

# Recent Developments in Land Use Law

City of Foster City

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# Special Legal Protection for Housing

- ADUs and SB 9
- Post-Entitlement Streamlining
- AB 2097
- AB 2011 and SB 6
- State Density Bonus Law



# **ADUs**

AB 2221

SB 897

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# ADU Review and Approval Process

- Permits for ADUs and Junior ADUs must be reviewed ministerially; no discretionary review or hearings are permitted
  - Ordinances may not conflict with provisions of Gov. Code Sec. 65852.2(a) through (d)
  - Ordinance must allow ADUs and Junior ADUs specified in Gov. Code Sec. 65852.2(e)
- Time to approve or deny permit application:
  - 60 days from complete application if there is an existing dwelling unit (or units) on the lot
  - May delay acting on applications to build ADUs with new single-family or multi-family dwellings, but ADU or Junior ADU permit may only be reviewed ministerially
- If complete application not acted on within 60 days, it shall be “deemed approved” if the local agency has not adopted a compliant ADU ordinance
- If application is denied, City must provide full set of comments identifying defects and how application can be remedied

# General ADU Standards

- Must allow ADUs in areas zoned to allow residential uses
  - May only restrict location based on: adequacy of water and sewer; impact of ADU on traffic flow; and public safety
- Owner-occupancy requirements are **not** permitted
  - This provision sunsets in 2025, but units built between 2020 and 2025 remain exempt
  - Pending legislation would remove the sunset provisions
- Jurisdictions **may** prohibit rentals of less than 30 days in all ADUs and **must** prohibit short-term rentals in ADUs created under Gov. Code Sec. 65852.2(e)
- Jurisdictions **may** allow the separate sale or conveyance of an ADU from a primary residence if it was constructed by a qualified nonprofit organization under AB 587
- No fire sprinklers required in ADU if not also required in primary dwelling
  - Creation of ADU may not trigger requirement for fire sprinklers to be installed

# ADU Height Standards

- Height limit for detached ADUs
  - 16 ft minimum
  - 18ft ft on a lot with an existing or proposed multifamily multistory dwelling unit
  - 18 ft, plus 2 ft for roof pitch, on lots within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor
- Height limit for attached ADUs
  - 25 ft or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower
  - No requirement to permit ADUs with more than 2 stories

# Additions and New Detached ADUs

- Expressly allowed to regulate parking, setback, landscape, architectural review, maximum unit size, and to require standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources
  - Prohibited from enforcing minimum lot size requirements
  - Lot coverage requirements still allowed
- Setbacks
  - No setback for conversions of existing structures
  - No more than 4' side and rear-yard setbacks for all other ADUs
  - No front yard setback if ADU development otherwise infeasible
- Minimum and maximum size requirements permitted:
  - Minimum size must allow efficiency units (150 square feet)
  - Maximum must be at least 850 square feet or 1,000 square feet for ADUs with 2+ bedrooms
  - Standards must be waived to permit at least 800 square foot ADU with 4' side and rear-yard setbacks

# ADU Parking

- Maximum of **1 space per bedroom or per ADU**, whichever is less (i.e., no parking required for an efficiency or studio ADU)
- **Must allow tandem parking** and parking in setbacks, unless specific site conditions, regional topography, or fire and life safety issues make this infeasible
- If existing parking area is converted to an ADU, **no replacement parking** may be required
- **No parking** may be required for ADUs:
  - Within ½-mile walking distance of public transit (including bus stops)
  - Within an architecturally and historically significant district
  - That are part of the existing primary residence or a converted accessory structure
  - In areas where on-street parking permits are required but not offered to ADU occupants
  - Within one block of car share vehicles



## Mandatory ADU Approval on Single Family Lots

Regardless of any other provisions, **must** approve building permits in any residential or mixed-use zone to create **any** of the following:

- One ADU and one Junior ADU with existing or proposed single family unit
  - Expansion up to 150 square feet of existing space permitted
  - Exterior access required
  - Setbacks sufficient for fire safety
- One detached ADU on lots with an existing or proposed single family unit
  - Not more than 800 square feet
  - 4' side and rear yard setbacks
  - May be combined with a Junior ADU

# Mandatory ADU Approval on Multifamily Lots

Regardless of any other provisions, **must** approve building permits in any residential or mixed-use zone to create **any** of the following:

