ACCESSORY DWELLING UNIT (ADU)

Government Code §§ 66310 – 66342

INTRODUCTION

Accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) are an important part of California's strategy to increase housing options in existing neighborhoods. In response to the state's housing shortage, the Legislature has enacted a series of laws to reduce barriers and streamline the approval process for these types of homes. ADUs and JADUs must generally be approved ministerially in residential and mixed-use zones, with limited ability for jurisdictions to impose local development standards.

Jurisdictions may adopt an ordinance governing ADUs, but it must adhere to State ADU Law. Ordinances must be submitted to HCD within 60 days of being adopted. HCD may review the ordinance and provide written findings as to whether the ordinance complies with the law. For more information, please see HCD's Accessory Dwelling Unit page, and learn more from HCD's ADU Handbook.

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KEY PROVISIONS

ADUs

Limitations on Local Development and Design Standards

The ability to impose additional development standards or conditions is limited. For ADUs described in Government Code section 66323, no development standards may be applied other than those described in section 66323 itself. When adopting a local ADU ordinance, a jurisdiction may not do any of the following:

- Impose minimum lot size requirements.
- Impose height limits that are not described in State ADU Law. Height limits vary based on several factors.
- Require rear and side setbacks greater than four feet for new construction ADUs.
- Limit the number of bedrooms.
- Require more than one parking space per unit, or require any parking for certain ADUs, such as those within a half mile of public transit, those within historic districts, and ADUs converted from existing space.
- Establish a maximum size of less than 850 square feet, or 1000 square feet if the ADU has more than one bedroom.
- Require replacement parking if the ADU is replacing a garage, carport, or other off-street parking.

- Impose impact fees on ADUs of less than 750 square feet or on JADUs. For larger ADUs, impact fees may be charged but proportionately by comparing the floor area of the ADU and the primary dwelling.
- Limit combinations of ADUs described in Government Code section 66323.

Jurisdictions may subject ADUs to limited development and design standards, but those standards must be objective (e.g., "a detached ADU must be at least four feet from a side or rear property line" rather than "ADUs must be consistent with existing neighborhood character"). To ensure that ADUs and JADUs add to the housing stock, jurisdictions may limit their use as short-term rentals. For certain ADUs and for JADUs, the law requires that any rental be for more than 30 days.

JADUs

A JADU is a unit created entirely within the walls of an existing or proposed single-family residence. This includes an attached garage. JADUs are subject to many of the same rules as ADUs, including ministerial approval in residential and mixed-use zones, but there are some differences. For example:

- JADUs may not exceed 500 square feet, and do not increase assessable space.
- Only one JADU is allowed per single-family lot.
- A JADU may share a bathroom with the single-family residence.
- If a JADU is replacing the garage, the jurisdiction may not require replacement parking.
- In a residence with a JADU that shares a bathroom with the main house, the owner must occupy either the JADU or the primary residence, with some exceptions.

Ministerial Approval

Generally, jurisdictions must approve ADU applications in residential and mixed-use zones ministerially as provided by state statutes. Ministerial review means a project that complies with objective development standards will be approved at a staff level and the project is exempt from the California Environmental Quality Act. Provisions of a certified Local Coastal Program that conflict with State ADU Law will supersede the requirements of State ADU Law within the coastal zone, except that an application must be approved or denied within 60 days, consistent with Government Code section 66317.

RECENT HCD TECHNICAL ASSISTANCE AND ORDINANCE REVIEW LETTERS

City of Irvine, March 27, 2025	The City cannot impose a deed restriction prohibiting separate sale of an ADU, and townhomes are eligible for a JADU. Regarding the ADU ordinance, the City must either amend the ordinance to comply with state law or include findings in the ordinance resolution to explain how the ordinance otherwise complies with state law and HCD findings.

City of Sutter Creek, March 11, 2025	Among other findings related to discrepancies in development standards and unpermitted units, the City must comply with State ADU Law on the number of allowable units (e.g., up to eight detached ADUs, not to exceed the number of existing units, in an existing multifamily dwelling or up to two detached ADUs for a proposed multifamily dwelling.
City of Camarillo March 6, 2025	Among various findings that portions of the City's ADU ordinance are noncompliant with State ADU Law, the City must amend the ordinance to provide for all combinations of ADUs under Government Code section 66323.
City of Berkeley, February 25, 2025	The City must allow both new construction and conversion ADUs on lots with multifamily dwellings, provided the ADUs meet applicable objective standards. It clarifies that Government Code section 66314(d)(3) requires jurisdictions to permit all qualifying ADU types—not just conversions—and that a local ordinance cannot impose more restrictive limitations than state law.

LEGISLATIVE HIGHLIGHTS

ADUs and JADUs in Disaster Recovery and the Coastal Zone AB 462, Lowenthal (2025); amended Gov. Code, §§ 66328 & 66329	This bill allows ADUs to be rebuilt before the primary dwelling when certain disaster-related conditions are met. Explicitly applies review deadlines and limits appeals for ADUs and JADUs in the coastal zone.
Technical and Procedural Clarifications for ADUs and JADUs SB 543, McNerney (2025); amended, added, and renumbered several sections of State ADU Law	This bill clarifies that ADU and JADU floor area limits apply to interior livable space, requires application completeness determinations within 15 business days, clarifies when ADUs and JADUs are exempt from school fees and other impact fees, clarifies the allowable combinations of ADUs and JADUs, and makes procedures and standards that apply to JADUs more like those that apply to ADUs.
ADU Expansion for Multifamily Housing SB 1211, Skinner (2024); amended Gov.	This bill increases the number of detached ADUs allowed on lots with existing multifamily dwellings from two to up to eight, if the number of ADUs does not exceed the number of existing units on the lot. It also restricts local agencies from

Code, §§ 66313, 66314 & 66323.	requiring replacement parking when an uncovered parking space is converted to an ADU.
Legalizing Unpermitted ADUs and JADUs AB 2533, Carrillo (2024); amended Gov. Code, § 66332	This bill helps legalize unpermitted ADUs and JADUs built before January 1, 2020, while ensuring that structures will not be substandard. It limits fees, allows a third-party code inspection, and requires jurisdictions to inform the public about its provisions.

AFFORDABLE HOUSING & HIGH ROADS JOBS ACT (AB 2011)

Government Code §§ 65912.100-65912.140

INTRODUCTION

The Affordable Housing and High Road Jobs Act of 2022 (Chapter 647, Statutes of 2022), commonly referred to as "AB 2011," was signed into law on September 28, 2022. The statute aims to address California's housing shortage by facilitating and streamlining the approval process for qualifying multifamily housing developments on commercially zoned sites. By allowing housing developments in these locations "by-right," without discretionary review and hearings, AB 2011 removes review process barriers and expedites the construction of much-needed affordable and mixed-income housing. The law took effect on July 1, 2023, and remains in effect until January 1, 2033 unless otherwise extended.

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KEY PROVISIONS

AB 2011 creates an optional streamlined, ministerial review process for housing projects on sites that allow commercial uses (office, retail, and parking). The ministerial process means that eligible projects cannot be denied based on subjective local discretion, are exempt from CEQA (California Environmental Quality Act), and must be evaluated solely based on the project's compliance with the requirements of AB 2011. The statute also prohibits local governments from imposing additional fees or requirements based on a project's eligibility for streamlined approval.

The statute contains two pathways:

- One hundred percent affordable lower income developments, and
- Mixed-income developments meeting specified affordability levels.

In addition to the affordable housing requirements, a development must comply with an array of other criteria for site eligibility and development-specific requirements (e.g., environmental criteria, replacement housing, limitations for vacant sites, and specified densities, among others). There is some variation in the requirements between the two different project pathways.

Labor Requirements. In exchange for streamlined review, developers must agree to provide the required affordable units and adhere to prevailing wage and labor standards in construction, requiring construction workers to be paid at least the general prevailing wage rate. For projects of 50 units or more, developers must also provide access to apprenticeship programs and healthcare expenditures for workers.

Exempt and Replace. The statute also allows local governments to exempt parcels from AB 2011 eligibility – and replace them with other parcels – if the local government

provides specific documentation and findings, including demonstrating that there would be no net loss in residential capacity.

Reporting. Local governments are required to report any AB 2011 projects as part of the annual progress reports (APR) due to HCD annually on April 1.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Santa Ana, December 10, 2024	Parcel exemptions are allowed only if local governments provide written findings demonstrating no net loss in housing capacity, including for lower-income units, and requires replacement sites to meet fair housing (AFFH) standards. The letter also confirms that exemptions are valid only if formally adopted through an ordinance with sufficient analysis.

