

CITY COUNCIL AGENDA ITEM NO. 7

Meeting Date: May 10, 2022

Subject/Title: An informational Summary and Overview of Recent Statewide Housing Legislation and Potential Applicability to the City of Brentwood

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PURPOSE AND RECOMMENDATION

Receive an informational summary and overview of recent Statewide housing legislation and its potential applicability to the City of Brentwood.

CITY COUNCIL STRATEGIC INITIATIVE

N/A

PREVIOUS ACTION

N/A

BACKGROUND

The attached report summarizes Statewide housing legislation that passed during 2021 and its potential applicability to the City of Brentwood as of January 2022. The report begins with an overview of the process that was used to research recent housing legislation and provides a summary of findings regarding California Senate and Assembly bills that may be applicable to Brentwood.

FISCAL IMPACT

This report is informational only and does not authorize expenditures.

Attachments:

New Housing Laws Summary

Summary Matrix of Housing Legislation and Applicability to Brentwood

Overview of Recent State Legislation and Potential Applicability to the City of Brentwood
(Legislation Passed During 2021 and Effective January 1, 2022)

Summary of Statewide Housing Legislation

This report summarizes Statewide housing legislation that passed during 2021 and its potential applicability to the City of Brentwood as of January 2022. The report begins with an overview of the process that was used to research recent housing legislation and provides a summary of findings regarding California Senate and Assembly bills that may be applicable to Brentwood. It then describes additional information that was compiled during this research effort, and the key findings that are presented in the accompanying tables. This report was prepared by Seifel Consulting, Inc. with input from City staff and outside legal counsel, Goldfarb & Lipman.

Overview of 2021 Housing Legislation Research and Evaluation Process

During 2021, a broad variety of housing legislation passed that could potentially affect local jurisdictions like the City of Brentwood, as well as many of the public and private entities who are involved in California's housing industry. The first step in the research process was to review information published by the Governor's Office, non-profit organizations and experienced law firms regarding housing legislation that passed during 2021.

This review identified more than thirty housing bills that were passed by the State Legislature and signed into law by Governor Newsom during 2021. Research on each bill involved reviewing and analyzing relevant information from the California Legislative Information website and summaries of key legislation prepared by law firms that specialize in California housing and land use law, as well as the League of California Cities.

As key housing legislation adopted in 2021 reflects the Governor's four housing priorities, these priorities are used as a framework to help analyze and categorize each bill as summarized below:

- **Streamlining**– Streamlining the building of new homes–
Legislation to reduce the time that it takes to secure land use approvals and streamline environmental review for infill housing, subject to certain labor provisions depending on the size of development.
- **Production**– Breaking down barriers to build housing, especially **Affordable Housing**–
Legislation to help make housing more affordable by catalyzing the production of Accessory Dwelling Units (ADUs), smaller homes (duplexes), small developments (up to 10 units), student housing and helping to plan and fund more deeply affordable housing developments.
- **Fair Housing**– Addressing systemic bias by elevating fair housing principles–
Legislation to help ensure that local governments affirmatively further fair housing (AFFH) and that various components of the housing transaction process, such as appraisals and title reporting, avoid discrimination to protected classes.
- **Accountability**– Holding local governments accountable to do their job, including maintaining and reporting **Planning & Housing Data** –
Legislation to require local jurisdictions to facilitate housing production (for example, through the Housing Element process), preserve housing and address other statewide housing goals/needs while providing State agencies with additional oversight, authority and enforcement to hold local governments accountable.

Each Senate Bill (SB) and Assembly Bill (AB) was evaluated to see how it could affect Brentwood according to three criteria:

Overview of Recent State Legislation and Potential Applicability to the City of Brentwood
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- **Likely**– A Senate or Assembly Bill that would likely affect how Brentwood undertakes planning activities (including the Housing Element), implements its housing programs and/or may be subject to greater oversight and monitoring.
- **Indirect**– A Senate or Assembly Bill that would indirectly affect Brentwood as it would help prioritize or redirect housing funding or could affect key players in the housing industry.
- **Unlikely**– A Senate or Assembly Bill that would not likely affect Brentwood.

Exhibit 1 summarizes the Senate bills that were researched and evaluated according to their likely effect on the City, and Exhibit 2 presents the same information for Assembly bills. Many of these bills contain numerous, complex provisions and contain statutory references that will affect their implementation, so this report provides a high summary of these bills.

Each Senate and Assembly Bill is categorized in these exhibits according to how it addresses the Governor’s housing priorities as follows:

- **Streamlining**– Bills focused on expediting approvals and environmental review.
- **Production**– Bills focused on producing housing (including affordable housing).
- **Affordable Housing**– Bills focused on producing, preserving or protecting affordable housing.
- **Fair Housing**– Bills focused on affirmatively promoting fair housing.
- **Accountability**– Bills focused on assuring that local governments are accountable.
- **Planning & Housing Data**– Bills focused on planning and land use requirements, including the preparation of the Housing Element, and the preparation and monitoring of housing data, such as the Annual Housing Element Progress Reports.

Evaluation and Summary of Senate Bills

Based on the research and evaluation presented in this report, seven Senate Bills are most likely to affect housing and land use planning in Brentwood, as briefly summarized below and presented in Exhibit 1:

- **SB 8**– Amends and extends key provisions of the Housing Crisis Act of 2019 (SB 330) until January 1, 2030. Continues key legislative measures that expedite the construction of affordable and market-rate housing while protecting tenant rights.
- **SB 9**– Allows a homeowner to construct a second unit on property zoned for single-family homes or convert existing single-family home to a duplex, provided certain criteria are met.
- **SB 290**– Makes several changes to Density Bonus Law– redefining “total units”, expanding eligibility for ownership housing where at least 10 percent of units are sold to moderate income households and allowing student housing developments to qualify, provided certain criteria are met.
- **SB 478**– Prohibits a local agency from imposing a floor area ratio (FAR) standard that is less than 1.0 FAR on a 3 to 7 unit housing development or less than 1.25 FAR on an 8 to 10 unit housing development.
- **SB 591**– Allows intergenerational housing development that includes seniors if certain criteria are met.

