

Matrix of SB 6 and AB 2011 – State Authorization of Multi-family Residential in Commercial Areas

	AB 2011: Affordable Housing Developments in Commercial Zones	AB 2011: “Middle Income Housing Development Along Commercial Corridors”	SB 6: Middle Class Housing Act of 2022
Operation			
<i>Operative Dates</i>	July 1, 2023 until repealed. (Stats. 2022, ch. 647, § 7.)		July 1, 2023–January 1, 2033 (§ 65852.24(m).)
<i>Preemptive language</i>	Makes eligible housing developments “a use by right” “subject to a streamlined, ministerial review.” Not a “project” under CEQA. (§§ 65912.101(q), 65912.111, 65912.121, 65912.101(q) [defining use by right].)		Deems qualifying “housing development projects” an allowable use.” Subject to CEQA. (§ 65852.24(f)(1)(B).)
Qualifications			
<i>Requirements for underlying local land use</i>	Site “is located in a zone where office, retail, or parking are a principally permitted use.” (§§ 65912.110, 65912.120.) A “principally permitted use” is “a use that may occupy more than one-third of the square footage of designated use on the site and does not require a conditional use permit.” (§ 65912.101(n).)		Parcel is “within a zone where office, retail, or parking are a principally permitted use.” (§ 65852.24(b).)
<i>Project type</i>	Must be a “multifamily housing development project.” (§§ 65912.113(a), 65912.123(a).) A multifamily housing development project is a project that includes five units and that is solely residential or mixed use with “at least two-thirds of the square footage designated for residential use.” (§ 65912.101(e) [defining “housing development project” by referencing definition in section 65589.5], 65912.101(l) [defining “multifamily”].)		Solely residential or mixed-use developments consisting of residential and commercial or office so long as 50% of the “square footage of the new construction associated with the project is designated for residential use.” No transient lodging. (§ 675852.24(k)(1).)
<i>Urbanized area</i>	City where portion is an “urbanized area” or “urban cluster” or, if unincorporated, the parcel is within “urbanized area” or “urban cluster.” (§§ 65912.111(b), 65912.121(b).)		Legal parcel in a city in which a portion is an “urban area” as designated by the Census Bureau or, if unincorporated, the parcel is wholly within an “urban area” (§ 65852.24(b)(6)(A).)
<i>Uses of adjacent parcels</i>	At least 75 percent of the perimeter of the site must adjoin parcels, including those separated only by a roadway, that are developed with urban uses. (§§ 65912.111(c), 65912.121(e).)		No more than one third of the square footage of the site or adjacent sites, including those separated only by a roadway, may be “dedicated to industrial use.” (§ 65852.24(b)(6)(B).)
<i>General site limitations</i>	Not in coastal zone, prime farmland or farmland of statewide importance, wetlands, within a very high fire hazard severity zone, a hazardous waste site, a delineated earthquake fault zone, special flood hazard area, regulatory flood way, a habitat conservation area, a habitat for protected species, under conservation easement, and no cultural resources. (§§ 65912.110(e), 65912.120(g), 65913.4(b)(6)(B)–(K).)		None

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<i>Specific plans</i>	If within a specific plan (or similar), multifamily housing <i>is permitted</i> on the site. ¹ (§ 65912.112(g), 65912.122(g).)		Not applicable
<i>Maximum site size</i>	None	The “site is not greater than 20 acres.” ² (§ 65912.121(d))	None
<i>Minimum commercial street frontage</i>	None	At least 50 feet of frontage along a public road with rights of way “of at least 70 feet but not greater than 150 feet.” (§§ 65912.101(a), 65912.121(c).)	None
<i>Other site restrictions</i>	None	Site cannot: 1. require demolition of deed-restricted affordable housing, rent-controlled housing, housing used as rentals in last 10 years, or a listed historic structure. 2. contain “one to four dwelling units” 3. be vacant and zoned for residential other than multifamily residential (§ 65912.121(h).)	None. (See § 65852.24(f)(2) [noting that demolition ordinances apply].)
Affordability Standards			
<i>Unit counts and incomes</i>	100% affordable to lower income. (55 years for rental and 45 for for-sale) (§ 65912.112.)	<i>Rental</i> projects: either (a) 8% very low and 5% extremely low or (b) 15% low income. (55 years.) (§ 65912.122(a).) <i>For-sale</i> projects: either (a) 30% moderate or (b) 15% lower (45 years.) (§ 65912.122(b).) Must meet the local requirements if higher. (§ 65912.122(c).)	Subject to local affordable housing/inclusionary laws. (§ 65852.24 (f)(1)(F).)