LEGISLATION HIGHLIGHTS

Campus Development Zone, Site Criteria AB 893, Fong (2025); amended Gov. Code, §§ 65912.101, 65912.104, 65912.114, 65912.121, 65912.122, 65912.123, and 65912.124, and added Gov. Code, § 65912.103.5	AB 893 extends AB 2011's by-right, streamlined, ministerial review process to qualifying student housing developments in "campus development zones" as defined in the statute. Additionally, AB 893 clarifies that a "site" for the purposes of AB 2011 compliance is only the area of the parcel(s) "being physically disturbed by construction."
Objective Standards, Affordability and Site Criteria AB 2243, Wicks (2024); amended Gov. Code, §§ 65852.24, 65912.101, 65912.111, 65912.112, 65912.113, 65912.114, 65912.121, 65912.122, 65912.123, and 65912.124 and added Gov. Code, § 65912.106	AB 2243 builds upon AB 2011 by making comprehensive clarifications and changes. Some of these changes expanded where streamlined housing development could occur, for example, to allow mixed-income housing projects on regional mall sites and within proximity of a freeway provided the project incorporates specified building features. Other changes included clarifications about how AB 2011 works in combination with the State Density Bonus Law and how local inclusionary housing requirements apply to mixed-income developments.

AFFORDABLE HOUSING ON FAITH & HIGHER EDUCATION LANDS ACT

Government Code § 65913.16

INTRODUCTION

The Affordable Housing on Faith and Higher Education Lands Act (Chapter 771, Statutes of 2023), commonly referred to as "SB 4," provides for by-right approval of qualifying housing development on land owned by faith-based organizations and independent institutions of higher education. Effective July 2, 2024 through January 1, 2036, this law establishes a streamlined, ministerial approval process for 100 percent affordable housing projects on qualified lands, bypassing many traditional local zoning restrictions with the intent to advance California's housing goals.

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KEY PROVISIONS

Affordability Requirements

One hundred percent of units (excluding managers' units) must be for lower income households, except up to 20 percent may be for moderate-income households and up to 5 percent may house staff of the land-owning institution. Units must be deed-restricted for 55 years (rental) or 45 years (ownership).

Eligibility Criteria

Qualifying SB 4 affordable housing developments are permitted in all zones, including single-family and non-residential zones. To qualify for SB 4, the property must have been owned by a religious institution or independent higher education institution (including through an affiliated nonprofit) as of January 1, 2024.

Projects are eligible for protections under the Housing Accountability Act and qualify for density bonus and other provisions under State Density Bonus Law. However, in some cases, a development cannot use a density bonus incentive, concession, or waiver to increase the height of the development beyond what is allowed as described below under "Density and Height."

Any requested modifications to a development project approved under SB 4 must be evaluated under the same objective standards as the original application unless the total square footage of construction increases by 15 percent or more or the total number of units decreases by 15 percent or more, in which case the local government may apply objective standards adopted after the original application was submitted.

Parcel Requirements

- **Urbanized Area or Urban Cluster.** The development site is a legal parcel(s) located in either 1) a city where the city boundaries include some portion of an urbanized area or urban cluster as designated by the United States Census Bureau

or 2) for unincorporated areas, within the boundaries of an urbanized area or urban cluster as designated by the United States Census Bureau.

- **Urban Uses.** At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.
- **Tenant Protections.** If the project requires the demolition of existing housing units or is on a site where housing units have been demolished within the last five years, the project must comply with requirements for replacement of protected units as specified in the Housing Crisis Act.

The development site cannot be located on a parcel or parcels where:

- **Environmental Factors.** Certain environmental characteristics are present, including farmland, land zoned or designated for agricultural protection, wetlands, very high fire hazard severity zone, hazardous waste, earthquake fault zone, special flood hazard area, regulatory floodway, lands identified for conservation in an adopted natural community conservation plan, habitat for protected species, or lands under a conservation easement.
- **Industrial Uses.** Certain industrial uses are present or nearby, including:
  - Adjacent to a site where more than one-third of the square footage is dedicated to light industrial use;
  - Within 1,200 feet of a site permitted for heavy industrial use;
  - Within 1,600 feet of a site permitted for Title V industrial use;
  - Within 3,200 feet of an oil or natural gas refinery.
- **Tribal Cultural Resources.** Vacant sites that contain tribal cultural resources that could be affected by the development and whose effects cannot be mitigated.

Ancillary and Previous Uses

Projects located in a single-family residential zone may include childcare centers and recreational, social, or educational facilities operated by community-based organizations. All other zones may include commercial uses that are permitted without a conditional use permit or planned unit development permit.

The development project can include any previous use that existed and was legally permitted if certain criteria are met (e.g., the project does not increase total nonresidential square footage or total parking and features the same operational conditions).

Density and Height

- **Parcels located in a zone that allows residential use.** The minimum density varies based on the type of jurisdiction:
  - 15 units per acre for an incorporated city within a nonmetropolitan county,
  - 10 units per acre for an unincorporated area in a nonmetropolitan county,
  - 20 units per acre for a suburban jurisdiction, and

- 30 units per acre in a metropolitan county.

The permitted height is one story above the otherwise-allowed local height limits. If the local government allows for greater density on the parcel, or greater density or height is allowed on an adjoining parcel, the greater density or building height shall apply. A development also qualifies for the provisions of State Density Bonus Law, including incentives, concessions, or waivers or reductions of development standards and parking ratios.

- **Parcels located in a zone that does not allow residential use.** The minimum density is 40 dwelling units per acre and the permitted height is one story above the otherwise-allowed local height limits. If the local government allows for greater density or height on the parcel or an adjoining parcel, the greater density or building height shall apply. A development is allowed to use State Density Bonus Law, except that a development shall not use an incentive, concession, or waiver to increase the height of the development above the height authorized in this paragraph.

Parking

One off-street parking space per unit is required, unless a state or local law allows less, except that no parking is required if the project is located within 0.5-mile walking distance of either a high-quality transit corridor or major transit stop or within 1 block of a car share vehicle.

Prevailing Wage and Labor Requirements

The housing development project must abide by prevailing wage requirements (Labor Code sections 1720-1861), including noticing in accordance with Labor Code section 1773.35. For projects containing 50 units or more, contractors and subcontractors must satisfy health care requirements in addition to participating in an apprenticeship program approved by the State of California Division of Apprenticeship Standards or request the dispatch of apprentices from a state-approved apprenticeship program. The developer must provide the local government with a publicly available monthly report to demonstrate compliance.

Ministerial Approval

SB 4 projects must be approved ministerially without discretionary or CEQA review, provided:

- The project meets all requirements in SB 4, including all local objective development standards that are not in conflict with SB 4, and
- The development applicant completes a Phase I environmental assessment (Health and Safety Code section 78090) and, if warranted, a Phase II environmental assessment (Health and Safety Code section 25403).

Subdivisions that are consistent with all objective standards in the local subdivision ordinance are also exempt from CEQA.

Local Government Review

- **60- or 90-Day Review.** If the local government determines the proposed development conflicts with any of the objective standards, it shall provide written documentation and an explanation of the conflicts within 60 days of the development submittal for developments with 150 units or fewer, or within 90 days of the development submittal for developments with more than 150 units. If the local government fails to provide the documentation within the required timeframe, the development shall be deemed to satisfy the required objective planning standards.
- **Design Review Allowed.** Design review is permitted but limited to objective standards and must not in any way inhibit, chill, or preclude the ministerial approval of the development. Any design review must be completed in 90 days for developments containing 150 or fewer housing units, or 180 days for developments containing more than 150 units.
- **No Special Fees or Inclusionary Requirements.** Cities cannot impose additional fees or requirements, including inclusionary housing requirements, solely based on SB 4 eligibility.
- **Subsequent Permit(s).** A local government shall consider the application for subsequent permits based on the objective standards that were in effect when the original development application was submitted unless the applicant agrees to a change in objective standards and shall process the permit without unreasonable delay and without imposing additional procedures or requirements solely based on SB 4 approval. Subsequent permits include, and are not limited to, demolition, grading, encroachment, and building permits, and final maps where applicable.

AFFORDABLE HOUSING PRESERVATION LAW

Government Code §§ 65863.10, 65863.11, and 65863.13

INTRODUCTION

California's Affordable Housing Preservation Law (AHPL) safeguards long-term affordability in housing developments that have rental restrictions. Administered by HCD, AHPL gives a right of first refusal to certain potential buyers that are determined to be a "Qualified Entity" (QE) by HCD and are willing to maintain the affordability of the property. AHPL does this by providing a 270-day offer period that gives QEs the exclusive opportunity to make an offer to purchase a property with expiring affordability. Non-QEs may only submit an offer after the 270-day period. This law also ensures transparency and tenant protections before affordability restrictions expire, mortgage prepayment, or subsidies are terminated.

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This law is a critical tool for local governments, housing authorities, and qualified affordable housing organizations seeking to prevent displacement and preserve housing for lower-income residents.