Overview of Recent State Legislation and Potential Applicability to the City of Brentwood (Legislation Passed During 2021 and Effective January 1, 2022)

- **SB 728**– Broadens Density Bonus Law to ensure a "qualified nonprofit housing corporation" can purchase for-sale units in an approved housing development to preserve continued affordability for lower income homeowners.
- **SB 791**– Establishes a California Surplus Land Unit to help local agencies and developers facilitate the development of housing on local surplus land, including the provision of regulations, rules, advice, and support.

Evaluation and Summary of Assembly Bills

The State Assembly passed more than twice as many housing bills as the Senate in 2021. Based on this evaluation, 18 Assembly Senate Bills would likely affect housing and land use planning in Brentwood, which are briefly summarized below and presented in Exhibit 2:

- **AB 68**– Revises and modernizes the quadrennial Statewide Housing Plan and expands HCD's annual reporting requirements to include publication of an annual report on its website that includes specified information on grants awarded by HCD and land use oversight actions related to housing taken by HCD against local agencies.
- **AB 215**– Increases oversight and accountability for cities that are underperforming on housing production and makes important changes to Housing Element deadlines.
- **AB 345**– Facilitates Accessory Dwelling Units (ADUs) by removing the requirement that local agencies first pass an ordinance allowing conveyance of an ADU separately from a primary residence before such conveyance occurs, and by permitting an ADU to be sold or conveyed separately from the primary residence to a qualified buyer (low to moderate income households) in limited circumstances.
- **AB 491**– Requires that a mixed-income residential building provide the same access to common entrances, areas and amenities for affordable units as market rate units, and affordable housing units should not be isolated within that building.
- **AB 571**– Prohibits a local agency from charging affordable housing impact fees, including inclusionary zoning fees, public benefit fees and in-lieu fees on deed-restricted affordable units that are part of a project eligible for a density bonus under Density Bonus Law.
- **AB 602**– Imposes additional standards and procedures for agencies adopting and increasing impact fees, which include imposing fees based on housing development square footage or making findings to use a different methodology that ensures smaller housing projects are not charged disproportionate fees.
- **AB 634**– Allows a local government to require an affordability period longer than 55 years for units that qualify a developer for a density bonus.
- **AB 721**– Generally, makes recorded covenants that limit residential development unenforceable against qualifying affordable housing developments and ensures that restrictive covenants do not curtail the type and density of development
- **AB 787**– Expands existing law that permits jurisdictions to claim credit for up to 25 percent of their RHNA from the conversion of existing housing units to include moderate income households, provided certain criteria are met.

Overview of Recent State Legislation and Potential Applicability to the City of Brentwood
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- **AB 803**– Removes the ability for local agencies to require setback requirements between units beyond that required by the State Building Code, establish a minimum home size, or require enclosed or covered parking beyond that allowed by state density bonus law.
- **AB 838**– Seeks to ensure that tenants can receive timely inspections of their rental unit and explicitly prohibits a local government from placing unreasonable conditions on the inspection of rental housing.
- **AB 1029**– Requires HCD to consider making preservation of affordable housing into a pro-housing policy for purposes of HCD's regulations and to establish a pro-housing designation for local jurisdictions.
- **AB 1043**– Adds a new housing affordability definition called "acutely low Income" households who earn 15 percent of Areawide Median Income (AMI) and whose rents can be no greater than 30 percent of the 15 percent AMI level.
- **AB 1174**– Specifies that the "shot clock" for a development or modifications is paused when a project is sued and clarifies that subsequent permit applications must only meet objective standards in place when the project was initially approved.
- **AB 1304**– Ensures that local governments must affirmatively further fair housing (AFFH) in their jurisdictions by clarifying enforcement language and strengthening the housing element site inventory evaluation to show how the site inventory affirmatively furthers fair housing.
- **AB 1398**– Imposes new zoning and site analysis requirements to encourage housing production and to affirmatively further fair housing, as well as reduces the allowable time period to one year (from 3.33 years) to complete rezoning of sites to accommodate a jurisdiction's regional housing need when certain conditions occur related to a jurisdiction's Housing Element compliance.
- **AB 1466**– Requires a title insurance company involved in any transfer of real property and that provides a deed or other documents to identify whether any of the documents contain unlawfully restrictive covenants and to record a specified modification document with the county recorder if one is found.
- **AB 1584**– Restricts contractual development controls that mirror AB 721 by declaring any covenant, condition and restriction (CC&R) that prohibits, effectively prohibits or restricts the construction or use of an ADU on a lot zoned for single-family use is unenforceable.

Overview of Recent State Legislation and Potential Applicability to the City of Brentwood (Legislation Passed During 2021 and Effective January 1, 2022)

Goldfarb & Lipman is an experienced law firm that specializes in housing and land use law and serves as outside counsel to the City of Brentwood regarding the City's housing programs and policies, which has included a review of SB 9. Appendix 1 includes the Goldfarb & Lipman Summary of 2021 Legislative Session Housing Bills that presents further information regarding key aspects of recently adopted housing legislation, which was a key reference for this report.

Evaluation and Summary of State Funding for Housing Programs

Also evaluated, current State funding for housing programs authorized by the Budget Act of 2021 and related Budget trailer bills (SB 129 and AB 140), which provide substantial funding to housing and homelessness-related programs across California including:

- \$2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program.
- \$380 million for the CalWORKs Housing Support Program over two years to house families in the program and help them avoid eviction.
- \$300 million for the Home Safe Program over two years to help combat senior homelessness.
- \$250 million for Homekey within the Multifamily Housing Program (bringing total investment to \$1.45 billion).
- \$250 million for the Infill Infrastructure Grant Program.
- \$100 million to the California Housing Finance Agency to expand homebuyer assistance.
- \$50 million to expand the Golden State Acquisition Fund (GSAF) to provide five-year loans to developers for acquisition or preservation of affordable housing.