¹ This “exception” includes specific plans adopted (a) before 1/1/2022 and (b) after 1/1/2022 and before 1/1/2024 provided that a notice of preparation was issued prior to 1/1/2022.

² This size limit—importantly—is as to the “site” and not the *parcel*. So, a 20-acre AB 2011 “middle income” project could be proposed on a 20-acre portion of a larger parcel. (See § 65912.121(b) [requiring the “site” to be “on a legal parcel or parcels”]; compare with § 65912.111 [requiring the site to be a legal parcel or parcels].)

SB 2011 also contains some ambiguous language that appears to be designed to prevent a proponent from developing multiple 20-acre “sites” in succession under AB 2011. Section 65912.103 provides that:

For purposes of establishing the total number of units in a development under this chapter, a development project includes both of the following:

- (a) All projects developed on a site, regardless of when those developments occur.
- (b) All projects developed on sites adjacent to a site developed pursuant to this chapter if, after January 1, 2022, the adjacent site had been subdivided from the site developed pursuant to this chapter.

Although this provision by its terms only applies to “establishing the total number of units in a development,” we are not able to find any aspect of the bill that would require such a calculation.

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<i>Unit standards</i>	None	Affordable units must “have same bedroom and bathroom count ratio as the market rate units, be equitably distributed within the project, and have the same type or quality of appliances, fixtures, and finishes.” (§ 65912.122(d).)	None

Objective Development Standards

<i>Minimum Density</i>	Density must “meet or exceed” ³ density appropriate for “lower income” households in the jurisdiction under the Housing Element Law. ⁴ (§ 65912.113(b))	Density must “meet or exceed” ³ greater of: –locally allowed density –<1 acre: 30 units per acre in metropolitan jurisdictions and 20 in non-metropolitan. ⁵ –if >1 acre and <100 ft. of commercial corridor frontage: 40 units/acres in metro and 30 in non-metro –if >1 acre and >100 ft. of commercial corridor frontage: 60 units/acre in metro and 50 in non-metro –within 1/2 mile of “major transit stop”: 80 units/acre in metro and 70 in non-metro. (§ 65912.123(b)(1))	Density must “meet or exceed” density appropriate for “lower income” households in the jurisdiction under the Housing Element Law. ⁴ (§ 65852.24(b)(1))
<i>Maximum Density</i>	That allowed by the site’s zoning or the zone for “the closest parcel that allows residential use at a density” that meets the minimum density requirement. (§ 65912.113(f).)	That from the “closest zone ... that allows multifamily residential use” at the minimum density requirement. (§ 65912.123(j).) If there is no such zone, then there is no maximum density. ⁶	Subject to maximum density in the local zoning district that “allows” the minimum density. (§ 65852.24(b)(2)(A).)

³ Notably, this phrasing establishes a *minimum density*. Is there a maximum density limit? The only potential density limit we have identified is the requirement that the project comply with “objective zoning standards” from the “closest parcel” (§ 65912.113(f)) or “closest zone” (§ 65912.123(j)) that allows the minimum density.