For comprehensive guidance, HCD created a Guide to Affordable Housing Preservation Laws. For more information, please see HCD's Preservation page.

KEY PROVISIONS

Applies to Certain Multifamily Developments

Multifamily rental developments with **five or more units** that have received **government assistance** and are subject to rental restrictions are covered by the AHPL, which includes but is not limited to housing supported by:

- HUD programs (e.g., Section 8, Section 202, Section 236)
- USDA Sections 514, 515, 538
- LIHTC and tax-exempt bond financing
- HCD and CalHFA loans or grants
- Local redevelopment agency funds, density bonuses, or other land use concessions

Property Owner Noticing Requirements

Property owners must provide multiple advance notices to preserve affordability and inform current and prospective tenants and stakeholders of expiring affordability restrictions. These include:

- A **Notice of Opportunity to Submit an Offer to Purchase (NOSOP)** must be sent to **QEs** and HCD before or concurrent with the 12-month notice. This starts a **270-day offer period** prioritizing buyers who commit to preserving affordability. During this time, the owner may only consider purchase offers received from QEs. If the owner receives a bona fide, market value offer from a QE in this period, then the owner must notify HCD within 90 days that they have received a purchase offer, and either: 1) accept one of the offers from a QE and execute a purchase agreement, or 2) record a new regulatory agreement with a term of at least 30 years, per Government Code section 65863.13, subdivision (a).

A **Qualified Entity (QE)** is a stakeholder certified by HCD as capable of operating the housing and related facilities. A QE can be a tenant association; a local, regional, or national non-profit or public agency; or a for-profit housing developer that has obtained certification from HCD.

- **Three-Year, Twelve-Month, and Six-Month Notices** to tenants, public agencies, local housing authorities and HCD before any expiration of affordability restrictions, prepayment of a mortgage, or termination of subsidy. Three-Year notices must be posted on site and delivered by email or first-class mail to public agencies and HCD. Twelve-Month and Six-Month Notices must be delivered by first-class mail to each affected tenant.
- Owners must provide tenants the **Tenant Advisory and Options document,** outlining possible rent changes, displacement risks, and available resources. These notices help tenants prepare and connect with legal aid or public entities.
- Owners must complete **Annual Compliance Certifications** with HCD, affirming they are in compliance with AHPL.
- **Injunctive relief** is available to tenants and public entities in case of noncompliance, including reinstatement of affordability and restitution for rent overcharges. Attorney's fees may also be recovered.

LEGISLATIVE HIGHLIGHTS

Notice of Expiration of Affordability Restrictions AB 2926, Kalra (2024); amended Gov. Code, §§ 65863.10, 65863.11, and 65863.13	AB 2926 strengthens the AHPL by mandating that owners of assisted housing developments accept bona fide purchase offers from qualified entities or record a new regulatory agreement to extend affordability restrictions for at least 30 years. Previously, owners could decline such offers, potentially leading to the conversion of affordable units to market rate.

AFFIRMATIVELY FURTHERING FAIR HOUSING AND ANTI-DISCRIMINATION IN LAND USE LAW

Government Code §§ 8899.50, 65583, 65583.2, 65008

INTRODUCTION

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Affirmatively Furthering Fair Housing (AFFH)

AFFH means "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws." State law requires that all public agencies, cities and counties included, administer all of their activities and programs relating to housing and community development in a manner to AFFH and take no action that is materially inconsistent with its obligation to AFFH. Please see HCD's AFFH page for more information, including a guidance memo to help jurisdictions better understand and fulfill their AFFH duty, with particular attention to housing element requirements. The memo also provides an AFFH data viewer to assist jurisdictions in performing the required analysis.

Anti-Discrimination in Land Use Law (ALU Law)

The ALU Law prohibits discrimination in local land use policies and practices. It incorporates the protected characteristics listed in the Fair Employment and Housing Act (FEHA), Government Code section 12900 et seq., while adding additional protections for persons and families of very low, low, moderate, or middle incomes, which include persons and families with incomes lower than 150 percent of area median income (AMI). Protected characteristics include race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, military or veteran status, and genetic information.

Enforced by the California Civil Rights Department, the Fair Employment and Housing Act (FEHA) also prohibits housing discrimination in local land use policies and practices, and on the basis of these protected characteristics. Visit the California Civil Rights Department's (CRD) Housing Discrimination page for information about FEHA, including examples of actions that could be discriminatory if based on a person's protected characteristic.

KEY PROVISIONS

Housing or Community Development and AFFH

Beyond what federal fair housing laws might require, Government Code section 8899.50 extends the obligation to affirmatively further fair housing to all public agencies in the State of California with programs or activities that relate to housing or community development. This affirmative duty is not limited to those agencies with relationships with the federal government. These statutory obligations charge all public agencies with broadly examining their existing and future policies, plans, programs, rules, practices, and activities, and making proactive changes to promote more inclusive communities. This can include, for example, considering whether the location and provision of public services and infrastructure are consistent with AFFH.

Housing Elements and AFFH

Government Code sections 65583 and 65583.2 establish several requirements for local housing elements. Jurisdictions must include the following AFFH components:

- A summary of fair housing issues and an assessment of the jurisdiction's fair housing enforcement and outreach capacity.
- A comparative analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty and affluence, disparities in access to opportunity, and disproportionate housing needs, including displacement risk. This analysis must identify and examine such patterns, trends, areas, disparities, and needs, both within the jurisdiction and comparing the jurisdiction to the region in which it is located, based on protected characteristics.
- An analysis of the relationship of the sites identified in the land inventory to the jurisdiction's duty to AFFH.
- An assessment of contributing factors for fair housing issues in the jurisdiction, with highest priority given to factors that limit fair housing choice or access to opportunity or that negatively impact fair housing or civil rights compliance.
- Programs to address the most salient fair housing issues and priorities identified by the required AFFH analyses, with measurable outcomes and a concrete timeline with milestones.

Section 65583 also clarifies local jurisdictions' AFFH duties by specifying that localities must promote, remove constraints on, and otherwise affirmatively support housing for persons with characteristics protected by state fair housing laws, including protections that apply to households with lower incomes.

Land Use Policies and Practices and ALU Law

As specified in Government Code section 65008, the following are key components of the ALU Law:

- **Method of Financing, Household Characteristics or Income, Multifamily Use.** The law prohibits discriminating against a housing development or an emergency shelter—including by disapproving it or imposing conditions—because of the method of financing, because of any characteristics of the owners or the intended occupants protected under FEHA, because of the income level of the intended occupants, or because the development is multifamily if it is consistent with the zoning for the site.
- **Equal Requirements.** The law prohibits jurisdictions from imposing requirements on government subsidized or assisted housing or shelters that are different from those imposed on nonsubsidized or unassisted housing. It similarly prohibits jurisdictions from imposing requirements on housing for persons with protected characteristics or with incomes below 150 percent of AMI that are different from the requirements jurisdictions generally impose on housing.
- **Preferential Treatment.** The law authorizes jurisdictions to extend preferential treatment to publicly subsidized housing or emergency shelters.
- **Senior Housing.** The law allows limited exceptions for senior housing that limit occupancy based on age.

In addition to prohibiting discriminatory local land use policies and practices, the law specifies that any actions taken under such policies or practices are null and void.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Norwalk, September 16, 2024	The City's ordinance imposing a citywide moratorium on establishing, implementing, or operating emergency shelters, single-room occupancy housing, supportive housing and transitional housing violates ALU Law for two reasons. First, the City is prohibiting housing because of the method of financing and/or the intended occupants. Second, the moratorium specifically denies low-income individuals and families, including individuals experiencing homelessness and individuals with disabilities, the enjoyment of housing.
City of Fresno, August 7, 2024	The City's decision to accept and later reject Homekey funding for a permanent supportive housing project located near resources and services runs counter to AFFH and the City's proposed housing element commitments.
County of Fresno, August 5, 2024	Withdrawal of the County's application for grant and loan funding from HCD's No Place Like Home (NPLH) program in connection with an approved supportive housing project runs counter to the County's duty to protect persons or families of very low or low income.
City of Concord, June 10, 2024	The City's failure to approve the Tax Equity and Fiscal Responsibility Act (TEFRA) resolution for an affordable

	housing project may be inconsistent with several of the City's housing element programs. Given that the approval of the TEFRA creates no risk, obligation, or liability for the City, the denial of a resolution raises concerns that the denial is "materially inconsistent" with the City's obligation to AFFH.
County of Los Angeles, July 28, 2023	ALU Law prohibits the County from imposing different requirements on a supportive housing project than those generally imposed on other housing.
City of Anaheim, December 14, 2021	The City violated California's AFFH and ALU Law provisions by "imposing separate, more onerous requirements on housing for a protected class" when it both impermissibly required a conditional use permit and subsequently denied its issuance for the "Grandma's House of Hope" application, a proposal to create transitional housing for formerly homeless women with mental health disabilities. HCD warned the City of its continued violation of these laws, and later joined a lawsuit filed by Grandma's House of Hope. In February 2024, the Orange County Superior Court ruled in favor of HCD.