- Multiple ADUs within existing multifamily building
  - Conversion of space not used as livable space
  - Examples: storage rooms, boiler roomers, garages, etc. – but must meet building code standards
  - Must allow 25% of existing units in building or one unit, whichever is greater
- Not more than two ADUs on lots with existing multifamily units
  - Detached from existing multifamily building
  - 4' side and rear yard setbacks

# ADU Fees

- Impact Fees
  - ADU less than 750 square feet: none permitted
  - ADU 750 square feet or more: charged proportionately in relation to the primary dwelling unit square foots
- Connection Fees and Capacity Charges
  - ADU or Junior ADU developed under Gov. Code Sec. 65852.2(e)(1)(A): no connection fee or capacity charge, and no direct connection between ADU and utility unless in conjunction with a new single-family home
  - All other ADUs: connection fee or capacity charge “proportionate to the burden” of the ADU and may require new or separate utility connections
- Cost Recovery Fees
  - Local agency may charge fees to reimburse for costs incurred to implement Gov. Code Sec. 65852.2(a)(3) (60 day ministerial review process), including costs to adopt or amend ADU ordinance

**SB 9**

## Gov. Code Sec. 65852.21 (Two Units)

- Requires ministerial approval of proposed housing developments containing no more than two units
  - Only applies in a “single-family residential zone,” which is not defined
  - Ministerial approval means no discretionary review or hearing
  - CEQA not applicable
  - The Coastal Act applies, however no CDP hearings are permitted
- Single units may be eligible for ministerial approval

## Gov. Code Sec. 66411.7 (Lot Splits)

- Requires ministerial approval of parcel maps to create two parcels from one
  - Only applies in a “single-family residential zone”
  - Ministerial approval means CEQA not applicable
  - The Coastal Act applies, however no CDP hearings are permitted

## Projects qualify if they. . .

- Are within the boundaries of an urbanized area or urban cluster
- Satisfy SB 35 environmental criteria

## Two-Unit Projects may be denied if. . .

- They require demolition of:
  - restricted affordable housing,
  - housing subject to rent or price control,
  - housing occupied by tenants in past 3 years, or
  - housing withdrawn from rental market under the Ellis Act
- Are located within a historic district or property included on the State Historic Resources Inventory or within a historic area designated by local ordinance
- **The building official makes a written finding based on preponderance of the evidence of a specific, adverse impact to public health, safety, or the physical environment**



## Two-Unit Projects and Local Standards

Local objective standards apply, provided that:

- Standards do not preclude two units at least 800 sf in area
- Side and rear yard setback requirements no greater than 4 feet
  - BUT **no setback** may be required for existing structure conversions with no change in location or dimension
- No more than 1 parking space required per unit
  - BUT **no parking** may be required near transit or car share vehicles

# Lot Splits and Local Standards

Local objective subdivision standards apply, provided that:

- Standards do not preclude two unit projects on either lot
- No right of way dedication or construction of offsite improvements may be required
- May require easements for public services and facilities, parcels to have or provide access to the right of way
- May not require correction of nonconforming zoning conditions

# Lot Splits - Miscellaneous

- Must require:
  - Uses on lots created under SB 9 be limited to residential uses
  - That rentals be of terms longer than 30 days
  - Applicants to sign an affidavit of intent to occupy one of the units as a principal residence for 3 years
    - Does not apply if community land trust uses SB 9
    - No other occupancy requirements permitted in connection with a lot split
- More than two units per lot may be prohibited!



# Post-Entitlement Phase Permits

AB 2234

# Streamlining for Building Permits

## *“Postentitlement phase permit”*

- All **nondiscretionary permits and reviews** filed after the entitlement process has been complete **required** or issued by the local agency **to begin construction**
- Applies to development that is intended to be **at least two-thirds residential**
- **Excludes** discretionary and ministerial planning permits, entitlements, and other permits and reviews that are covered under Chapter 4.5 (commencing with Section 65920).

## Examples, without limitation, include:

- Building permits, and all inter-departmental review required for the issuance of a building permit.
- Permits for minor or standard off-site improvements.
- Permits for demolition.
- Permits for minor or standard excavation and grading.

