

Developing Housing in Commercial Zones: Focus on AB 2011 and SB 6



American Planning Association
California Chapter

Land Acknowledgement



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The Big Picture

Housing in Commercial Zones

AB 2011 (Wicks)
Affordable Housing and High Road Jobs Act

SB 6 (Caballero)
Middle Class Housing Act

Both laws are intended to:

Address state housing needs

Revitalize underutilized commercial land

Generate well-paid construction jobs

Effective July 1, 2023

Sunset on January 1, 2033

Two Bills on the Same Topic?

- Both bills allow residential uses in areas designated for office, retail, or parking development
- Both bills include minimum labor standards
- Both bills include minimum development standards

What about the General Fund?

- “Retail follows rooftops”
- Property Tax vs. Sales Tax
- Effects on mixed-use

<https://www.epsys.com/news/retail-versus-housing-rethinking-the-fiscal-paradigm/>

AB 2011

AB 2011 (Wicks)

Affordable Housing and High Road Jobs Act

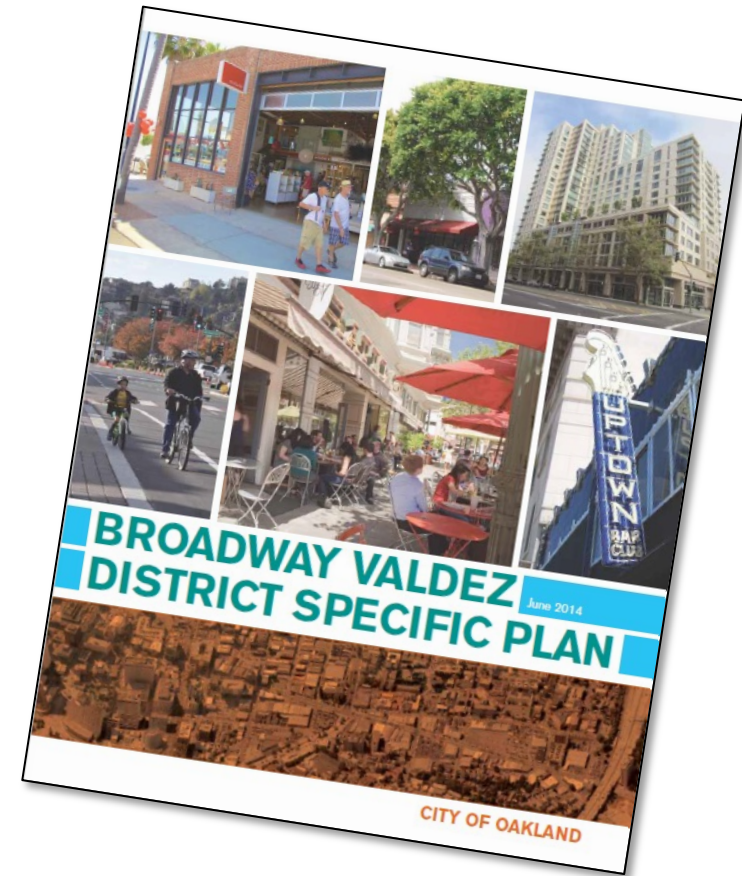
- Creates a ministerial, streamlined approval process for two types of projects:
 - 100% affordable housing projects in commercial zones
 - mixed-income housing projects along commercial corridors
- Ministerial review exempt from CEQA
 - Local government must identify any inconsistencies with qualifying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

Project Location

- Zone where office, retail, or parking is a principally permitted use
- Urban infill site
 - Census designated urbanized area or urban cluster
 - 75% of site's perimeter adjoins parcels developed with urban uses
- Subject to GC Sec. 65913.4 (SB 35) criteria in (a)(6)(B) through (K)
- May not adjoin sites where more than 1/3 of square footage dedicated to industrial
- May not be subject to mobilehome laws
- If vacant:
 - Must not contain tribal cultural resources
 - Must be outside very high fire hazard severity zones

Interface with Neighborhood Plans

- AB 2011 applies regardless of general plan, zoning, etc., with limited “neighborhood plan” exemption
- “Neighborhood plan” means an adopted specific plan, area plan, precise plan, urban village plan, or master plan
- If site is within neighborhood plan area, then AB 2011 applies only if plan permits multifamily housing development and:
 - Plan adopted before 1/1/22
 - Plan adopted before 1/1/24 and NOP issued before 1/1/22



Labor Standards

- 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

100% Affordable Projects

- 100% lower-income, except for manager's unit
 - Deed restrictions for 55 years (rental) or 45 years (sale)
 - Rents can be Health and Safety Code rents or TCAC rents
- Must meet or exceed "Mullin density" subject to objective standards in
 - Existing zoning OR
 - Zoning designation from closest parcel that allows required residential density
 - Note that if GP and zoning are inconsistent, then only GP standards apply
- Must complete Phase I ESA and mitigate to level of insignificance
- Must not be within 500 feet of a freeway or 3,200 feet of a refinery

Mixed-Income Projects

- 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 for-sale units
 - Deed restriction for 55 years (rental) or 45 years (for-sale)
- Complex interplay with local inclusionary standards if greater than 15% dedicated for low but not VLI and ELI
 - 8% very low income and 5% extremely low income required
 - Subtract 15% from local requirement at highest required affordability level
- Demolition protections for existing affordable and rent controlled housing and sites with four or fewer units
- Affordable units must have same bed/bathroom ratio as market rate units, same type of appliances/fixtures, and be equitably distributed
- Located on a commercial corridor (highway that is not a freeway with ROW b/t 70 and 150 feet)

Mixed-Income Density Standards

- 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.

