects are covered by the legislation's general prohibition on applying minimum parking requirements to development near transit.

Conclusion

As California continues to address the statewide housing crisis through new legislation, it has become even more problematic to flip open a local zoning ordinance and assume that what's written there represents the applicable law. Rather, each potential new project must be assessed under the complex interplay between state and local law. While this legal framework has its challenges, it also is facilitating more housing development, with less delay and fewer obstacles.

Authors