RECENT LEGISLATION

Additional AFFH Analysis AB 1304, Santiago (2021) amended Gov. Code, §§ 65583 and 65583.2	Pursuant to AB 1304, jurisdictions must include an analysis in their housing element sites inventory of how the inventory affirmatively furthers fair housing and state explicit goals, objectives, and policies relative to AFFH. In addition, jurisdictions must analyze their fair housing issues through both a regional and historical context rather than just analyzing current issues within their own boundaries and must include protected characteristics as factors in the analysis. AB 1304 also clarified that AFFH duties are mandatory and enforceable in court.
Affirmatively Furthering Fair Housing AB 686, Santiago (2018) amended Gov. Code, §§ 65583 and 65583.2, added Gov. Code, § 8899.50	AB 686 requires all public agencies, including cities and counties, to administer all of their activities and programs relating to housing and community development in a manner to AFFH and take no action that is materially inconsistent with the duty to AFFH. Beginning January 1, 2021, all housing elements must include an assessment of fair housing issues, an analysis of the relationship between available sites and areas of high or low resources, and concrete actions in the form of programs to address identified fair housing issues and/or further promote AFFH.

BY-RIGHT APPROVAL FOR LOW BARRIER NAVIGATION CENTERS

Government Code §§ 65660-65668

INTRODUCTION

Low-barrier navigation centers serve as shelters that follow best practices to reduce barriers to entry—such as allowing partners and pets, providing storage, and ensuring privacy—while focusing on transitioning individuals experiencing homelessness into permanent housing and support services.

Low-barrier navigation centers must be processed as a by-right use in mixed-use and nonresidential zones that allow multi-family residential uses.

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KEY PROVISIONS

Project Eligibility

To qualify for by-right approval, a low-barrier navigation center must have a plan that identifies staff to provide the services necessary to connect residents to permanent housing. It must also be linked to a coordinated entry system, which is designed to align intake, assessment, and referrals for housing and services. Additionally, the center must comply with Housing First requirements, ensuring that housing is provided without preconditions such as sobriety or treatment participation. Finally, it must have a system for entering information into the local Homeless Management Information System, which tracks and monitors service use.

Approval Timeline

Jurisdictions have 30 days to review an application and notify the applicant if it is complete. Within 60 days of receipt of a completed application, the jurisdiction must approve or deny the application. If the proposed project meets all statutory requirements, the jurisdiction is required to approve it.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Watsonville, November 19, 2024	Low-barrier navigation centers must be processed as a by-right use in mixed-use zones and nonresidential zones that allow residential uses. The letter clarifies that the project shall not be subject to any form of discretionary approval. The letter further describes project eligibility criteria and provides statutory examples of “low-barrier.”

LEGISLATIVE HIGHLIGHTS

Interim Housing Act SB 1395, Becker (2024); amended Gov. Code, §§ 8698.4, 65660, amended Pub. Resource Code, § 21080.27.5, and added Welfare and Institutions Code, § 8255.	SB 1395 updates regulations for Low Barrier Navigation Centers by clarifying that they can be non-congregate and relocatable, expanding flexibility in shelter design. It also removes the 2027 repeal date, making the provisions permanent under state law. These changes aim to ensure continued access to low-barrier shelter options for people experiencing homelessness.

BY-RIGHT SUPPORTIVE HOUSING PROVISIONS

Government Code §§ 65650-65656

INTRODUCTION

Supportive housing is housing with no limit on length of stay that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community. Supportive housing projects that meet certain conditions must be processed as a by-right use in zones that allow multifamily residential development or mixed-use development. In smaller jurisdictions, specific limitations apply to by-right approval based on population and homelessness figures.

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

KEY PROVISIONS

Project Eligibility

To qualify for by-right approval, a project must designate 100 percent of its units, excluding managers' units, as affordable to lower-income households. In addition, at least 25 percent of the units must be used for supportive housing, except for projects with 12 or fewer units, where all units must be designated as supportive housing. A deed restriction must ensure the specified affordability for 55 years. If any qualifying residential units are being demolished as part of the project, the developer must comply with replacement housing requirements under State Density Bonus Law even if the project is not using the benefits of that law.

Limitations for Smaller Jurisdictions

In cities and unincorporated areas with populations under 200,000, where the most recent point-in-time count shows fewer than 1,500 individuals experiencing homelessness, by-right approval is limited to supportive housing projects of 50 units or fewer. However, jurisdictions may choose to allow by-right approval for larger projects.

Development Standards and Parking Requirements

Jurisdictions may require projects to comply with objective, written development standards that apply to other multifamily residential developments in the same zone. They may not impose development standards that are specific to supportive housing projects. This aligns with Housing Element Law, which mandates that transitional and supportive housing be treated the same as all other residential uses in a given zone. In addition, jurisdictions are prohibited from imposing parking requirements on supportive housing units if the project is located within one-half mile of transit.

Application Review and Approval Timelines

As part of the application submittal, the developer is required to provide a plan for providing supportive services onsite to residents. The plan must include the name of the

proposed entities that will provide supportive services, proposed funding sources for the supportive services, and proposed staffing levels.

Jurisdictions must notify developers within 30 days of submission whether the application is complete. Once the application is complete, the review process must be completed within 60 days after the application is complete for projects with 50 or fewer units and within 120 days after the application is complete for projects exceeding 50 units. If a project meets all statutory requirements, it must be approved.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Sutter Creek, May 24, 2022	AB 2162 requires supportive housing projects meeting specific criteria to be processed by-right in zones allowing multifamily residential or mixed-use development, meaning local governments must approve qualifying projects without requiring discretionary permits such as conditional use permits. Additionally, local jurisdictions must review by-right supportive housing applications within 60 days for projects with 50 or fewer units and within 120 days for projects with more than 50 units to ensure timely approval.

LEGISLATIVE HIGHLIGHTS

Supportive Housing: Administrative Office Space AB 1801, Jackson (2024); amended Gov. Code, §§ 65650 and 65651	Builds on AB 2162 by refining supportive housing requirements. It mandates that developments with over 20 units allocate at least 3 percent of total floor space for supportive services and allows administrative office space within the nonresidential area, capped at 25 percent of total floor space. It also expands "supportive housing" to include transitional housing for youth and young adults. These updates provide greater flexibility in supportive housing design while maintaining streamlined, by-right approvals.
Supportive Housing By-Right AB 2162, Chiu (2018); amended Gov. Code, § 65583 and added Article 11 (commencing with § 65650)	Requires that supportive housing be a use by right—without a conditional use or other discretionary permit—in zones where multifamily and mixed uses are permitted, including nonresidential zones where multifamily uses are permitted, if the proposed housing development meets specified local objective standards.

STATE DENSITY BONUS LAW

Government Code §§ 65915, 65914.1, 65915.2, 65915.5

INTRODUCTION

The State Density Bonus Law (SDBL) is a long-standing feature of state law that provides benefits to developers when they agree to include affordable housing in projects of five or more units. The law has undergone numerous changes over the years, maintaining its status as one of California's most frequently used housing laws. Local jurisdictions must adopt a local density bonus ordinance that meets state requirements. Even without such an ordinance, local agencies must provide developers the benefits to which the law entitles them.

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

KEY PROVISIONS

Privileges of State Density Bonus Law

Under the SDBL, developers are entitled to any or all of the following, at their discretion, if they include the requisite percentage of affordable units in a housing development project: an increase in allowable density, concessions and incentives, waivers or reductions of development standards, and reductions in parking requirements.

State Density Bonus Eligibility

The percentage of affordable units is calculated off the base project, meaning the total number of units prior to any units added through additional density or other benefits of the law. The base project's density is based on the gross residential density of the parcel(s) that comprise(s) the housing development site and the highest residential density available under the zoning ordinance, specific plan, or land use element of the general plan.

To qualify for benefits under the law, developers must provide at least one of the following:

- **Very Low-Income.** 5 percent of the units affordable to very low-income households,
- **Low-Income.** 10 percent of the units affordable to low-income households,
- **Moderate-Income**. 10 percent of the units affordable to moderate-income households in a for-sale development,
- **Lower-Income Students.** 20 percent of the "units" affordable to lower-income students in a student housing development (e.g., dorm- or congregate-style buildings where a unit is a bed plus a share of the common facilities), or
- **Seniors**. A senior housing development or senior mobile home park.

