



Technical Assistance
for Local Planning

HOUSING



2022 New Housing Legislation Overview

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Topic Areas

- Types of Housing Processes
- General Plan, Reporting and Entitlement Processing
- Building Permitting and Other Postentitlement Permits

Presentation Key

ACTION ITEM
Green Background

IMPACTS YOUR JOB
Yellow Background

GOOD TO KNOW
Blue Background

Types of Housing Processes

Residential Development in Commercial Zones

- AB 2011 and SB 6 provide different paths for residential development in “zones where commercial, retail, or parking are principally permitted uses”
- Effective Date: July 1, 2023

Action Item: Begin considering parcels for exemption under SB 6 and reallocating or accommodating lost density on other parcels

See resources slide for additional information

Accessory Dwelling Units

- Requires increased height limits (**SB 897**)
 - Between 16 to 25 feet depending on location of ADU
- Cannot limit attached or detached ADU to less than 800 sq ft due to front yard setback requirements (**AB 2221**)
- May reinstate owner-occupancy requirements for properties with ADUs beginning January 1, 2025 (**AB 2221**)

Action Item: Update ADU ordinance as required to conform with changes in AB 2221 and SB 897

ADUs - Limitations on Code Requirements (SB 897)

- Cannot deny permit to legalize unpermitted ADU constructed before January 1, 2018 due to building standard violation or violation of state or local ADU law **unless** to protect health & safety
- Construction of ADU does not constitute Group R occupancy change under building code
- Construction of ADU does not require fire sprinkler installation in existing primary dwellings
- Correction of housing code violation in primary dwelling cannot be required as condition of ADU construction except to protect health & safety

ADUs - Permitting (AB 2221)

- Application submitted must be approved or denied within 60 days
- “Permitting agency” includes utilities and special districts
- No separate zoning clearance or zoning review
- If denied, must provide written comments itemizing reasons for denial and how to remedy

Action Item: Coordinate ADU permit processing with utilities and special districts

Impacts Your Job: Cannot require applicant to provide written notice or post placard for demolition of garage unless architecturally and historically significant district (**SB 897**)

Permitting (AB 916)

- Prohibits requiring a public hearing for a permit to reconfigure an existing dwelling unit to add up to two bedrooms
- No prohibition on public hearing for project that would increase the number of dwelling units within existing structure

Parking Requirements (AB 2097)

- Prohibits minimum parking requirements for projects within ½ mile of a major transit stop
 - **UNLESS** “substantially negative impact” findings on low or very low RHNA, housing needs of elderly or disabled, or residential/commercial parking within ½ mile
- Even if findings are made no parking requirements for housing development projects with a minimum of 20% affordable or fewer than 20 units

Action Item: Update code to eliminate minimum car parking requirements for projects within ½ mile of major transit stop

Action Item: Consider completing study demonstrating not meeting local parking standards would have substantially negative impact

Q & A



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General Plan, Reporting and Entitlement Processing

Density Bonus - Shared Housing Buildings (AB 682)

- Can use density bonus for these buildings
- Defined as “a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residents of more than 30 days by tenants”
 - If includes other types of units, cannot be more than 25% of floor area of the building
 - Includes 100 percent shared housing and can have ground floor commercial space

Density Bonus (AB 2234)

100% Affordable Projects

- Entitled to unlimited density if located in “very low vehicle traffic area” in “designated county”
 - “Very low vehicle traffic area” means vehicle miles/capita < 85% of either regional or city miles traveled/capita
 - All nine Bay Area counties are “designated counties”
- Rent for 80 percent of units must be consistent with **low income TCAC** rents

Other

- “Development standards” include “lot area per unit” and entitled to waiver
- Commercial density bonus program reinstated via AB 1551

Density Bonus - Maximum Allowable Residential Density (AB 2234)

- Defined as “maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan”
 - If “inconsistent,” “the greater shall prevail”
 - If no provision for du/acre standard for density (i.e. “form-based code”) then determined by development standards
 - May require developer to submit “base density study”

Density Bonus - Summary

Action Item: If using form-based code, ensure density bonus application requires base density study

Action Item: If using lot area per unit as density standard, consider changing to units per acre

Action Item: Generally, review density bonus ordinance to determine if changes are needed

Impacts Your Job: Prepare for applications under new rules, including “shared housing buildings”

Good to Know: Cannot impose maximum density on 100-percent affordable projects located in “very low vehicle travel area” in your jurisdiction

SB 35 Clean-Up (AB 2668)

- Clarifies SB 35 projects not subject to CUP or any other nonlegislative discretionary approval
- Calculate required affordable units before density bonus
- Determination of inconsistency with objective standards \neq missing application materials if substantial evidence that project is consistent

Impacts Your Job: Must provide project proponent with written explanation of which objective standards project conflicts with and why

Good to Know: May authorize development on hazardous waste sites that you determine suitable for residential use

Housing Element - Emergency Shelters (AB 2339)

- Must be allowed in residential zone or nonresidential zone that allows residential uses
 - Cannot situate in industrial zones or other zones without residential uses
- If zone mixed-use site, must identify amenities and services for people experiencing homelessness

