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New By-Right Approval Process for Qualifying Housing Projects in Certain Commercial Zones

AB 2011, "the Affordable Housing and High Road Jobs Act of 2022," goes into effect July 1, 2023. The bill allows for ministerial, by-right approval of qualifying: (1) 100% affordable housing projects in commercial zones; and (2) mixed-income housing projects along commercial corridors. The new law also imposes prevailing wage requirements on these projects.

Provided a proposed project of either type meets the applicable criteria set out in the new law, then the project must be approved if it meets applicable objective zoning, subdivision, and design review standards. Accelerated processing timelines apply, and a project can be "deemed approved" if these timelines are not met. Qualifying projects are also eligible for a density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios.

AB 2011 also contains certain CEQA exemptions for both types of projects.

The new law prohibits local agencies from imposing increased fees or inclusionary housing requirements that apply to a project solely or partially on the basis that the project is eligible for review under the new law.

A short summary of some of the significant criteria for AB 2011 projects follows below. Projects should be reviewed in detail against the full statutory criteria as the criteria are extensive. As explained below, the new legislation also provides a way for agencies to exempt certain parcels from the new law, provided certain findings are met.

Summary of Criteria for 100% Affordable Housing Projects in Commercial Zones

100% affordable, multi-family housing projects may qualify for AB 2011 processing if they meet certain criteria, including but not limited to:

- Being located in a commercial zone where office, retail, or parking is a principally permitted use;

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- Meeting or exceeding the applicable density previously deemed appropriate to accommodate housing for lower income households (also known as “Mullins Density”);
- Being located on a site where 75% of the site perimeter adjoins parcels already developed with urban uses (urbanized);
- Not being located in certain farmland, ecologically sensitive, or disaster-prone areas, or on a hazardous waste site;
- Not being located on or adjoining any site with more than 1/3 of the square footage dedicated to industrial use;
- Not proposing housing units located within 500 feet of a freeway, or within 3,200 feet of an oil or natural gas refinery or extraction site; and
- Meeting applicable statutory requirements concerning consistency with local neighborhood plans.

The project must also record a 55 year deed restriction for rental units and a 45 year restriction for owner-occupied units.

Summary of Criteria for Mixed Income Housing Projects along Commercial Corridors

AB 2011 also creates a new ministerial, by-right application process for certain mixed income housing development projects along commercial corridors, which are defined as highways with a right of way of between 70 and 150 feet. Rental and owner-occupied units are subject to affordability requirements for a period of 55 and 45 years, respectively.

To qualify under this second category, a project must be a multifamily rental housing development that meets the same locational requirements of the 100% affordable projects in commercial zones and that meets additional requirements, including but not limited to:

- Certain minimum density, height, and setback requirements specified by AB 2011;
- A minimum 50 foot frontage on a commercial corridor;
- Specified affordability requirements, including local inclusionary standards;
- Affordable units with market rate features are equitably distributed within the project;
- Does not require the demolition of certain types of existing housing or historic structures;
- Not located on a vacant parcel that is zoned for housing but not for multifamily residential use;
- Meet applicable statutory requirements concerning consistency with local neighborhood plans; and

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- Provide notice and relocation assistance to certain existing commercial tenants.

Prevailing Wage Requirement

AB 2011 construction workers must be paid a prevailing wage, with additional requirements for development projects of 50 or more housing units. On these larger projects, developers must ensure the contractor provides certain health care benefits to construction workers and participates in or requests of apprentices from a state-approved apprenticeship program.

Exemptions

A local agency may exempt a parcel from AB 2011 if it makes written findings identifying one or more other parcels that 1) are eligible for AB 2011 processing that would not be otherwise, or 2) would already be eligible for AB 2011 processing, but will be permitted to be developed at a greater density than is required. The law also requires additional findings that the development of these alternative parcels will not result in a net loss to the total potential residential density in the jurisdiction or the total potential residential density of affordable housing, and will affirmatively further fair housing.

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