These State funding resources could help Brentwood to preserve and develop affordable housing for a broad range of households, including seniors, persons experiencing homelessness, special needs households, and first-time homebuyers.

Exhibit 1
Summary Matrix of Housing Legislation and Applicability to Brentwood – Senate Bills
 Effective 1/1/22

Bill Information and Applicability to Brentwood										Applies to City?	Bill Title or Summary Description	Overview of Key Bill Provisions
Bill #	Sponsor	Streamlining	Production	Affordable Housing	Fair Housing	Planning & Hsg Data	Accountability					
SB 8	Skinner		X	X	X	X		X	Likely	Housing Crisis Act of 2019-Extension/Update	Amends and extends key provisions of the Housing Crisis Act of 2019 (SB 330) until January 1, 2030. Helps expedite affordable and market-rate construction by providing early vested rights, limiting ad hoc fee increases on housing, barring local governments from reducing the number of homes that can be built, and cutting the time it takes to obtain discretionary project approvals. Modifies definition of "housing development project" to include those that involve no discretionary approvals or build a single dwelling unit. Modifies requirements regarding replacement housing, relocation and tenant right to return. Provides that receipt of a density bonus does not constitute a valid basis on which to find a proposed housing development inconsistent, noncompliant, or nonconforming with an applicable plan, program, policy, ordinance, standard, requirement or similar provision. Extends the Act's sunset by five years to January 1, 2034.	
SB 9	Atkins			X	X			X	Likely	Duplex and Lot Splits	Allows a homeowner to split their lot and construct a second unit on every property zoned for single-family homes in California or convert their existing single-family home to a duplex, provided certain criteria are met.	
SB 290	Skinner			X	X		X		Likely	Density Bonus Law Amendments; Student Housing	Makes several changes to Density Bonus Law. Redefines "total units" to include inclusionary housing units and exclude units added by state or local density bonus in calculating the density bonus and incentives/concessions. Removes "specific adverse impact on the physical environment" as a basis for denying a concession, incentive, waiver, or deduction of development standard. Expands the types of for-sale moderate-income housing units that can benefit from a density bonus. Allows student housing developments that reserve at least 20 percent of their units for lower-income students to access one incentive or concession under Density Bonus Law and requires jurisdictions to report the number of units for lower-income students in such developments in their annual progress report.	
SB 478	Weiner			X				X	Likely	Minimum Floor Area Ratio (FAR)/Lot Coverage Standards	Prohibits a local agency from imposing a floor area ratio standard that is less than 1.0 on a housing development project that consists of 3 to 7 units, or less than 1.25 on a housing development project that consists of 8 to 10 units.	
SB 591	Becker			X	X				Likely	Senior citizens: intergenerational housing developments	Allows intergenerational housing development that includes seniors if both requirements are met: a) Affordable to lower income households as specified; b) 80% of the dwelling units are occupied by at least one senior citizen and up to 20% of the dwelling units may be occupied by at least one caregiver or transition age youth.	
SB 728	Hertzberg			X	X				Likely	Density Bonus Law: purchase of density bonus units by nonprofit	Broadens Density Bonus Law to ensure a "qualified nonprofit housing corporation" can purchase for-sale units in an approved housing development project to preserve continued affordability for lower income homeowners.	
SB 791	Cortese			X	X			X	Likely	Establishment of California Surplus Land Unit	Establishes HCD California Surplus Land Unit to provide technical assistance to local agencies and developers to facilitate the development and construction of housing on local surplus land, including the provision of regulations, rules, advice, and support.	

Attachment: Summary Matrix of Housing Legislation and Applicability to Brentwood (2674 : Informational

Exhibit 1
 Summary Matrix of Housing Legislation and Applicability to Brentwood – Senate Bills Effective 1/1/22

Bill Information and Applicability to Brentwood										Applies to City?	Bill Title or Summary Description	Overview of Key Bill Provisions
Bill #	Sponsor	Streamlining	Production	Affordable Housing	Fair Housing	Planning & Hsg Data	Accountability					
Senate Bills												
SB 7	Atkins		X	X						Unlikely	Jobs and Economic Improvement Through Environmental Leadership Act	Extends and expands expedited administrative and judicial review process under CEQA to include smaller projects as well as large, multi-benefit housing, clean energy, and manufacturing projects, provided they met certain requirements, including provisions related to labor.
SB 10	Weiner		X	X						Unlikely	Housing development: 10 Unit Upzonings	Creates a voluntary process for local governments to streamline the upzoning of parcels by passing an ordinance prior to January 1, 2029 to zone any parcel for up to 10 units in a "transit-rich area" or "urban infill site" without triggering environmental review under CEQA.

Exhibit 2

Summary Matrix of Housing Legislation and Applicability to Brentwood – Assembly Bills Effective 1/1/22

