

UNDERSTANDING AB 2011 AND SB 6:

Keeping Up With New State Requirements for Allowing Residential in Commercial Zones

Overview

Assembly Bill (AB) 2011, the Affordable Housing and High Road Jobs Act of 2022, and Senate Bill (SB) 6, the Middle Class Housing Act of 2022, both allow housing in areas designated for office, retail, or parking, and are intended to expand the number of sites available for housing. AB 2011 and SB 6 offer different approaches to allowing residential in commercial zones. Key differences between AB 2011 and SB 6 include:

- AB 2011 establishes qualifying criteria based on affordability, while SB 6 does not require affordable housing to be provided.
- SB 6 establishes qualifying criteria based on use, and defines two eligible project types as: 1) 100% residential development; 2) mixed-use development. AB 2011 also allows mixed-use development for eligible projects.
- AB 2011 requires a streamlined ministerial approval process; SB 6 does not (unless SB 35 is invoked). As a result, AB 2011 also provides streamlining under the California Environmental Quality Act (CEQA).
- SB 6 requires stricter labor standards than AB 2011.

Table 1 provides a comparison of AB 2011 and SB 6, highlighting some of the similarities and differences specified in AB 2011 and SB 6 related to project eligibility and requirements, including the applicability of development standards specified, the California Environmental Quality Act (CEQA), the California Coastal Act (Coastal Act), labor requirements, and the required approval process. The provisions of both AB 2011 and SB 6 are applicable to local jurisdictions without an implementing ordinance, although if utilized, the ordinance is exempt from CEQA. **Both bills go into effect on July 1, 2023.**

Purpose

The purpose of this material is to provide guidance, which agencies and other entities may use at their discretion. This guidance does not alter lead agency discretion in decision-making, independent judgment and analysis, and preparing environmental documents for project or governmental action subject to CEQA requirements. This material is for general information only and should not be construed as legal advice or legal opinion.

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Table 1 - Comparison of AB 2011 and SB 6

	AB 2011	SB 6
Allowable Use	Permits residential development in commercial zone.	Permits residential development in commercial zone.
Affordable Housing Requirements	May be either: <ul style="list-style-type: none"> • 100% affordable; or • Mixed-income 	No requirement to provide affordable housing specified, unless SB 35 invoked.
Use Requirements	May be: <ul style="list-style-type: none"> • 100% residential; or • Mixed-use project, where at least 2/3 of square footage is residential. 	May be either: <ul style="list-style-type: none"> • 100% residential; or • Mixed-use project, where at least 50% of square footage is residential.
Density Standards	At least default density (20 or 30 du/acre) for 100% affordable projects. For mixed-income projects: <ul style="list-style-type: none"> • Range of at least 30-80 du/ac for metropolitan jurisdictions, as specified. • Range of at least 20-70 du/ac for non-metropolitan jurisdictions, as specified. 	At least default density (20 or 30 du/acre)
Other Development Standards	Yes. For mixed-income projects only, specifies development standards for minimum density, height, and setbacks.	No. There are no development standards specified in SB 6.
Parking Requirements	For mixed-income projects, specifies that no parking is required.	None specified, unless streamlined processing under SB 35 invoked.
Approval Process	Streamlined, ministerial process.	Does not create any new approval process, but may invoke streamlined processing under SB 35.
CEQA	Exempt from CEQA.	Not exempt from CEQA, unless SB 35 invoked.
Coastal Zone	May be used in the Coastal Zone.	May be used in the Coastal Zone.
Labor Requirements	Prevailing wage required. Projects over 50 units must meet additional standards, including apprenticeship, health care, and other administrative requirements.	Prevailing wage and “skilled and trained workforce” required.
Exemptions	Properties may be exempted from the provisions of SB 6 if a local jurisdiction makes written findings, including meeting criteria for the identification of one or more substitute parcels, and will not reduce the total zoned capacity for residential development.	Properties may be exempted from the provisions of SB 6 if a local jurisdiction makes written findings, including meeting criteria for the identification of one or more substitute parcels, and will not reduce the total zoned capacity for residential development.

Summary of AB 2011

AB 2011 creates a CEQA-exempt, ministerial approval process for multifamily housing developments on sites within a zone where office, retail or parking are the principally permitted use, if specified conditions are met. AB 2011 establishes qualifying criteria based on affordability and defines eligible project types as either: 1) “Affordable Housing Developments in Commercial Zones”; or, 2) “Mixed-Income Housing Developments Along Commercial Corridors”.