Increase in Allowable Density

If a developer has a project that meets the eligibility requirements, jurisdictions must grant an increase in allowable density. A developer can also request a lesser amount of density increase or no density increase at all. In addition, a jurisdiction may adopt an ordinance that offers additional density beyond what is specified in the SDBL.

General Projects

For most projects, the allowable density increase is based on a sliding scale depending on the percentage of affordable units included, as follows:

- **Very Low-Income Projects**. A 20- to 50-percent increase in density for including 5 to 15 percent very low-income units.
- **Low-Income Projects.** A 20- to 50-percent increase in density for including 10 to 24 percent low-income units.
- **Moderate-Income For-Sale Projects**. A 5- to 50-percent density increase for including 10 to 44 percent moderate-income units in a for-sale development.

Jurisdictions must also grant an additional "stacking" density bonus based on a sliding scale if a project would not restrict more than 50 percent of the total pre-density bonus units to moderate- or lower-income households and includes additional affordable units, as follows:

- **Very Low-Income Projects.** An additional 20- to 38.75-percent increase in density for including 5 to 10 percent very low-income units.
- **Moderate-Income Projects.** An additional 20- to 50-percent increase in density for including 5 to 15 percent moderate-income units (either for-sale or rental).

Senior and Student Housing Projects

For senior housing projects, the bonus is 20 percent of the number of senior units in the base project. For student housing projects, the bonus ranges from 35 to 50 percent, increasing based on the percentage of affordable student housing units.

100 Percent Affordable Housing Projects

For 100 percent affordable housing projects—if the final project, counting both base units and bonus units, will include at least 80 percent (and up to 100 percent) lower-income units and no more than 20-percent moderate-income units—the developer is entitled to a bonus equal to 80 percent of the number of lower-income units in the base project.

If an affordable housing project is located within a half mile of a major transit stop, the jurisdiction may not impose any limits on density (i.e., the developer is entitled to as many additional units as can fit on the project site but may be limited by the local government to no more than three additional stories of building height).

Concessions or Incentives

The term "concessions and incentives" is defined broadly to include:

- A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission that result in cost reductions.
- Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and the non-housing uses are compatible with the housing project and existing or planned development in the area.
- Any other regulatory incentives or concessions proposed by the developer or the jurisdiction that result in cost reductions.

Jurisdictions are legally obligated to grant requested concessions or incentives (i.e., "shall approve") unless they find, based on substantial evidence, that the concession or incentive does not reduce costs; would have a specific, adverse impact on public health and safety or a historical resource in a way that cannot be mitigated; or is against state or federal law.

Developers using SDBL are entitled to request specific concessions or incentives on a sliding scale as follows:

# of Concessions	Project Affordability
1	At least 5 percent very low-income units, 10 percent low-income units, 10 percent for-sale moderate-income units, or 20 percent lower-income student housing in a student housing project.
2	At least 10 percent very low-income units, 17 percent low-income units, 20 percent for-sale moderate-income units, or 23 percent lower-income student housing in a student housing project.
3	At least 15 percent very low-income units, 24 percent low-income units, or 30 percent for-sale moderate-income units
4	At least 16 percent lower-income units or at least 45 percent for-sale moderate-income units.
5	100 percent affordable.

Jurisdictions cannot limit developers to specific concessions and incentives listed in a local density bonus ordinance. Local density bonus ordinances may have a "menu" of concessions and incentives for developers to choose from, but developers are free to ask for things that are not on that list. Local jurisdictions, however, are not required to grant any concession that would serve to facilitate construction of the portion of a mixed-use development that contains a hotel use. In addition, concessions cannot be used to increase commercial floor area more than 2.5 times the base zone commercial floor area ratio.

Waivers

In addition to concessions and incentives, developers are entitled to relief from development standards that physically preclude development of the project at the density and with the concessions and incentives allowed under the law, either through a reduction in the standard or through a waiver. For example, setback requirements or height limits may create challenges to accommodating a larger building on a site and may need to be reduced or waived entirely.

Jurisdictions may only deny requests for waivers or reductions of development standards for the same limited reasons as for rejecting a concession or incentive. Affordable housing projects within a half mile of a major transit stop that receive unlimited density are entitled to an additional three stories or 33 feet of height. Applicants that seek unlimited density may request additional waivers or reductions of development standards affecting height beyond the prescribed three additional stories, but the jurisdiction is not required to grant them.

Reduction in Parking Requirements

Developers are entitled to reductions in parking requirements. Generally, a jurisdiction may not require a density bonus project to include more than the following number of parking spaces:

- **1 parking space** for studios and 1-bedroom units
- **1.5 parking spaces** for 2- and 3-bedroom units
- **2.5 parking spaces** for 4- or more bedroom units

No parking spaces are required for special-needs housing, supportive housing, and senior housing more than a half mile from transit if served by paratransit, or any student housing development.

Further Reductions in Parking Requirement

- **0.5 parking space per unit** for projects with at least 20 percent low-income units or 11 percent very low-income units within a half mile of a major transit stop.
- **0.5 parking space per bedroom** for projects with at least 40 percent moderate-income units within a half mile of a major transit stop.
- **No parking requirement** for projects within a half mile of a major transit stop in which all units are affordable to lower-income households, including special-needs housing and supportive housing, and senior rental housing. Please note that Government Code section 65863.2 further restricts parking minimum requirements for developments near major transit stops.

Replacement Requirements

Developers must agree to replace certain units that are demolished in conjunction with the project, or that have been demolished on the project site within the last five years. Replacement units count towards meeting the affordable housing set-aside requirement to qualify for benefits under the law. Units that must be replaced include:

- Deed-restricted housing affordable to low- and very low-income households
- Rent-controlled housing
- Housing that is or was occupied by low- or very low-income households

A replacement unit must be affordable at the same or lower income level as the current occupant of the unit it is replacing, or at the most recent former occupant's income level for vacant or already demolished units. In cases where the income level of current or former occupants is unknown, the replacement obligation is determined by formula.

The majority of rental replacement units will be deed-restricted for at least 55 years to be affordable to either low- or very low-income households. The exception is when the rental unit is replacing a rent-controlled unit that is currently occupied by a household with an income above low-income (i.e., above 80 percent of area median income). In this case, it is up to the jurisdiction to decide whether the developer must replace that unit with a deed-restricted unit affordable to low-income households or with a new rent-controlled unit pursuant to the jurisdiction's rent control ordinance.

If the proposed development is for-sale units, the replacement units must also be for-sale units and must be sold to low-, very low-, or moderate-income households at an affordable price.

Replacement units must be of equivalent size to the units they are replacing. However, when a project is replacing multiple units, the "equivalent size" requirement can be met by replacing the total number of bedrooms across multiple units. For example, a project that has an obligation to replace five three-bedroom units and five one-bedroom units could meet the replacement obligation with 10 two-bedroom units.

RECENT OPINION FROM ATTORNEY GENERAL'S OFFICE

In April 2025, the Attorney General's Office issued an opinion that a city or county may not impose its local affordable housing requirements, such as inclusionary zoning, on the density bonus units awarded under SDBL.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of San Diego, December 12, 2024	SDBL permits the City to approve the requested incentive and associated waiver or to deny the requested incentive and associated waiver by making a written finding, based on substantial evidence, that the incentive does not result in identifiable and actual cost reductions to provide for affordable housing.
City of Carlsbad, February 16, 2024	Accessory dwelling units (ADUs) may count toward the five-unit eligibility criteria for a housing development project, but ADUs do not count for density bonus calculations.
City of El Cajon, February 16, 2023	A project may use SDBL on a site with existing units. The existing units may be physically altered or deed restricted to qualify as dependent units. SDBL does not contain

	comparability or dispersal requirements. Deed restrictions may float between units.