Bill Information and Applicability to Brentwood										Bill Title or Summary Description	Overview of Key Bill Provisions	
Bill #	Sponsor	Streamlining	Production	Affordable Housing	Fair Housing	Planning & Hsg Data	Accountability	Applies to City?				
AB 68	Quirk-Silva						X	X	X	Likely	Statewide Housing Plans, Annual Reports by HCD	Revises and modernizes the quadrennial Statewide Housing Plan and expands HCD's annual reporting requirements. Authorizes HCD to use data collected by the Homeless Coordinating and Financing Council in compiling the Statewide Housing Plan. Requires HCD to develop and publish an annual report on its website by December 31 each year, which will include specified information on grants awarded by HCD and regarding land use oversight actions taken by HCD against local agencies for housing violations related to the Housing Accountability Act, Housing Crisis Act, affirmatively furthering fair housing (AFFH), SB 35 streamlining, Permanent Supportive Housing streamlining, and Low Barrier Navigation Center streamlining.
AB 215	Chiu			X				X	X	Likely	Planning and Zoning Law: Housing Element. Violations and enforcement	Increases oversight and accountability for cities that are underperforming on housing production, including adding SB 8 to the list of housing laws that the Attorney General (AG) can enforce. Specifies that existing statutes of limitation of three years apply to any action or proceeding brought by the AG or HCD. Requires local agencies to make draft revisions of the housing element available for public comment for 30 days and must consider and incorporate public comments prior to submission to HCD for review. If public comments are received, cities must take at least 10 business days after the 30-day public comment period to consider and incorporate the comments. Expands AG's authority to independently seek action and grants HCD the ability to hire or appoint other counsel if AG does not pursue action against a local agency that has allegedly violated certain housing laws, inclusive of the HCA, AFFH policies (AB 686), SB 35 Streamlining, Permanent Supportive Housing streamlining (AB 2162) and Low Barrier Navigation Center streamlining (AB 101).
AB 345	Quirk-Silva	X	X	X						Likely	ADUs: separate conveyance	Facilitates ADUs by removing requirement for a local agency to first pass an ordinance allowing the conveyance of an ADU separately from a primary residence before such conveyance occurs and permits an ADU to be sold or conveyed separately from the primary residence to a qualified buyer (low and moderate income households as defined in Health and Safety Code Section 50093) in limited circumstances. Helps qualified non-profits sell ADUs to low and moderate income households in two ways: 1) requires local governments to allow such sales and 2) increases the clarity and efficacy of legal agreements between the homeowners.
AB 491	Ward				X	X			X	Likely	Same housing access: affordable and market rate units	Requires that a mixed-income residential building provide the same access to common entrances, areas and amenities for affordable units as market rate units, and affordable housing units should not be isolated within that building to a specific floor or an area on a specific floor in any residential building with five or more residential dwelling units.
AB 571	Mayes			X	X					Likely	Planning and zoning, limits fees on affordable housing per Density Bonus Law	Prohibits a local government from charging affordable housing impact fees, including inclusionary zoning fees, public benefit fees, and in-lieu fees on deed-restricted affordable units that are part of a project eligible for a density bonus under Density Bonus Law.
AB 602	Grayson			X					X	Likely	Development Impact Fee nexus study standards and procedures	Imposes additional standards and procedures for agencies adopting impact fees. Requires agencies to identify an existing and proposed level of service for public facilities and information supporting the agency's actions in increasing fees and requires agencies to impose fees on a housing development proportionately to the square footage of the development or make findings to use a different methodology that ensures smaller developments are not charged disproportionate fees.
AB 634	Carrillo			X	X					Likely	Density Bonus Law: affordability restriction	Allows a local government to require an affordability period longer than 55 years for units that qualify a developer for a density bonus.

Attachment: Summary Matrix of Housing Legislation and Applicability to Brentwood (2674 : Informational

Exhibit 2

Summary Matrix of Housing Legislation and Applicability to Brentwood – Assembly Bills Effective 1/1/22

Bill Information and Applicability to Brentwood										Applies to City?	Bill Title or Summary Description	Overview of Key Bill Provisions
Bill #	Sponsor	Streamlining	Production	Affordable Housing	Fair Housing	Planning & Hsg Data	Accountability					
AB 721	Bloom			X	X	X				Likely	Covenants and restrictions: limitations for affordable housing	Generally makes recorded covenants that limit residential development unenforceable against qualifying affordable housing developments and ensures that restrictive covenants do not curtail the type and density of development otherwise permitted by local zoning on a property.
AB 787	Gabriel				X			X		Likely	Planning and Housing Element: moderate-income conversions counted toward	Expands existing law that permits jurisdictions to claim credit for up to 25 percent of their RHNA from the conversion of existing housing units to include moderate income households, provided certain criteria are met.
AB 803	Horvath			X				X		Likely	Home Revitalization Act, Housing Density	Removes the ability for local agencies to require setback requirements between units beyond that required by the State Building Code, establish a minimum home size, or require enclosed or covered parking beyond that allowed by Density Bonus Law.
AB 838	Friedman								X	Likely	State Housing Law: enforcement response to complaints	Seeks to ensure that tenants can receive timely inspections of their rental unit and explicitly prohibits a local government from placing unreasonable conditions on the inspection of rental housing. Also seeks to ensure other parties are given notice of violations and provides that, if a tenant submits a complaint to a city or county, the local government is required to cite any violations and provide free copies of inspection reports to the individual who submitted a complaint and others who may be impacted. Requires a local government to act as quickly as they would when conducting a final building inspection. Prohibits a local government from refusing to communicate with a tenant in order to avoid complying with the inspection requirements.
AB 1029	Mullin			X	X			X		Likely	Housing Element: pro-housing local policies, preservation	Requires HCD to consider making preservation of affordable housing into a pro-housing policy for purposes of their regulations, which may lead to the revisions in their approach to the pro-housing designation, as the current scoring system does not give credit for the preservation of affordable housing or other measures that keep housing affordable. Requires HCD to establish a pro-housing designation for local jurisdictions and defines "pro-housing local policies" to mean policies that facilitate the planning, approval, or construction of housing. Requires that jurisdictions designated pro-housing and have an adopted housing element in substantial compliance according to HCD must be awarded additional points or preference in the scoring of program applications.
AB 1043	Bryan				X					Likely	Housing programs: rental housing developments, affordability levels	Adds a new subset of lower income households called "acutely low income" households, who earn 15 percent of AMI and whose rents can be no greater than 30 percent of the 15 percent AMI level.
AB 1174	Grayson	X	X						X	Likely	Reforms to SB 35's Streamlined Ministerial Process for Post-Approval Changes and Permits	Specifies that the "shot clock" for a development or modifications is paused when a project is sued, and clarifies that subsequent permit applications must only meet the objective standards that were in place when the project was initially approved.
AB 1304	Santiago					X			X	Likely	Affirmatively further fair housing (AFFH), Housing Element, Inventory of land	Ensures that local governments must affirmatively further fair housing (AFFH) in their jurisdictions. Clarifies enforcement language and makes clear that local governments must analyze racial segregation patterns within their own jurisdiction as well as within the broader region, in addition to historical factors and current policies that contribute to fair housing issues. Strengthens the existing requirement that the housing element sites inventory affirmatively further fair housing by requiring the local government to state how the inventory in fact does this.