# Processing Timeline

## New Shot-Clock Timeline:

→ Failure to meet these timeframes is “disapproval of a housing development project” and a violation of the Housing Accountability Act

- Within 15 business days
  - determine whether an application for a postentitlement phase permit is complete
  - provide written notice of this determination to the applicant
- Within 30 business days
  - For projects with 25 units or fewer, complete review and return either comments or an approval to the applicant
- Within 60 business days
  - For projects with more than 25 units, complete review and return either comments or an approval to the applicant

# Procedural and Informational Requirements

**By January 1, 2024, local agencies must:**

- Compile a list of information needed to approve or deny a postentitlement phase permit
- Post an example of a complete approved application and an example of a complete set of postentitlement phase permits for at least 5 types of housing development projects, including, but not limited to, accessory dwelling unit, duplex, multifamily, mixed use, and townhome
- Provide an option for postentitlement phase permits to be applied for, completed, and retrieved by the applicant on its internet website, and accept applications for postentitlement phase permits and any related documentation by electronic mail until that process has been established
- List on their internet website or provide by electronic mail upon request, as applicable, the current processing status of the applicant's permit

# Parking Limitations

AB 2097



# AB 2097 – No Parking Minimums Near Transit

- Prohibits a public agency from imposing or enforcing minimum automobile parking requirements within one-half mile of public transit
- Public transit means:
  - an existing rail or bus rapid transit station;
  - a ferry terminal served by either bus or rail transit;
  - the intersection of two or more bus routes with 15 minute or shorter headways during morning and afternoon peak commute periods; or
  - planned major transit stops included in the applicable regional transportation plan
- No exceptions if a project:
  - (1) has at least 20% of the total number of housing units are for very low, low-, or moderate-income households, students, the elderly, or persons with disabilities;
  - (2) the development contains fewer than 20 housing units; or
  - (3) the development is subject to parking reductions based on any other applicable law
- HCD is required to notify the jurisdiction of any violations of this law and the Attorney General can bring an action to enforce it.

# **Residential Development in Commercial Zones**

AB 2011

SB 6

# Housing in Commercial Zones

## AB 2011 (Wicks)

### Affordable Housing and High Road Jobs Act

- Creates a ministerial, streamlined approval process for two types of projects:
  - 100% affordable housing projects in commercial zones
  - mixed-income housing projects along commercial corridors
- Ministerial review exempt from CEQA
  - Local government must identify any inconsistencies with qualifying criteria within 60 ( $\leq 150$  homes) or 90 ( $> 150$  homes) days, otherwise development is deemed to comply with standards
  - Approve within 90 ( $\leq 150$  homes) or 180 ( $> 150$  homes)

## SB 6 (Caballero)

### Middle Class Housing Act

- Establishes housing as an allowable use on any parcel zoned for office or retail uses
- No new ministerial approval process
  - Projects can invoke HAA and SB 35 even if they don't comply with underlying zoning
- Adopt of local ordinance is exempt from CEQA

# Labor Standards

## AB 2011 (Wicks)

Affordable Housing and High Road Jobs Act

- Developer must pay laborers the general prevailing wage
- Contractors developing 50 or more housing units must participate in an apprenticeship program or request dispatch of apprentices from a state-approved apprenticeship program, and make certain healthcare expenditures for construction craft employees

## SB 6 (Caballero)

Middle Class Housing Act

- Developer must pay laborers the general prevailing wage
- Contractors must employ a “skilled and trained workforce” unless only one prequalified contractor promises to use “skilled and train workforce” bid on the contract

# Affordability Requirements

## AB 2011 (Wicks)

### Affordable Housing and High Road Jobs Act

- 100% lower-income rental or for-sale units with deed restriction for 55 years (rental) or 45 years (sale); OR
- Mixed-income housing with at least:
  - 8% very low income and 5% extremely low income or 15% lower income rental units; OR
  - 30% moderate income or 15% low-income sale units
  - Deed restriction for 55 years (rental) or 45 years (for-sale)
- Complex interplay with local inclusionary standards

## SB 6 (Caballero)

### Middle Class Housing Act

- No new affordability requirements
- Must comply with local inclusionary standards
- If using SB 35, that law's affordability standards apply