LEGISLATIVE HIGHLIGHTS

Concessions for Commercial Floor Area Ratio SB 92, Blakespear (2025); amended Gov. Code, § 65915.	Limits the use of concessions that would allow an increase of commercial floor area ratio beyond 2.5 times the current allowed base zone commercial floor area, and jurisdictions are not required to grant any concession that would serve to facilitate hotel or other transient lodging uses that are a part of a mixed-use development.
Maximum Allowable Residential Density, or Base Density AB 1287, Alvarez (2023); amended Gov. Code, § 65915.	Increases the incentives or concessions for a 100% lower income project from 4 to 5. Clarifies that the maximum allowable residential density, or base density, is defined as the greatest number of units allowed by the zoning, specific plan, or general plan land use element and any inconsistency between planning documents is irrelevant.
Parking, Low VMT, Definitions, Thresholds AB 2334, Wicks (2022); amended Gov. Code, § 65915.	Makes the following changes to SDBL: ▶ **Allowances to Low VMT Areas.** Expands the height and density provisions that apply for 100 percent affordable projects within a half mile of a major transit stop to also apply to "very low vehicle travel areas" within designated counties. ▶ **No Parking Minimum Parking Requirements for 100% Affordable Developments Under Certain Conditions.** Eliminates minimum parking requirements where 100 percent of the units are for lower-income households within a half mile of a transit stop or the development is for individuals who are 55 years of age or older where the development has paratransit service or access to transit. ▶ **Minimum Lot Area and Maximum Allowable Density Definitions**. Includes "minimum lot area per unit" and clarified that the definition of "maximum allowable residential density" is the highest available density in the general plan, zoning code, or specific plan applies regardless of document inconsistencies. ▶ **Conditions for 100% Lower Income Developments.** Changes requirements applicable to qualifying developments with 100 percent lower-income developments by allowing the rent to be set at an amount consistent with the maximum rent levels for lower-income households determined by the California Tax Credit

	Allocation Committee. For enforcement of agreements for for-sale units, the local government may defer to the equity sharing recapture provisions.
Imposition of Fees. AB 571, Mayes (2021); amended Gov. Code, § 65915 § 65915.1.	Prohibits a jurisdiction from imposing affordable housing fees (i.e., fees intended to support the development of affordable housing within the jurisdiction) on the affordable units in a density bonus project.
Modifies the Proportions of the Density Bonus. AB 2345, Gonzalez (2020); amended Gov. Code, §§ 65400 and 65915.	Extends the charts that dictate the amount of density a developer gets in exchange for including affordable units to allow up to a 50-percent density bonus. Previously, the tables had stopped at a 35-percent density bonus. Also changes the percentage of affordable units at which a developer is entitled to an additional concession or incentive but did not change the previous statutory maximum of four. Reduces the maximum number of parking spaces a jurisdiction can require for two- and three-bedroom units from 2 to 1.5. Reduces the number of parking spaces a jurisdiction can require for certain projects within a half mile of transit from 0.5 spaces per bedroom to 0.5 spaces per unit.

FIVE HEARING RULE

Government Code § 65905.5

INTRODUCTION

As part of the Housing Crisis Act (HCA) of 2019, this statute mandates that a local government may not hold more than five hearings after an application is deemed complete to consider a proposed housing development project if the project complies with all applicable, objective general plan and zoning standards.

"Hearings" cover a variety of meeting types including appeals, continuances, workshops, or other similar meetings conducted by the city or county with respect to the housing development project. Hearings required to be conducted by law, ordinance, or regulation—including by the recommending or decision-making bodies (e.g., design review committee)—count towards the total. However, the five hearing rule does not apply to hearings to review legislative approvals required for a proposed housing development, such as a general plan or zoning amendment or specific plan adoption or amendment.

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

KEY PROVISIONS

Applicability

This section applies to an application for a proposed housing development as defined in the Housing Accountability Act (Gov. Code, § 65589.5) that has submitted an application that meets all of the requirements in the relevant list compiled according to the Permit Streamlining Act (Gov. Code, § 65940) that was available at the time the application was deemed complete.

Maximum Five Hearings

Jurisdictions are limited to five hearings on an application for a housing development project if the project complies with the applicable objective general plan and zoning standards that were in effect at the time the application was deemed complete under the Permit Streamlining Act.

- **Decision-Maker Action.** Jurisdictions must take action to approve or disapprove the application during at least one of the five hearings.
- **Continuance.** Continued hearings count as one of the five hearings.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Oceanside, May 14, 2025	Community meetings count towards the five hearing limit when they are required to be conducted by law, ordinance, or regulation.
City of Encinitas, February 5, 2025	A hearing includes any public hearing, including design review, a meeting to consider an appeal, and continued hearings.

RECENT LEGISLATION

Five Hearings Maximum SB 330, Skinner (2022); added Gov. Code, § 65905.5.	Limits jurisdictions to five hearings after an application is deemed complete under the Permit Streamlining Act.

HOUSING ACCOUNTABILITY ACT

Government Code §§ 65589.5, 65589.5.1, 65589.5.2

INTRODUCTION

The Housing Accountability Act (HAA) limits local governments' ability to disapprove, condition, or reduce the density of housing development projects, emergency shelters, or farmworker housing that are consistent with local objective development standards and contribute to meeting housing need. As the legislative findings that accompany the HAA note, local decisionmakers in their review of housing development projects must consider "the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects."

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

The policy intent of the HAA is to increase approval and construction of new housing at all affordability levels, build more housing in urban areas, and provide additional protections for developments containing units for very low-, low-, or moderate-income households, including for applications deemed complete while a jurisdiction's housing element is not substantially compliant with state law (builder's remedy).

KEY PROVISIONS

The HAA has two key provisions:

Provision #1 Applies to All Housing Development Applications

The first is a general provision that applies to all housing development applications, both market-rate and affordable, that are consistent with the objective general plan, zoning, design, and subdivision standards for the site that were in effect at the time that the project application was deemed complete. "Deemed complete" means that the applicant has submitted a preliminary application pursuant to Government Code section 65941.1 or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to section 65943.

A housing development proposal that meets those criteria cannot be disapproved or approved with a condition that reduces the density of the project unless the jurisdiction makes both of the following findings:

Finding #1. **Specific, Adverse Impact on Public Health or Safety**. That the proposed development would have a "specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density." Specific, adverse impact means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety

standards, policies, or conditions as they existed on the date the application was deemed complete, *and*

Finding #2. **No Possible Mitigation.** That "there is no feasible method to satisfactorily mitigate or avoid the adverse impact."

Provision #2 Applies Only to Certain Affordable Housing (including Farmworker Housing), Emergency Shelters, and Smaller Housing Projects

The second provision applies to a narrower category of projects: emergency shelters and housing developments, including farmworker housing, that are affordable to very low-, low-, or moderate-income households or certain smaller housing projects. A housing development project must meet *one* of the following criteria to be covered by this provision:

- **Lower-Income or Moderate-Income Units.** 100 percent of the units are deed-restricted for lower-income households (includes very low-income and low-income) or moderate-income households.
- **Extremely Low-Income Units.** 7 percent of the total units (excluding density bonus) are deed-restricted for extremely low-income households.
- **Very Low-Income Units.** 10 percent of the total units (excluding density bonus) are deed-restricted for very low-income households.
- **Lower-Income Units.** 13 percent of the total units (excluding density bonus) are deed-restricted for lower-income households.
- **Smaller Housing Projects.** 10 or fewer total units (excluding density bonus) on a site that is less than one acre and has a minimum density of 10 units per acre. Can include 100 percent market-rate projects.

Under the limits of this second provision, a jurisdiction can only deny a qualifying housing development project or impose conditions on that project that render it infeasible if it can make one of several specified findings:

Finding #1. **Compliant Housing Element and Meets Housing Targets**. The jurisdiction has adopted a housing element that substantially complies with the law and has already met or exceeded its regional housing needs allocation (RHNA) for all income groups that would be served by the housing, or in the case of an emergency shelter, has already met or exceeded the need for shelter as identified in the housing element.

Finding #2. **Specific, Adverse Impact on Public Health or Safety**. The housing or shelter "would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible."

Finding #3. **Compliance with State or Federal Law.** The denial or conditions are necessary to comply with state or federal law and there is no other feasible alternative to the denial or conditions.

Finding #4. **Agricultural Land or Resource Preservation.** The housing or shelter is proposed on land that is zoned for agricultural or resource preservation and either a) the land on at least two sides surrounding the property is currently used for agricultural or resource preservation or b) there are not adequate water or wastewater facilities available to serve the project.

Finding #5. **Compliant Housing Element, Inconsistent with Zoning and General Plan Land Use, and Non-Housing Element Site *or* Emergency Shelter Project.** The jurisdiction has an adopted, substantially compliant housing element and the proposed housing development or shelter is inconsistent with both the zoning code and general plan land use designation for the site, *and* either (1) the proposed project is not proposed on a site or candidate rezone site identified in the housing element for very low-, low-, or moderate-income households at the density specified in the housing element, *or* (2) the project is an emergency shelter and the local jurisdiction has zoned for by-right emergency shelters or zoned sufficiently to accommodate emergency shelters as identified in the housing element.

Finding #6. **Non-Compliant Housing Element and Not a Builder's Remedy Project**. The jurisdiction's housing element is out of compliance and the proposed project (1) does not qualify as a builder's remedy project *and* (2) is not consistent with the objective general plan, zoning, design, and subdivision standards for the site that were in effect at the time that the project application was deemed complete (see Provision #1 above.)

There are several practical implications to these limitations on projects that are important to note.