⁴ Those standards are: (a) 30 units/acre for jurisdictions in metropolitan counties (Alameda, Contra Costa, El Dorado, Los Angeles, Orange, Placer, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and, Yolo); (b) 20 units/acre for “suburban jurisdictions” (jurisdictions other than cities of 100,000 or more in the counties of Butte, Fresno, Imperial, Kern, Kings, Madera, Marin, Merced, Monterey, Napa, San Joaquin, San

Luis Obispo, Santa Barbara, Santa Cruz Shasta, Solano, Sonoma, Stanislaus, Sutter, Tulare, Ventura, and Yuba); (c) 15 units/acre for incorporated areas in all other counties and the Del Norte, Humboldt, Lassen, Lake, Mendocino, Nevada, Tehama, and Tuolumne; and 10 units/acre for unincorporated areas of all other counties. (See § 65583.2(c).)

⁵ “Metropolitan jurisdictions” is not defined in AB 2011, but the Legislature’s intention is, we presume, to refer to a concept in the Housing Element Law, the “jurisdiction in a metropolitan county.” (See § 65583.2(c).)

⁶ To avoid the “no limit” loophole, agencies may wish to consider amending the applicable zoning district to create a maximum density or creating additional residential zones that are

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<i>Height limit</i>	None specified. Limits from applicable zone (see below) should be applicable. (§ 65912.113(f).)	Greater of: –locally allowed on the site –35 feet if <100 ft. of commercial corridor frontage –45 feet if >100 ft. of commercial corridor frontage –60 feet: if (a) within city of 100,000, (b) within 1/2 mile of “major transit stop,” and (c) not in coastal zone. (§ 65912.123(c).)	Subject to height limit in the local zoning district that “allows” the statutorily authorized density. (§ 65852.24(b)(2)(A).)
<i>Minimum setbacks</i>	None specified. Limits from applicable zone (see below) should be applicable. (§ 65912.113(f).)	– <i>Commercial corridor frontage</i> : No setbacks required but parking must be set back 25 feet. –“ <i>Side street</i> ” (public street of at least 25 and fewer than 70 feet): None specified. – <i>Adjoining property with commercial corridor frontage</i> : No setbacks required unless residential constructed prior to January 1, 2023. – <i>Other property lines</i> : –If residential, 10 feet on ground floor, and on each additional floor 7 feet multiplied by the floor number (14 foot 2nd floor set back) –If non-residential, 15 feet. Local agency may reduce. (§ 65912.123(d).)	Subject to setbacks in the local zoning district that “allows” the statutorily authorized density. (§ 65852.24(b)(2)(A).)

consistent with the minimum density requirements and establish maximum densities and other appropriate objective standards. The “closest zone” language in this section may or may not require such a zoning designation to actually be applied to some property within the jurisdiction. Some ambiguity is created by the fact that the corresponding section of the affordable housing chapter applies to the “zone for the *closest parcel* that allows” the density. (Compare §

65912.113(f)(1)(B) to 65912.123(j).) You should consult with counsel on this point to consider your options. Such ordinances can be adopted at any time, but a jurisdiction desiring to avoid the loophole would want to do so before the effective date of July 1, 2023 as the objective standards are those in effect at the time the application is submitted. (§ 65912.123(j)(2).)

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<i>Maximum setbacks</i>	None specified.	– <i>Commercial corridor frontage</i> : Ground floor must abut within 10 ft. for 80% of frontage. – <i>“Side street”</i> (public street of at least 25 and fewer than 70 ft): ground floor must abut within 10 ft for 60% of frontage. (§ 65912.123(d).)	Subject to setbacks in the local zoning district that “allows” the statutorily authorized density. (§ 65852.24(b)(2)(A).)
<i>Parking maximums</i>	None	“No parking shall be required.” (§ 65912.123(e).)	Subject to parking standards in the local zoning district that “allows” the statutorily authorized density. (§ 65852.24(b)(2)(A).)
<i>Relocation assistance to commercial tenants</i>	None	Required as specified from 6 to 18 months’ rent, depending on period tenant has operated on site. (§§ 65912.123(i), 65852.24(c).)	
<i>Hazardous substances</i>	Mitigate to level of insignificance. (§§ 65912.113(c), 65912.123(f))		None
<i>Applicability of other local standards</i>	Objective standards in effect on date of application submittal from the zone of the site if it allows multifamily housing or from the “zoning designation for the closest parcel” that allows the minimum density. (§ 65912.113(f).) But, cannot apply subjective standards. (§ 65912.114(a)(1).)	Objective standards in effect on date of application submittal from “closest zone” that allows the minimum density (see above) or the zone that “allows the greatest density.” (§ 65912.123(j).) But, cannot apply subjective standards. (§ 65912.124(a)(1).)	Subject to “local zoning, design and other ordinances, local code requirements” in a zone that “allows” the statutorily authorized density. (§ 65852.24(b)(2)(A).) If there is more than 1 such zone, the applicable zone is the one that is applied to the “closest parcel” that allows the density. (§ 65852.24(b)(2)(B).)