Exhibit 2

Summary Matrix of Housing Legislation and Applicability to Brentwood – Assembly Bills Effective 1/1/22

Bill Information and Applicability to Brentwood										Bill Title or Summary Description	Overview of Key Bill Provisions
Bill #	Sponsor	Streamlining	Production	Affordable Housing	Fair Housing	Planning & Hsg Data	Accountability	Applies to City?			
AB 1398	Bloom			X			X	X	Likely	Accelerating By-Right Rezoning Requirements for Non-Compliant Housing Elements	Imposes new zoning and site analysis requirements to encourage housing production and to affirmatively further fair housing. Reduces the allowable time period to one year (from 3.33 years) to complete rezoning of sites to accommodate a jurisdiction's regional housing need. If the jurisdiction does not adopt a housing element that HCD has found to be in substantial compliance within 120 days of its due date and prohibits the housing element from being found in substantial compliance until that rezoning is completed.
AB 1466	McCarty					X		X	Likely	Real property, removal of unenforceable discriminatory restrictions	Requires a title insurance company involved in any transfer of real property and that provides a deed or other documents to identify whether any of the documents contain unlawfully restrictive covenants and, if found, record a specified modification document with the county recorder. Makes changes to the existing process of recording a restrictive covenant modification, as provided.
AB 1584	OmniBus			X				X	Likely	Housing Omnibus, limitations on covenants for ADU Zoning	Restricts contractual development controls that mirror AB 721 by declaring unenforceable any covenant, condition and restriction (CC&R) contained within a deed, contract, security instrument or other instrument that prohibits, effectively prohibits or restricts the construction or use of an ADU on a lot zoned for single-family use.
AB 447	Grayson			X	X				Indirect	Tax credit (LIHTC) expansion for at-risk properties	Revises and updates the list of eligible government assistance programs that count towards the "at risk" designation under the state LIHTC program. Allows the CTCAC to allocate tax credits to a wider range of affordable housing developments that are at risk of losing their affordability requirements and converting to market rate housing.
AB 948	Holden					X			Indirect	Bureau of Real Estate: Appraisers, disclosures, demographic information	Contains requirements for disclosures in transactions, required pre-licensing and continuing education, and the addition of clear language in the Fair Employment and Housing Act that discrimination based upon protected classes in the provision of appraisal services is unlawful.
AB 1095	Cooley			X	X				Indirect	Equity in state and local programs for affordable homeownership	Creates parity between affordable homeownership and rental projects in state funding programs. Clarifies that projects eligible for AHSC funding include owner-occupied housing, in addition to rental housing. Requires the Strategic Growth Council (SGC) to adopt guidelines or selection criteria that include both affordable rental and owner-occupied units and allows SGC to include guidelines or criteria for the award of funds to projects that provide home ownership opportunities for low-income individuals in notices of funding availability released after July 1, 2022.
AB 1297	Holden			X					Indirect	State Infrastructure and Economic Development Bank: public and economic development facilities, housing	Expands the IBank's financing authority to include financing projects with a housing component when it is required for the operation of an economic or public development facility, and no part of the housing component is financed with tax-exempt bonds. The housing component could include but is not limited to rental housing, employee housing and student housing.

Attachment: Summary Matrix of Housing Legislation and Applicability to Brentwood (2674 : Informational

Summary of 2021 Legislative Session Housing Bills

Below is a summary of significant housing legislation that was passed in the 2021 legislative session and subsequently signed into law by Governor Gavin Newsom.

GENERAL PLAN AND HOUSING ELEMENT

Housing Element Timing. **AB 215** makes important changes to Housing Element deadlines. Specifically, AB 215 provides that the first draft of a housing element must be made available for public review and comment for at least 30 days. If any public comments are received, the local government must take at least 10 *business* days after the 30-day public comment period to consider and incorporate the comments. This must be done before submitting the draft housing element to HCD for review, otherwise HCD will not review the draft. Subsequent drafts must be posted electronically and those interested must be provided notice at least 7 days before submitting to HCD. Additionally, AB 215 extends the time that HCD has to review the first draft of the housing element to 90 days and reiterates that it has 60 days to review any subsequent drafts.

AB 215 also provides HCD with authority to contract with an independent attorney to sue jurisdictions over housing law violations where the Attorney General has declined to bring suit or represent HCD. Lastly, it extends the statute of limitations to three years for actions brought by the Attorney General or HCD or pursuant to a notice of violation issued by HCD regarding housing laws.

Affirmatively Furthering Fair Housing. The AFFH legislation primarily codifies requirements already imposed by HCD's AFFH Guidelines. **AB 1304** requires local governments to administer their programs and activities relating to housing in a manner to affirmatively further fair housing. Similarly, **AB 1398** provides that the site inventory and analysis contained in housing elements must include discussion of the relationship

between the identified site and the jurisdiction's duty to affirmatively further fair housing. AB 1398 also requires that any AFFH analysis identify and examine patterns, trends, areas, disparities, and needs both within the jurisdiction and regionally. Any assessments should include local and regional historical origins and current policies and practices for identified fair housing issues.

Rezoning. In addition to the AFFH changes, **AB 1398** imposes new rezoning requirements on jurisdictions. If a jurisdiction does not adopt a housing element that HCD has found in substantial compliance within 120 days of the housing element due date, the agency now has one year from the housing element due date to complete rezoning of sites. Previously, the agency had three years and 120 days regardless of the date the element was found in compliance. If the housing element requires rezoning and it is not completed within one year of the housing element due date, HCD may revoke any findings of compliance it has previously made. Prior to revoking its findings, HCD must issue inconsistency findings and give the local agency an opportunity to respond. Finally, if a housing element is adopted more than one year after the due date, it cannot be found to be in compliance until the agency has completed any required rezoning.

