

October 4, 2022

Governor Newsom Signs Major Development Bills into Law

By [Braeden Mansouri](#) and [Alicia Guerra](#)

On September 28, Governor Gavin Newsom signed into law two of the most anticipated housing bills of this legislative session: AB 2011 and SB 6. Both bills have the potential to increase significantly the amount of land available for residential development by deeming housing a permitted use in certain types of commercial zones. Legislative leaders struck an eleventh hour deal with the building trades, such that eligible AB 2011 and SB 6 projects must incorporate several labor-friendly provisions. A residential developer may elect to rely on either AB 2011 or SB 6. Because AB 2011 and SB 6 projects are subject to streamlined ministerial review, eligible projects would be exempt from the California Environmental Quality Act. Both bills become effective on July 1, 2023. Earlier, the Governor signed into law AB 2097, which limits the applicability of parking requirements near public transit.

AB 2011 (Wicks)

AB 2011 would enact the Affordable Housing and High Road Jobs Act of 2022. This would provide eligible housing projects with streamlined, ministerial review. (*Forthcoming*¹ Gov. Code, § 65912.110.) AB 2011 splits up its eligibility to provide for both 100% affordable projects and for mixed-income projects.

To qualify, 100% affordable eligible projects must:

- Be located “in a zone where office, retail, or parking are a principally permitted use.” (§ 65912.111(a).)
- Be on a parcel in an urban area, surrounded by urban uses, and not “on a site or adjoined to any site” where more than 1/3 of the square footage is “dedicated to an industrial use.” (§ 65912.111(b)-(d).)
- The site satisfies the requirements of Section 65913.4(a)(6)(B)-(K). (§ 65912.111(e).)
- Provide 100% affordable units. (§ 65912.114(a).)
- Meet hazardous condition criteria as determined in a Phase I ESA. (§ 65912.111(c).)
- Located more than 500’ from a freeway and more than 3,200 feet from a facility that extracts or refines oil or natural gas. (§ 65912.111(d)-(e).)
- Meets objective zoning standards based on enumerated criteria for determining development standards to apply. (§ 65912.111(f).)

Mixed-income eligible projects must:

- Be located “in a zone where office, retail, or parking are a principally permitted use.” (§ 65912.121(a).)

¹ All code sections cited to in this summary are forthcoming, effective on July 1, 2023.

- Be on a parcel in an urban area, surrounded by urban uses, abuts a commercial corridor with a frontage along the corridor of at least 50', is on a site of 20 acres or less, and is not on a site or adjoined to a site where more than 1/3 of the square footage is dedicated to an industrial use. (§ 65912.121(b)-(f).)
- Be on a site that satisfies the requirements of Section 65913.4(a)(6)(B)-(K). (§ 65912.121(g).)
- Not require demolition of specified types of housing. (§ 65912.121(h).)
- Vacant sites cannot contain tribal cultural resources or be located in a very high fire hazard severity zone. (§ 65912.121(j).)
- Meet the following affordability criteria, by providing:
 - For rental projects, 8% very low income and 5% extremely low income affordable units; or
 - 15% affordable for lower income households. (§ 65912.122(a).)
- For owner-occupied housing:
 - 30% of units offered as affordable to moderate income households; or
 - 15% units offered as affordable to lower income households. (§ 65912.122(b).)
- Meet objective development standards. (§ 65912.123.)
- For sites more than one acre in size and with more than 100 feet in width, provide a density of at least 60 un/acre. (§ 65912.123.)
- Located more than 500' from a freeway and more than 3,200 feet from a facility that extracts or refines oil or natural gas. (§ 65912.123(g)-(h).)
- Provide notice and specified protections to existing commercial tenants located on the site. (§ 65912.123(i).)

Eligible projects must meet specified labor standard criteria, including payment of a prevailing wage and, for larger projects, hire contractors that participate in apprenticeship programs. (§ 65912.130, -.131.)

SB 6 (Caballero)

SB 6 provides similar benefits to AB 2011. A housing development project would be deemed an allowable use on a parcel where office, retail, or parking is a principally permitted use, if the project complies with the following:

- Meets specified density requirements—at least 30 units/acre for this parcel (*Forthcoming Gov. Code*, § 65852.24(b)(1), § 65583.2(c)(3)(B).)
- Project site is 20 acres in size or less (§ 65852.24(b)(4).)
- Meets specified objective local requirements (§ 65852.24(b)(5).)
- Is not “on a site or adjoined to any site” where more than 1/3 of the square footage is “dedicated to an industrial use.” (§ 65852.24(b)(6)(B)(i).)
- Is consistent with any applicable and approved sustainable community strategy or alternative plan (§ 65852.24(b)(7).)
- The project is either: (i) a “public work” for prevailing wage purposes, or (ii) all construction labor will be paid a prevailing wage (along with other labor requirements) (§ 65852.24(b)(8)(A).)
- The developer must provide written notice to exiting commercial tenants (§ 65852.24(c)(1).)
- The project must provide at least a specified percentage of affordable units (§ 65913.4(a)(3)(A).)

Approval of an SB 6 project would be ministerial. (§ 65913.4(a)(2)(C).)

AB 2097 (Friedman)

AB 2097 is a first of its kind law in California, aimed to reduce development costs associated with minimum parking requirements. Specifically, the law prohibits any jurisdiction from imposing a parking

requirement on any “residential, commercial, or other development project” if those projects are located within ½ mile of a major transit stop. (*Forthcoming* Gov. Code, § 65863.2(a).) A jurisdiction has 30 days from the date of a completed development application to make written findings which would allow it to impose parking requirements under very limited circumstances, including that not enforcing parking requirements: would have a negative impact on the jurisdiction’s ability to meet its share of regional housing need, parking would, would have a negative impact on the jurisdiction’s ability to meet its housing need for the elderly or persons with disabilities, or a negative impact on existing parking. (§ 65863.2(b).)

Once in effect, AB 2097 may be a useful tool for reducing housing costs associated with minimum parking requirements and by discouraging single-occupancy vehicle use by increasing development around high quality transit corridors. Despite AB 2097’s “undoubtedly” “positive impact in reaching [California’s] climate and housing goals,” Governor Newsom warned in a [signing message](#) that the state must “guard[] against earnestly unintended consequences,” in particular, he warns against undermining the efficacy of local initiatives to craft transit-oriented housing programs. To that end, Governor Newsom has directed the Department of Housing and Community Development to monitor the impacts of AB 2097’s implementation and to identify unintended outcomes, suggesting that future legislation may be necessary to address those concerns.

These three new laws have the potential to transform and revitalize downtown neighborhoods and commercial corridors across California. They propose to dramatically increase housing production, as well as to limit requirements that including expensive parking. Especially because of AB 2011 and SB 6’s strict conditions of compliance, we recommend that applicants collaborate with skilled land use counsel to assist with navigating the application process.



[Braeden Mansouri](#)

Attorney
(415) 227-3516
bmansouri@buchalter.com



[Alicia Guerra](#)

Shareholder
(415) 227-3508
aguerra@buchalter.com

This communication is not intended to create or constitute, nor does it create or constitute, an attorney-client or any other legal relationship. No statement in this communication constitutes legal advice nor should any communication herein be construed, relied upon, or interpreted as legal advice. This communication is for general information purposes only regarding recent legal developments of interest, and is not a substitute for legal counsel on any subject matter. No reader should act or refrain from acting on the basis of any information included herein without seeking appropriate legal advice on the particular facts and circumstances affecting that reader. For more information, visit www.buchalter.com.