# Development Standards

## AB 2011 100% Affordable

- Located in zone where office, retail, or parking are principally permitted uses
- In a City or unincorporated urban area/urban cluster
- Not adjacent to site with more than 1/3 industrial use
- No TCR/VHFH
- Must complete Phase I and mitigate hazards
- Must meet or exceed “Mullin density”
  - Existing zoning standards OR
  - Zoning standards from closest parcel that allows required residential density

## SB 6 (Caballero) Middle Class Housing Act

- Located in a zone where office, retail, or parking area a principally permitted use
- Project site is 20 acres or less
- Proposed project must be either 100% residential units OR a mixed-use project with at least 50% of square footage dedicated to residential space
- In an urbanized area or cluster
- Not adjacent to a site where more than 1/3 of the square footage is industrial use
- Must meet or exceed “Mullins density”
  - Existing zoning standards OR
  - Zoning standards from closest parcel that allows required residential density

# AB 2011 Mixed-Income Development Standards



## Density

### Metro Areas:

- For sites of less than one acre in size, 30 units per acre.
- For sites of one acre in size or greater located on a commercial corridor of less than 100 feet in width, 40 units per acre.
- For sites of one acre in size or greater located on a commercial corridor of 100 feet in width or greater, 60 units per acre.
- Notwithstanding subparagraph (B), (C), or (D), for sites within one-half mile of a major transit stop, 80 units per acre.

### Non-Metro Areas

- For sites of less than one acre in size, 20 units per acre.
- For sites of one acre in size or greater located on a commercial corridor of less than 100 feet in width, 30 units per acre.
- For sites of one acre in size or greater located on a commercial corridor of 100 feet in width or greater, 50 units per acre.
- Notwithstanding subparagraph (B), (C), or (D), for sites within one-half mile of a major transit stop, 70 units per acre.



## Height

For sites on a commercial corridor of less than 100 feet in width, 35 feet.

For sites on a commercial corridor of 100 feet in width or greater, 45 feet.

65 feet for sites that meet all of the following criteria:

- They are within one-half mile of a major transit stop.
- They are within a city with a population of greater than 100,000.
- They are not within a coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code



## Setbacks

No front setback from commercial corridor

80% of frontage must be within 10 feet of property line; 60% within 10 feet along side streets

10 foot setback for properties adjacent to residential, with upper-story step-back requirements

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# Density Bonus

AB 682  
AB 2334  
AB 1551



# State Density Bonus Law

## You've Got to Give. . .

- Affordable Housing
- Senior Housing
- Land for Affordable Housing
- Condo Conversions with Affordable Housing
- Child Care Facilities
- Student Housing
- Shared Housing Buildings

## To Get. . .

- Bonus Units
- Reduced Parking Standards
- Incentives/Concessions
- Waivers
- Commercial Density Bonus

# Base Density Calculation

New definition of “*maximum allowable residential density*”

- Expressly focuses on **number of units** allowed by the base density
- Default calculation is du/ac
- If no du/ac standard (e.g. form-based codes, FAR limits, etc.), applicant shall provide estimate of realistic development capacity based on applicable objective development standards; hold unit size and other assumptions constant to award bonus units

# Bonus Dwelling Units Available

Category	Minimum Percent	Minimum Bonus	Additional Bonus for 1% Increase	Percent Required for Maximum 50% Bonus
Very-low income	5%	20%	2.5%	15%
Lower income	10%	20%	1.5%	24%
Moderate income (ownership units only)	10%	5%	1%	44%

# 100% Affordable Density Bonus

- AB 1763 increases maximum density bonus for 100% affordable projects
  - At least 20% of units must meet Health and Safety Code affordability definitions
  - Remainder of units may be restricted at TCAC affordability levels
  - 20% of units may be rented to moderate-income households
- Density bonus equals 80% above maximum density
- If within ½ mile of major transit stop, no density limit and 33 foot height increase, but other waivers not mandatory

# Density Bonus in Low VMT Areas

- **AB 2334 (Wicks)** Allows a housing development project in 17 specified counties to receive added height and unlimited density if the project is located in an urbanized very low vehicle travel area, at least 80 percent of the units are restricted to lower income households, and no more than 20 percent are for moderate income households
- “Designated county” includes the Counties of Alameda, Contra Costa, Los Angeles, Marin, Napa, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, and Ventura



**QUESTIONS?**