AB 1398 also eliminates 4-year housing element cycles for local governments that fail to adopt a housing element within 120 days of the due date. Starting with the 6th cycle, adoption of a housing element that HCD finds to be in substantial compliance with state law will be deemed to satisfy the 4-year housing element requirement.

Annual Progress Reports. **SB 290** requires jurisdictions to include in their annual reports the number of units in a student housing development for lower-income students for which a developer was granted a density bonus. **SB 9** requires

jurisdictions to report the number of units constructed pursuant to its provisions as well as the number of applications for parcel maps for urban lot splits.

SB 787 provides that a local agency may include in the annual report the number of units in an existing multifamily building that were deed-restricted rental for moderate-income households by imposition of affordability covenants/restrictions for up to 25 percent of moderate-income RHNA. The jurisdiction must clearly indicate that these are not newly constructed units and must meet specific requirements to be able to count these units in the annual report. While implementation of this new provision begins January 1, 2023, the agency may report any conversion that occurred after January 1, 2022. SB 787 does *not* provide that jurisdictions may use these units in their housing elements to satisfy their RHNA.

HOUSING DEVELOPMENT APPROVALS

SB 330 Update. SB 8 extends the key provisions of the Housing Crisis Act of 2019 until January 1, 2030. If a qualifying preliminary application for a housing development is submitted prior to January 1, 2030, the rights to complete the project can vest until January 1, 2034. SB 8 extends the protections provided by a preliminary application to three and a half years from "final approval" if the project is an "affordable housing project" as statutorily defined.

Perhaps most significantly, SB 8 modifies the definition of "housing development project" to include (1) projects that involve no discretionary approvals, and (2) projects to build a single dwelling unit. While this definition does not impact the scope of "housing development project" under the Housing

Accountability Act, it does impact the Permit Streamlining Act (PSA) and the Housing Crisis Act. As a result, the 30-day deadline in the PSA to notify applicants if their project is complete will apply to SB 35 projects, ADUs, SB 9 projects, and single-family homes.

Other clarifications made by SB 8 include:

- Expanding the definition of "hearing" to include "any appeal" conducted by the jurisdiction with respect to the housing development project
- Providing that receipt of a density bonus, including any incentives, concessions, or waivers, does not constitute a valid basis on which to find a proposed housing development inconsistent, noncompliant, or nonconforming with an applicable plan, program, policy, ordinance, standard, requirement or similar provision

SB 8 also amends the replacement housing and relocation requirements in the Housing Crisis Act of 2019. Existing law requires one-for-one replacement of statutorily defined "protected units" that are demolished. Moreover, existing law provides that all residents of protected units, regardless of income, are entitled to state relocation benefits and a right of first refusal to a comparable unit. SB 8 changes these requirements by:

- Extending the requirement to replace "protected units" to a project that proposes to demolish a single-family home. If a "protected" single-family home is being replaced in a development that consists of two or more units, "comparable units" means:
 - A unit that contains the same number of bedrooms, if the single-family home had three or fewer bedrooms; or

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- A unit that contains three bedrooms, if the single-family home had four or more bedrooms.
- Clarifying that existing occupants that are displaced for the housing development project can return to their units at their prior rental rate if the demolition does not proceed and the property is returned to the rental market.
- Limiting relocation benefits, including rental assistance payments and right of first refusal, to lower-income households.
- Providing that the existing occupants' right of first refusal to a comparable unit in the new housing development does not apply to:
 - A development project that consists of a single residential unit located on a site where a single protected unit is being demolished;
 - Units in a housing development in which 100 percent of the units, except the manager's unit(s), are reserved for lower-income households;
 - Occupants of a short-term rental that is rented for fewer than 30 days;
 - Any unlawful occupant of a protected unit.

Floor Area Ratio. SB 478 sets minimum floor area ratios (FAR) in multifamily residential zones and mixed-use zones. For projects with 3-7 units, there is a minimum FAR of 1.0; the minimum FAR is 1.25 for projects with 8-10 units. A local agency cannot impose a lot coverage requirement that would physically preclude a housing development from achieving these FARs. However, it may impose other zoning design standards. A local agency also cannot deny a housing development project located on an existing legal parcel, and

meeting specified requirements, solely because the lot area of the proposed lot does not meet requirements for minimum size.

Two-Unit Developments & Urban Lot Splits. For a comprehensive overview of SB 9, see our Law Alert [HERE](#).

Upzoning. For a comprehensive overview of SB 10, see our Law Alert [HERE](#).

DENSITY BONUS

Changes to Density Bonus Law. SB 290 makes several small changes to state density bonus law. First, it redefines "total units" to (1) include inclusionary housing units, and (2) exclude the units added by state or local density bonus in calculating the density bonus and incentives/concessions. Additionally, SB 290 removes "specific adverse impact on the *physical environment*" as a basis for denying a concession, incentive, waiver, or deduction of development standard; denials may only be based on health or safety impacts.

Next, SB 290 requires a jurisdiction to grant one incentive/concession for student housing with a 20 percent set-aside for low-income students. The jurisdiction's housing element annual report must include the number of housing units for lower-income students for which the student housing development was granted a density bonus.

SB 290 also eliminates the requirement that moderate-income units be in a "common interest" development to qualify for a density bonus, instead providing for a density bonus so long as 10 percent of the total units in any for-sale housing development are sold to moderate-income families. Lastly,

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SB 290 extends the parking ratio exception to cover development with at least 40 percent moderate-income units and located within one-half mile of a major transit stop. Where the housing development project meets these requirements, jurisdictions cannot impose a parking requirement that exceeds 0.5 spaces per bedroom.