Eligibility

Sites that are eligible for AB 2011 include any zone where office, retail, or parking are a principally permitted use. “Principally permitted use” is defined as any use that may occupy more than one-third of the square footage of the site without a conditional use permit. For an AB 2011 mixed-income housing development, sites must have a frontage along a commercial corridor of at least 50 feet. AB 2011 also specifies additional criteria related to adjoining uses and establishes other requirements for site eligibility.

Affordability Requirements

AB 2011 projects may be 100% affordable housing. In addition, eligible AB 2011 projects that are mixed-income affordable housing projects must provide a minimum number of on-site affordable units. Rental housing developments must include either: 8 percent very-low income and 5 percent extremely-low units; or, 15 percent lower income units. Owner-occupied housing developments must include either: 30 percent moderate income units; or, 15 percent lower income units.

If a jurisdiction has an adopted inclusionary affordable housing requirement, an AB 2011 mixed-income affordable housing project must include the percentage of affordable units required by AB 2011 or the local requirement, whichever requires a higher percentage of affordable units and meets the lowest income target. Additional requirements apply if a local requirement is greater than 15 percent of the units dedicated for low income for very low and extremely low income households.

Labor Requirements

All projects that qualify for AB 2011 must pay prevailing wage. AB 2011 projects greater than 50 units must meet additional standards, including apprenticeship requirements, health care contributions, and other contracting and reporting criteria.

Design Requirements and Design Review

Projects eligible for AB 2011 must meet objective zoning, development, and design standards. Design review may only consider objective standards, and must be conducted within the specified timeframe. In addition, AB 2011 includes supplemental development requirements for mixed-income projects, including density, height, front setbacks, parking setbacks, and setbacks from adjacent residential and non-residential uses along side streets and interior property lines. Some additional development requirements of AB 2011 include:

- Must provide noticing and relocation assistance for existing commercial tenants, and additional criteria address parcel and siting requirements.
- Must complete a Phase I environmental assessment and remove or remediate any hazardous substances found.
- May not build any units within 500 feet of a freeway. Distance from a freeway should be measured from the structure to the edge of the right-of-way, including any off-ramp right-of-way.

Streamlining and CEQA

Qualifying AB 2011 projects must be reviewed on a ministerial basis and are exempt from CEQA, and a local jurisdiction is not permitted to require any discretionary approvals, such as a conditional use permit. In addition, AB 2011 sets timeline standards for project review and approval. Projects with 150 units or fewer must be reviewed for compliance with objective design and development standards within 60 days and approved within 90 days; for larger projects, projects must be reviewed within 90 days and approved within 180 days.

Coastal Zone

AB 2011 can be used in the coastal zone for eligible projects, but does not change the applicability of the California Coastal Act. However, increased height limits of 65 feet, specified in AB 2011, are not applicable within the coastal zone.

Exempting Properties from AB 2011

Properties may be exempted from the provisions of AB 2011 if a local jurisdiction makes written findings, including meeting criteria for the identification of one or more substitute parcels, and ensuring that the development of substitute parcels will affirmatively further fair housing, and not reduce the total zoned capacity for residential development or affordable residential development. A property can only be exempted prior to the filing of an application under AB 2011.

Summary of SB 6

SB 6 creates a process for approving multifamily housing developments on sites within a zone where office, retail, or parking are the principally permitted use, if specified conditions are met. SB 6 establishes qualifying criteria based on use and defines eligible “housing development project” as either: 1) a residential only project; or, 2) a mixed-use development with at least 50% of the square footage is designated for residential uses.

Eligibility and Site Criteria

Sites that are eligible for SB 6 include any zone where office, retail, or parking are a principally permitted use. SB 6 specifies additional site criteria related to adjoining uses and establishes other requirements for site eligibility.

Affordability Requirements

SB 6 projects are not subject to affordability requirements, unless there are local inclusionary requirements, and/or SB 35 is invoked.

Labor Requirements

SB 6 projects are required to pay prevailing wages and utilize a “skilled and trained workforce” requirements, as well as other contracting, certification, and reporting standards.

Design Requirements and Design Review

Projects eligible for SB 6 must meet objective zoning, development, and design standards. Design review may only consider objective standards.

Streamlining and CEQA

SB 6 projects are not exempt from CEQA and no streamlined ministerial approval process is required.

Coastal Zone

SB 6 can be used in the coastal zone for eligible projects, but SB 6 does not change the applicability of the California Coastal Act.

Exempting Properties from SB 6

Properties may be exempted from the provisions of SB 6 if a local jurisdiction makes written findings, including meeting criteria for the identification of one or more substitute parcels, and will not reduce the total zoned capacity for residential development.