- **Non-Compliant Housing Element and Builder's Remedy**. A jurisdiction that has failed to adopt a housing element in compliance with state law may be prohibited from disapproving an affordable housing development or certain smaller housing projects, even if the proposed project is inconsistent with the zoning and general plan land use designation on the site. In order to qualify as a builder's remedy project, the proposed project must not be located on or near a heavy industrial use and meet the density limits as specified within Government Code section 65589.5 subdivision (h)(11).
- **Compliant Housing Element and Insufficient Rezoning.** Jurisdictions that have adopted a substantially compliant housing element may face limits in denying an affordable housing development or emergency shelter unless the jurisdiction has zoned enough land to accommodate all of its housing and shelter needs.

HAA Consistency Review Timeline

After an application is deemed complete, local agencies have a set timeline to determine in writing whether the application is inconsistent with objective general plan, zoning, subdivision, and design standards and criteria; otherwise, the application is deemed consistent by default. Projects containing 150 or fewer units must be reviewed within 30 calendar days and projects containing more than 150 units must be reviewed within 60 calendar days. Any additional density or any concessions and development standard reductions or waivers to which the project is entitled under State Density

Bonus Law (SDBL) shall be considered consistent with objective zoning, design review, and subdivision standards.

Postentitlement Phase Permits and the HAA

While requirements for postentitlement phase permits are not part of the HAA, a project is considered disapproved under the HAA if a local agency does not adhere to the time limits specified for reviewing and processing a postentitlement permit (i.e., building permits, demolition permits, and permits for standard off-site improvements and excavation and grading). Local agencies have 15 business days to determine whether a postentitlement permit application contains all the information required from an applicant, and 30 or 60 days to determine whether the application complies with permit standards depending on the number of units proposed. For certain smaller housing development projects, the local agency must inspect permitted work within 10 days of receiving a notice of completion.

HAA Enforcement

The HAA can be enforced by the applicant, any person who would be eligible to live in the proposed housing or shelter, or a housing organization. Housing organizations are defined as either a "trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households." Housing organizations must have provided their comments orally or in writing to the local agency prior to its action and can only challenge disapproval of a project. The statute does not provide standing for housing organizations to challenge a violation that does not involve a denial of the project.

A jurisdiction that violates the HAA can be subject to both an order compelling it to take action to come into compliance and fines if it fails to comply with the court's order. If the court finds that the denial or conditional approval was in bad faith, the court can effectively order the housing development or emergency shelter proposal approved.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of San Jose, February 7, 2025	A builder's remedy project is not automatically precluded from meeting the conditions required for a CEQA Class 32 infill exemption determination.
City of Menlo Park, November 26, 2024	Local jurisdictions cannot require a general plan amendment or zoning change for a builder's remedy project.
City of Gilroy, July 23, 2024	Local jurisdictions must separate incompleteness and inconsistency review items, and builder's remedy prevents disapproval for inconsistency with either general plan or zoning.

LEGISLATION HIGHLIGHTS

Mixed-use development criteria SB 838, Durazo (2025); amended Gov. Code, § 65589.5.	Redefines a "mixed-use development" to exclude any portion used as a hotel, motel, bed and breakfast inn, or other transient lodging with the exception of a residential hotel.
Building Permit Inspections AB 1308, Hoover (2025); amended Gov. Code, § 65589.5, and added Health and Safety Code § 17970.3.	Specifies a 10-day time limit for building permit inspection of certain smaller permitted housing development projects. Failing to meet the time limit would constitute a local agency's disapproval of the housing development project.
Builder's Remedy, and Expanded Definitions, Criteria AB 1893, Wicks (2024); amended Gov. Code, § 65589.5.	Expands the definition of "disapprove the housing development" to include administrative actions and certain provisions of the Permit Streamlining Act among others. Amended the definition of "housing for lower income households, mixed-income households, and housing for moderate-income households" to include a range of affordability mix. Prescribes residential density standards and objective development standards that apply to a builder's remedy project.
CEQA Disapproval Procedures AB 1413, Ting (2024); added Gov. Code, §§ 65589.5.1 and 65589.5.2	Expands CEQA disapproval criteria when a local agency fails to make a CEQA exemption determination or adopt a CEQA environmental document. Requires a local agency to file notice within 5 days of receiving a timely written notice from the applicant. Requires a minimum 60-day public comment period and consideration of the applicant's objectives, comments, evidence, and concerns in their notice.
CEQA Disapprovals AB 1633, Ting (2023); amended Gov. Code, § 65589.5.	Establishes that a local agency's failure to make a determination that the project is exempt from CEQA; abuse of discretion; or failure to adopt, approve, or certify an environmental review document constitutes a disapproval.
General Plan Consistency AB 3194, Daly (2018); amended Gov. Code, § 65589.5	Establishes that a housing development project need not be consistent with the zoning if it is consistent with the general plan designation. Includes a statement of legislative intent disfavoring denials based on an adverse impact to health and safety, noting that conditions allowing for such a finding should "arise infrequently."

Preponderance of Evidence; Lower Density Definition AB 678, Bocanegra & SB 167, Skinner (2017); amended Gov. Code, § 65589.5	Expands findings to be reviewed under the more restrictive "preponderance of the evidence" standard rather than the "substantial evidence" test that had previously applied. Expands the definition of "lower density" to include any action that has the same impact on the ability of the project to provide housing as reducing the density. Authorizes fines and other remedies for noncompliant jurisdictions.
Reasonable Person Standard AB 1515, Daly (2017); amended Gov. Code, § 65589.5	Requires jurisdictions make findings that a housing development project is consistent with local plans, programs, ordinances, standards, and policies if a reasonable person would conclude that the project is consistent.

HOUSING CRISIS ACT

Government Code §§ 65913.10, 65940, 66300, 66300.5, 66300.6

INTRODUCTION

The Housing Crisis Act (HCA) limits the ability of cities and counties to (among other provisions):

- Change the general plan land use designation, specific plan land use designation, or zoning to a less intensive use or reduce the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below that which was in effect on January 1, 2018;
- Impose a moratorium or similar restriction or limitation on housing development; or
- Cap the number of housing units that can be approved or constructed.

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

More detail is available on HCD's website about Designated Jurisdictions Prohibited from Certain Zoning-Related Actions.

KEY PROVISIONS

HCD is required to develop and maintain a list of cities ("affected cities") and census designated places (CDPs) within the unincorporated county ("affected counties") that are prohibited from taking certain zoning-related actions.

Prohibited Actions by Affected Jurisdictions

Affected jurisdictions are prohibited from taking a range of actions that would limit or decrease residential development capacity or construction in the jurisdiction. Where housing is an allowable use, an affected county or city cannot enact a development policy, standard, or condition that would have the following effects:

General Plan Land Use, Specific Plan, or Zoning

Changing the general plan land use designation, specific plan land use designation, or zoning to a less intensive use below what was allowed by the land use designations or zoning in effect on January 1, 2018.

- *Exception*: Jurisdictions may change a land use designation or zoning to a less-intensive use if that change is accompanied by a concurrent increase in residential density elsewhere in the community.

Moratorium or Similar Restrictions

Imposing a moratorium or similar restriction on housing development except to address an imminent threat to health and safety. Any moratorium must be approved by HCD before it can be enforced.

- *Exception*: The law includes an exception to moratoriums or other limitations on residential development capacity if the policy is intended to preserve or facilitate the production of housing for lower-income households or housing types that traditionally serve lower-income households. For example, several cities around the state have removed mobile home parks from zones that otherwise allow high-density residential development to decrease pressure to redevelop those properties. This type of action to preserve and stabilize housing serving vulnerable populations continues to be allowed under the HCA.

Objective Design Standards

Imposing design review standards established on or after January 1, 2020 that are not objective.

Limitation on Permits, Housing Units, or Population

Limiting the number of housing development permits that can be issued or the number of housing units that can be constructed, or establishing or implementing any provision that limits the population of the county or city.

Demolition and Replacement of Protected Units

Additionally, the HCA requires housing development projects to create at least as many units as will be demolished during construction of the project in an affected jurisdiction. All development projects, including housing development projects and non-housing development projects, must replace any existing protected units on site and provide relocation benefits to existing occupants of protected units. Replacement units required for non-housing projects must be developed prior to or concurrently with the development project and may be located on a site other than the project site but must be located within the same jurisdiction.

HCA No Net Loss

The HCA requires no net loss of housing units in the development of new housing in an affected jurisdiction and the replacement of any existing housing units that qualify as protected units. If a housing project is demolishing existing residential units, the jurisdiction can only approve the project if it will include at least as many units as are being demolished. In addition, development projects that are demolishing what are known as “protected units” must comply with additional replacement requirements to be approved. This applies to development projects beyond just housing projects that are demolishing existing protected units on the site.

Protected Units

Protected units include the following:

- Units that are, or have been within the last five years, deed-restricted housing affordable to lower income or very low-income households.
- Units that are or have been rented within the last five years by lower-income or very low-income households.
- Units that are, or have been within the last five years, rent-controlled.
- Units that have been withdrawn from the rental market within the past 10 years pursuant to the Ellis Act.