Purchase of Density Bonus Units. SB 728 broadens the requirements for a for-sale unit that qualifies an applicant for a density bonus. Whereas previously the applicant and the city or county had to ensure that the initial occupant of the for-sale affordable unit was a person or family of very low, low, or moderate income, now the for-sale unit may be purchased by a "qualified nonprofit housing corporation." The nonprofit must have 501(c)(3) tax exempt status and a state welfare exemption and must sell to low-income families pursuant to a no-interest loan program. To satisfy the requirements in density bonus law, it must be purchased under a recorded contract that includes:

- A repurchase option that requires a subsequent purchaser of the property that desires to sell or convey the property to first offer the qualified nonprofit corporation a right to repurchase;
- An equity sharing agreement, as statutorily defined; and
- Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for lower-income housing for at least 45 years.

Local Affordability Restrictions. AB 634 clarifies that state density bonus law does not prohibit a jurisdiction from requiring an affordability period that is longer than 55 years for any units that qualify a housing development project for a

density bonus, if required to meet the terms of a local inclusionary ordinance, so long as the project is not financed with low-income housing tax credits.

IMPACT FEES

Development Fee: Impact Fee Nexus Study. AB 602 outlines the following new requirements for local impact fee nexus studies:

1. The study must be adopted prior to adoption of the associated development fee;
2. The study must identify the existing and proposed level of service for each public facility and explain why the proposed service level is necessary;
3. The study must include supporting information as required by the Mitigation Fee Act;
4. If the study supports a fee increase, it must also support the original fee;
5. The study must employ one of the following calculation methods after July 1, 2022:
 - a. **The fee is levied proportionately to the square footage of the proposed units.** This method is automatically deemed a valid method by which to establish a reasonable relationship between the fee charged and the burden imposed by the development;
 - b. **The fee is levied on some alternative basis of calculation,** if the local agency makes the following specified findings: (1) an explanation of why square footage is not an appropriate metric; (2) an explanation that the alternative basis bears a reasonable relationship between the fee charged and the burden imposed by the development;

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and (3) other policies in the fee structure ensure that smaller developments are not charged disproportionate fees.

6. If the jurisdiction is a "large jurisdiction," meaning a county with a population of at least 250,000 people or any city within such a county, the city or county must adopt a capital improvement plan;
7. The study must be adopted at a public hearing with at least 20-days' notice, and the local agency must notify any member of the public who requested notice of the date of the hearing; and
8. The study must be updated at least every eight (8) years, beginning January 1, 2022.

Any member of the public, including an applicant for a housing development project, may submit evidence that the city, county, or local agency has failed to comply with the requirements of the Mitigation Fee Act. Upon receipt of such information, the jurisdiction must consider the timely submitted evidence and authorize the legislative body to adjust the proposal if deemed necessary in light of evidence considered.

Additionally, a city, county, or special district must (1) request the developer to provide total amount of fees and exactions associated with a project upon the issuance of a certificate of occupancy or the final inspection, whichever occurs last, and (2) if the developer provides this information, post this information on its website. The information posted on the jurisdiction's website must be updated at least twice a year, but the jurisdiction may include a disclaimer that it is not responsible for the accuracy of the information received and posted. Developers are not required to provide the information.

AB 602 is not intended to prevent a local agency from establishing and adopting different fees for different types of developments. Additionally, these new study requirements do not apply to any fees or charges for water and sewer services and facilities.

Lastly, AB 602 directs HCD to create a template, by January 1, 2023, that may be used by local jurisdictions to design their impact fee nexus studies. The template must include a method for calculating the feasibility of housing being built within a given fee level.

Impact Fees & Affordable Housing. AB 571 prohibits the imposition of affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, on a housing development's affordable units.

OTHER SIGNIFICANT HOUSING LEGISLATION

Mixed-Income Structures. AB 491 addresses fair housing issues in mixed-income structures. Specifically, AB 491 provides that in a mixed-income multifamily structure, the residents of the affordable housing units must have the same access as the residents of the market-rate units to (1) the common entrances of the structure, and (2) the common areas and amenities of the structure. Perhaps more significantly, AB 491 also states that the affordable housing units in a multifamily structure cannot be isolated on a specific floor or area of a floor; rather, they must be integrated throughout the structure.

For the purposes of this legislation, a "mixed-income multifamily structure" means any residential structure with five or more dwelling units that includes both affordable housing units and market-rate housing units. "Affordable housing unit"

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is defined to include both low- and moderate-income units. Nothing in AB 491 prohibits the development of a separate structure with all affordable housing units.

Restrictive Covenants. During this session, the Legislature addressed restrictive covenants as barriers to the development of housing. First, **AB 721** allows the owner of a statutorily defined affordable housing development to record a restrictive covenant modification to make inoperable a recorded covenant, condition, or restriction that restricts the number, size, or location of the residences that may be built on a property, or that restricts the number of people or families who may reside on the property. To qualify, the owner of the affordable housing development must submit the modification document, along with supporting documentation, to the county recorder. The county recorder must forward the documentation to the county counsel who must make a determination whether, among other things, the original restrictive covenant contains an unlawful restriction in violation of AB 721 and the property qualifies as an affordable housing development. The intended impact of AB 721 is to ensure that restrictive covenants do not curtail the type and density of development otherwise permitted on a site by the local zoning.

Similarly, **AB 1584** makes void and unenforceable any covenant, restriction, or condition that "effectively prohibits or unreasonably restricts" construction or use of qualifying accessory dwelling units or junior accessory dwelling units on single-family residential lots. For the purposes of the law, reasonable restrictions are those that do not unreasonably increase construction costs, effectively prohibit construction, or extinguish the ability to otherwise construct. Unlike AB 721, AB 1584's provisions automatically void the effect of any

CC&Rs that conflict with its provisions; the owner of the property need not take any additional action.