Labor Standards

<i>Prevailing Wage required?</i>		Yes	
<i>Apprentices</i>	Projects of more than 50 units are required to require contractors and subcontractors, other than signatories to a valid collective bargaining agreement, to participate in an apprenticeship program or dispatch apprentices. (§ 65912.131(b).)		Not required
<i>Use “skilled and trained workforce”?</i>	No		Yes. (§ 65852.24(b)(8)(B).) Exceptions for: (a) contractors subject to project labor agreements and (b) projects that receive fewer than two bids.

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<i>Health care expenditures</i>	Projects of more than 50 units must require contractors and subcontractors, other than signatories to a valid collective bargaining agreement, to make healthcare expenditures for each “construction craft” employee equivalent “to at least the hourly pro rata cost of a Covered California Platinum level plan for two 40-year-old adults and two dependents 0 to 14 years of age for the Covered California rating area in which the development is located.” (§ 65912.131(c).)		None
Procedures			
<i>Approval</i>	If an agency finds that a project meets the objective requirements, it must approve it. (§§ 65912.114(a)(1), 65912.124(a)(1).)		
<i>–Application processing, Deemed approval</i>	Standards are deemed satisfied if the agency fails to provide documentation of what the application conflicts with and why within 60 days for a project of fewer than 151 units and 90 days for larger projects. (§ 65912.114(a)(2).)		Projects are “subject to ... procedures ... applicable to the ... permitting” in applicable provisions of zoning ordinance. (§ 65852.24(b)(3).)
<i>Design review</i>	Objective design review must be completed within 90 days of submittal for fewer than 151 units and 180 days for larger projects. (§§ 65912.114(e), 65912.124(e).)		
<i>Approval life</i>	Generally 3 years, and permanent for 50% low-income affordable projects “beyond tax credits” (§§ 65912.114(j), 65912.124(j))		
<i>Ability to exempt individual parcels</i>	An agency, subject to various requirements, may exempt a parcels by making an ineligible site eligible such that there is “no net loss” of residential density. (§§ 65912.114(i), 65912.124(i), 65852.24(e).)		
Other laws			
<i>Density Bonus Law</i>	Projects are eligible for bonuses, incentives and concessions, waivers and reductions of development standards under the Density Bonus Law. (§§ 65912.114(f), 65912.124(f).)		Does not “alter or lessen the applicability of ... The Density Bonus Law.” (§ 65852.24(f)(1)) Applicants may apply for “a density bonus.” (§ 65852.24(f)(4).)
<i>Housing Accountability Act</i>	No statement		For purposes of HAA, projects meeting SB 6’s statutory requirements are “deemed consistent” with applicable standards. (§ 65852.24(f)(3).)
<i>Subdivision Map Act</i>	If an application is “consistent with all objective subdivision” standards, it is “exempt from” CEQA. (§§ 65912.114(h), 65912.124(h).)		No statement. Subdivisions can be pursued under the HAA. (See <i>Honchariw v. County of Stanislaus</i> (2011) 200 Cal. App. 4th 1066.)