Mixed-Income Height Standards

- 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

Mixed-Income Setback Standards

- 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

Catch-All Provisions

- Implementing ordinances authorized AND are CEQA exempt
- HCD authorized to adopt implementing guidelines
- HCD directed to undertake multiple studies regarding the outcome: 2027 and 2031
 - Projects built
 - Units built
 - Local and regional locations, including wealth and access to resources
 - Affordability
 - Effect on GHG
 - Creation of prevailing wage construction jobs
- Limited opportunities to exempt parcels if substitute parcels are upzoned

SB 6

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 Housing Accountability Act and SB 35 even if they don't comply with underlying zoning
- Adoption of local ordinance is exempt from CEQA

SB 35 Recap

Must meet affordable housing requirements based on RHNA performance

Projects with more than 10 units must pay prevailing wages

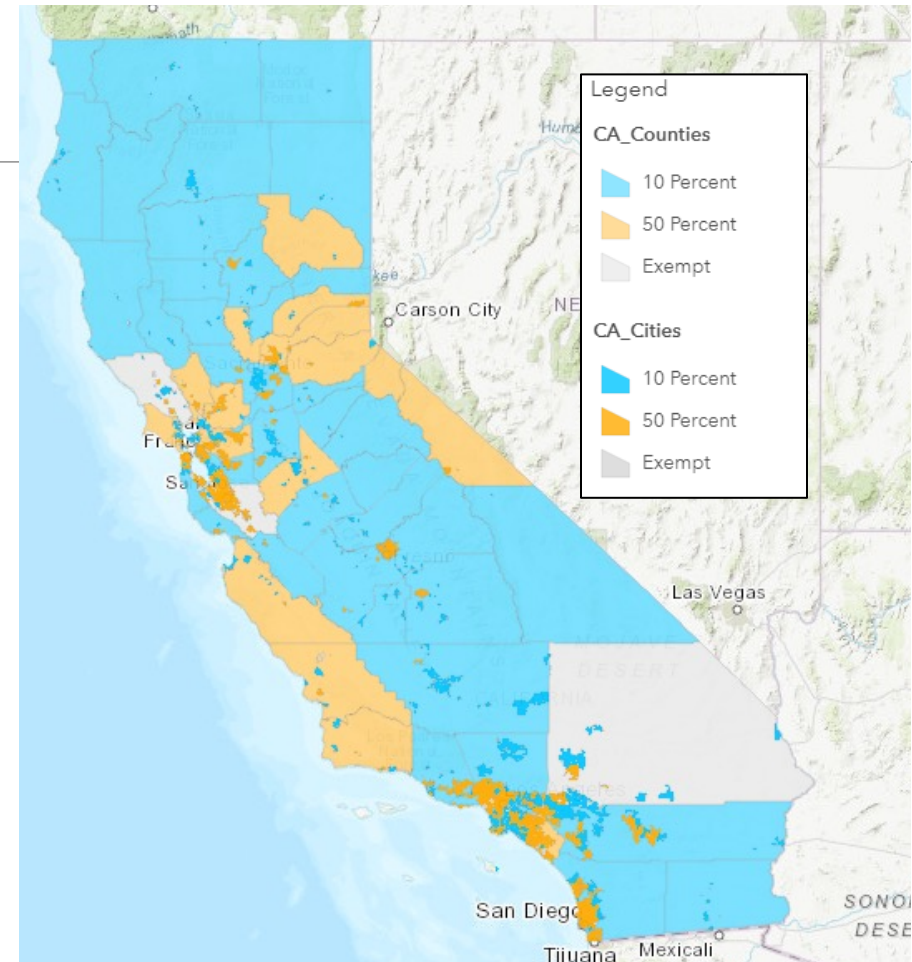
Must use “skilled and trained workforce” for larger projects

- Threshold varies by location
- 100% affordable projects exempt

Site must not have contained housing occupied by tenants within last 10 years

Site must not be in the coastal zone or other specified areas

Project may not involve a subdivision unless exception applies



SB 35 Key Benefits Applicable to SB 6

Ministerial review if consistent with “objective” standards – no CEQA review!

- A project that receives a density bonus and other regulatory incentives under density bonus law is considered consistent
- Any 'maximum unit allocation' (e.g., growth control measures) must be ignored
- Maximum density is the maximum shown in the general plan. Under SB 35, general plan standards trump other standards if inconsistent

General Plan and Zoning conformity not required if SB 6 criteria are satisfied

Labor Standards

- 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

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

Development Standards

- 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 “Mullin density”
 - Existing zoning standards OR
 - Zoning standards from closest parcel that allows required residential density

Questions?

Implementation Opportunities

- Develop local standards to attract mixed-use development
- Objective residential standards applicable to multifamily resi and mixed-use projects
- Local implementation is CEQA exempt
- Remain mindful of Housing Accountability Act limitation on project denial



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