While similar provisions were passed in 2019 and 2020 that amended Civil Code §§ 4740, 4741 & 4751 to prohibit these types of CC&Rs from being imposed by homeowners' associations and common interest developments, AB 1584 amends Civil Code § 714.3 to void any of these CC&Rs, regardless of their origin. AB 1584 serves to reinforce previously adopted legislation.

Conveyance of ADUs. Previously, the law permitted jurisdictions to choose to allow separate conveyance of certain accessory dwelling units (ADUs) by adoption of a local ordinance. **SB 345** requires local agencies to allow for separate conveyance or sale of these ADUs.

To separately convey an ADU, it must meet the following requirements:

- The ADU was built or developed by a statutorily defined qualified nonprofit corporation;
- The ADU is being sold to a statutorily defined qualified buyer;
- There is a recorded restriction on the use of the land between the buyer and the nonprofit;
- The property is held pursuant to a tenancy in common agreement that, among other requirements, provides for affordability restrictions on the future sale or conveyance of both the ADU and the primary dwelling on the property;
- The recording of a grant deed with the county naming the grantor and grantee, and describing the property interests being transferred; and

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- If requested by a utility providing service to the primary dwelling unit, separate water, sewer, or electrical connection to that utility for the ADU.

AB 345 also requires that any tenancy in common agreement, as outlined above, that is recorded after December 31, 2021, include the following:

- Delineation of all areas of the property that are for the exclusive use of a cotenant;
- Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property; and
- Procedures for the resolution of disputes among the cotenants before legal action.

To the extent that jurisdictions have adopted local policies regarding the separate conveyance or sale of these types of ADUs, AB 345 would override any conflicting provisions.

Starter Home Development. AB 803, or Starter Home Revitalization Act, seeks to make it easier to develop smaller, more affordable homes to increase homeownership. AB 803 eliminates minimum lot sizes to encourage zero lot line detached homes and requires approval of projects that propose these types of homes and meet certain other criteria.

The proposed development must, among other requirements, meet the following requirements:

- The site to be developed must be in a multifamily residential zone, substantially surrounded by qualified urban uses, and at least five acres in size;

- The project must propose to develop single-family homes on fee simple ownership lots;
- The project must comply with existing density, height requirements and setbacks in relation to other sites;
- The proposed development must be within the boundaries of a jurisdiction that has adopted a compliant housing element.

A local agency need not ministerially approve projects that meet all the criteria in AB 803, but it must approve the application so long as the development complies with non-conflicting local standards and would not have a specific, adverse impact on public health and safety that cannot be satisfactorily mitigated. A local agency may impose conditions not in conflict with the law, except that it:

- May not impose setback requirements between buildings, except as required by the state Building Code;
- May not impose a minimum lot size;
- May not require covered or enclosed parking; and
- May not require the formation of a homeowner's association.

The utility of AB 803 is likely to be limited given its narrow application and strict criteria.

Enforcement Response to Complaints. With the goal of ensuring safe and habitable housing for tenants, AB 838 imposes on cities and counties new rules for the enforcement of complaints of substandard building conditions or lead hazard violations. First, AB 838 requires that local agencies inspect the property in question as promptly after receipt of a complaint as they would a request for final inspection.

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Moreover, agencies cannot impose unreasonable conditions, such as that the tenant be current on rent or in compliance with their rental agreement, on responding to substandard building complaints.

Upon inspection, the agency must document any violations and substandard conditions. Thereafter, the agency must inform the owner of the property of any violations and required corrective actions and schedule a time for reinspection to ensure compliance with the corrective actions. Finally, the city or county may not collect a fee from the property owner for the inspection or the report and must provide free, certified copies of inspection reports and citations to any who requests such copies.

A local agency is not required to conduct an inspection where (1) the complaint does not allege one or more substandard conditions, or (2) a previous complaint, submitted by a tenant, resident, or occupant about the same property, was determined to be frivolous or unfounded by an inspector in the last 180 days.

Intergenerational Housing. SB 591 seeks to facilitate the establishment of intergenerational housing to benefit senior citizens who need special living environments and services. The new law provides that an intergenerational housing development may be established to provide housing units for senior citizens, caregivers, or transition age youth if, among others, the following requirements are met:

- At least 80 percent of the occupied units are occupied by at least one senior citizen, which is defined as a person 55 years of age or older;
- Up to 20 percent of the occupied units are occupied by at least one statutorily defined caregiver or

transition age youth, defined as a person who is 18 to 24 years of age and is either a current or former foster youth or a current or former homeless youth;

- The development is affordable to statutorily defined lower-income households; and
- The CC&Rs or written policy for the development set forth the limitations on occupancy, residency, or use.

SB 591 is particularly important because it allows developers that have certain funds or tax credits designated for affordable rental housing to expand occupancy to include not only senior citizens, but also caregivers and transitional youth.

Surplus Land Unit. SB 791 creates the California Surplus Land Unit within the Department of Housing and Community Development. The purpose of the Unit is to facilitate development and construction of residential housing on local surplus land, which is defined as land declared surplus by a local agency, pursuant to Gov. Code §§ 54220, *et seq.*, or by a school district, pursuant to Educ. Code §§ 17455, *et seq.* The Unit may engage in the following activities in the furtherance of its purpose:

- Facilitate agreements between housing developers and local agencies seeking to dispose of surplus land;
- Provide advice or technical assistance and services to local agencies with surplus land or developers seeking to develop housing on the surplus land;
- Collaborate with other relevant state agencies, such as the California Housing Finance Agency or the California Tax Credit Allocation Committee, to assist housing developers and local agencies with obtaining grants, loans, tax credits, and other types of financing;
- Collect and compile data on housing production on local surplus land.

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February 17, 2022

Attachment: Summary Matrix of Housing Legislation and Applicability to Brentwood (2674 : Informational Summary and Overview on New

For more information about this new housing legislation summary or any specific bills, please contact Barbara Kautz (bkautz@goldfarblipman.com), Nazanin Salehi (nsalehi@goldfarblipman.com), or any other attorney at Goldfarb Lipman LLP.

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