Action Item: Requirements apply if first Housing Element draft submitted to HCD after January 31, 2023, or draft submitted more than 90 days after January 1, 2023

Housing Element - No-Net-Loss (AB 2339)

Applies to sites shown in housing element that satisfy “carryover” obligations, where sites not zoned as promised in previous housing element cycle

Housing Element - Annual Progress Reports

- Must include:
 - Ministerial vs. discretionary (AB 1743)
 - Progress in meeting extremely low-income household needs (AB 2094)
 - Certain information about AB 2011 projects
 - Total number of new housing units (AB 2653)
 - Total number of demolished housing units (AB 2653)
 - Data from all density bonus projects (AB 2653)

Impacts Your Job: HCD may request corrections of APRs within 90 day after receipt; jurisdiction has 30 days to correct (AB 2653)

Good to Know: HCD and Attorney General have enforcement authority for failure to comply with APR requirements (AB 2653)

Open Space Element (AB 1425)

- Must address:
 - Access to open space for all residents
 - Includes social, economic and racial equity correlated with environmental justice element or environmental justice policies in general plan
 - Climate resilience and other co-benefits of open space, correlated with safety element
 - Rewilding opportunities, correlated with land use element

Action Item: Must review and update open space element by January 1, 2026

Q & A



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Building Permitting & Miscellaneous

Postentitlement Phase Permits (AB 2234)

- Must determine if application is complete within 15 business days of receipt and provide written notice
 - Includes building, demolition and minor or standard offsite improvements permits; and permits for minor or standard excavation or grading
 - Does not include permits required by Coastal Commission, special districts, utility not owner and operated by local agency or other entity
- If no notice provided within 15 business days, application deemed complete
- If incomplete notice provided, must include list of incomplete items and how to make them complete

Action Item: “Minor” and “standard” offsite improvements should be defined by local ordinance

Postentitlement Phase Permits - Review (AB 2234)

- Review complete application in:
 - 30 business days - \leq 25 units projects
 - 60 business days - $>$ 25 units projects
- Within timeframe must either:
 - Return with full written set of comments with request for revisions; OR
 - Approve the application
- Allowed additional review time if written findings based on substantial evidence that specific adverse impact on objective, identified, written public health and safety standards
- Appeals may be filed if incomplete, noncompliant or denial decision
 - Must respond within 60 business days for projects with \leq 25 units OR 90 days for projects with $>$ 25 units

Postentitlement Phase Permits - Website Requirements (AB 2234)

- Post on site:
 - List of all application information
 - Example of complete, approved app
 - Example of complete sets of permits for at least five types of projects
- Create website with application, completion and retrieval of permits capability

Action Item: Compile by January 1, 2023; post by January 1, 2024

Action Item: If in county with < 1.1 million population or any community with population \leq 75,000, by January 1, 2024; other communities by January 1, 2028

Architectural Plans - Requirements (SB 1214)

- Cannot post drawings with copyrighted information in manner that facilitates copying
- Permitted to make available for internal office review, distribute copies to members of legislative body or planning agency, and display on internet and in person only during public hearing

Impacts Your Job: Make physical copy of architectural drawings available for public review on premises of planning agency

Impacts Your Job: Ensure custodian of architectural drawings is aware NOT to post online or allow copying at in-person viewings

Fair Housing (SB 649)

Affordable multifamily housing developments with “local tenant preferences” are “available for general public use” for LITHC purposes

Impacts Your Job: May adopt “local tenant preference” subject to both state and federal fair housing laws

Impacts Your Job: Must post local tenant preference ordinance on website within 90 days after effective date

Impacts Your Job: Must provide HCD with link to website page in APR

Educational Facility Housing

Impacts Your Job: Housing development project with the majority of units for lower and moderate-income households = an allowable use on any property owned by a local education agency subject to qualifying criteria **(AB 2295)**

Impacts Your Job: CEQA exemption for certain faculty and student housing projects undertaken by UC, CSU and CCC **(SB 886)**

Good to Know: Community College Districts may facilitate the acquisition, construction, rehabilitation and preservation of affordable rental housing for their employees and other local public employees **(AB 1719)**

Rent Control - Mobile and Floating Homes

Mobilehome (SB 940)

- “New construction” is newly constructed spaces “initially rented” after January 1, 1990
- “New mobilehome park construction” is all spaces in a newly constructed mobilehome park, permit issued on or after January 1, 2023
- Both exempt from local rent control ordinances for period of 15 years from date “initially rented”

Floating Home Marinas (AB 252)

- Applicable only in Alameda, Contra Costa and Marin
- Rent may only be increased once during any given 12-month period and is limited to the lesser of three percent (3%) plus change in the cost of living, or five percent (5%)
- Applicable to all rent increases occurring on or after January 1, 2022

Q & A



Resources

- Residential Development in Commercial Zones
 - ABAG AB 2011/SB 6 Chart
 - APA Webinar Recording
 - APA Webinar PowerPoint
 - Upcoming AB 2011/SB 6 Webinar - Jan/Feb 2023



For more information, contact the Regional Housing Technical Assistance Program, HousingTA@bayareametro.gov