Replacement of Protected Units

A developer must commit to replacing all protected units in the new project. Replacement requirements largely mirror those under the state density bonus law (SDBL) and replacement units may be used towards meeting SDBL requirements or a local inclusionary housing requirement.

- **Replacement units must be affordable at the same or lower income level** as the household that is or was last in occupancy and be deed-restricted for 55 years for rental units or subject to an equity-sharing agreement for for-sale units.
- **If the income level of the household that is or was last in occupancy is unknown**, it is rebuttably presumed that lower-income and/or very low-income households (depending on if the units are vacant or demolished) occupied these units in the same proportion as lower income and/or very low-income households to all renter households within the jurisdiction based on the Comprehensive Housing Affordability Strategy database (CHAS).
- **In the case of a rent-controlled unit occupied by a household above lower-income limits**, the jurisdiction may choose to require replacement with a deed-restricted unit affordable to low-income households or a rent-controlled unit.
- **Replacement units must be of an equivalent size to the units they are replacing**. If more than one protected unit is being replaced, the "equivalent size" requirement can be met by providing replacement units that contain at least the same total number of bedrooms across all replacement units.
    - *Example*: If a developer has an obligation to replace three 3-bedroom protected units and three 1-bedroom protected units, this could be met with six 2-bedroom replacement units.

Tenant Protections

In addition to complying with replacement obligations, developers must do the following for protected units that are currently occupied:

- **Allow occupants to remain in their units** until six months before the start of construction activities.
- **Provide relocation assistance** for existing occupants of any protected units that are lower-income households.

- **Provide a right of first refusal for a comparable unit** affordable to the household at an affordable rent or housing cost in the new development, or in any required replacement units associated with a new development that is not a housing development, for existing occupants of any protected units that are lower income.

Local Ordinances

The HCA's demolition restrictions and replacement requirements do not supersede any objective provision of a locally adopted ordinance that are more protective. A local ordinance applies—rather than the provisions of the HCA—if that ordinance is objective and places restrictions on the demolition of residential units or the subdivision of residential rental units that are:

- More protective of lower-income households,
- Requires the provision of a greater number of units affordable to lower-income households, *or*
- Requires greater relocation assistance to displaced households.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of San Jose, October 16, 2024	Replacement units in for-sale projects must be provided as for-sale units, and because of City adoption of a compliant ordinance, applicants in the City can fulfill replacement unit requirements by providing for-sale Accessory Dwelling Units (ADUs) as allowed under State ADU Law and State Density Bonus Law.
City of Riverside, June 14, 2024	Changing residential to commercial zone is considered a net loss issue under the HCA and requires increase in residential capacity elsewhere within the jurisdiction.
City of Los Angeles, August 28, 2024	While the HCA requires the developer to provide right of first refusal to existing occupants of any protected units that are lower-income households, it does not state that comparable units must be deed-restricted in the same manner as protected units for replacement purposes under the HCA.
City of Carlsbad, December 14, 2023	Affordable dwelling units used to qualify a housing development for State Density Bonus Law may be counted towards the replacement units required when affordable housing is demolished.

LEGISLATION HIGHLIGHTS

Replacement and Relocation Provisions	Expands provisions regarding demolition of housing units to prohibit affected cities or counties from approving any development project, not just housing development projects,

AB 1218, Lowenthal (2023); amended Gov. Code, §§ 65912.114, 65912.124, 65940, and 66300; reorganized provisions under Gov. Code, §§ 66300.5 and 66300.6	that requires demolition of occupied or vacant protected units (including sites where protected units were demolished in the previous 5 years) unless certain conditions are met. Protected units, including those demolished on or after January 1, 2020, must be replaced prior to or concurrently with the development project.
Added to HCD enforcement authority AB 215, Chiu (2021); amended Gov. Code, § 65585	Adds a number of laws to the list of laws that fall under HCD's AB 72 enforcement authority, including the Housing Crisis Act of 2019.
Restricting Rezones, Limits to Housing Development, and Demolition of Existing Housing. SB 330, Skinner (2019); amended Gov. Code, § 65589.5 and added Gov. Code, § 66300	Makes a number of changes to the law that limit local review of housing projects, restrict the ability of jurisdictions to rezone residential sites or place limits on housing development, and limit the demolition of existing housing. Some of the bill's provisions apply statewide, while others apply only in affected cities and counties such as urbanized areas or urban clusters.

HOUSING ELEMENT LAW

Government Code §§ 65580-65589.11

INTRODUCTION

The housing element is the plan for how every city and county will meet the existing and projected housing needs of all income groups within the jurisdiction. Housing Element Law is also part of a broader statewide framework to reduce regional and local patterns of housing segregation by removing barriers to housing production—particularly affordable housing—and ensure that every local jurisdiction in the state does its part to plan for the housing needs at all income levels.

HCD created **Building Blocks: A Comprehensive Housing-Element Guide** to assist jurisdictions in creating comprehensive housing elements. For additional technical assistance resources, please view the following link: Building Blocks | California Department of Housing and Community Development.

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

KEY PROVISIONS

General Plan Framework

The housing element is one of several required elements of a jurisdiction's general plan. Every city and county must adopt and periodically update its general plan, generally every 8 years. Project entitlements, including subdivision maps, and local legislative actions (e.g., specific plans, zoning ordinances) must be consistent with the general plan. Each of the general plan's elements must also be consistent with one another, ensuring an internally consistent document to guide planning and development within the jurisdiction. The housing element is unique within the general plan because it requires specific actions and commitments by the jurisdiction to facilitate housing development and the element must be reviewed and certified by HCD.

Site Inventory Requirements

One of the most important requirements of the housing element is the preparation of an inventory of available sites suitable to accommodate its assigned Regional Housing Needs Allocation (RHNA) for each income group. These income groups include Very Low, Low, Moderate, and Above Moderate, representing different percentage ranges of Area Median Income (AMI). This analysis requires the jurisdiction to calculate how many new units may be accommodated on each inventory site and demonstrate that each site is "suitable and available" for the development of housing within the 8-year planning period. This includes determining that the sites are served by infrastructure (or that there is a plan to serve them) and have appropriate zoning and development standards in place.

Density Minimums

Sites designated to meet the need for lower-income households must be zoned at densities sufficient to accommodate housing affordable to these income groups. This standard can be demonstrated in two ways.

- The jurisdiction can rely on a set of minimum default densities set forth in the statute. These default densities—sometimes known as "Mullin densities" after the name of the author of the bill that enacted them—vary by the community type, ranging from 10 units per acre for an unincorporated area in a nonmetropolitan county, to 30 units per acre in a metropolitan jurisdiction. HCD publishes a list of jurisdictions and their respective "default" density standards that are deemed appropriate to accommodating housing for lower-income households. Zoning that accommodates the default density is presumed to be sufficient to support the development of housing for lower-income households. For additional details, please view the following link: Default Density Memo.
- The jurisdiction can demonstrate that certain densities support feasible developments for that income group based on market demand, financial feasibility, and development trends. This method is generally rare and subject to HCD review.

Programs to Address Gaps

After evaluating the inventory based on statutory requirements, if the inventory shows a shortfall for one or more income categories, the housing element must contain a program to make additional adequate sites available to accommodate the entire RHNA during the housing element planning period. For example, if a jurisdiction has a RHNA of 1,000 units for low-income households, the inventory must show that there are enough sites to accommodate at least 1,000 new units of housing zoned at appropriate multifamily densities. If not, the housing element must have a program that commits the jurisdiction to rezone land or take other actions to make additional sites available.

In addition, the program must designate sites sufficient to meet the RHNA for lower-income households with a zoning that permits development by-right for projects where at least 20 percent of the units are affordable to lower-income households. By right means that a project must be approved without discretionary action that would trigger environmental review requirements. This program can include a number of actions by the local government, including rezoning land to residential from other uses or increasing the density and development standards on existing residential sites. If a housing element is certified by the due date, a jurisdiction has three years to complete the rezoning program.

Other Requirements in the Housing Element

Beyond identifying sufficient sites to meet the RHNA, the housing element must include analyses, programs, and objectives on a number of topics critical to addressing the existing and projected need for housing affordable at all income levels. The following is a broad overview of key requirements that must be included in the housing element:

- **Analysis of existing demographics and housing need.** The element must include an analysis of existing need for housing for various income levels and populations.

This includes an analysis of the number of households that are living in overcrowded or substandard housing, the number of households overpaying for housing—generally defined as those paying more than 30 percent of their income for housing, and housing need for special need populations such as persons experiencing homelessness, seniors, persons with disabilities, large families, and extremely low-income households.

- **Identification and removal of constraints to housing.** Housing elements must include an analysis of governmental and non-governmental constraints to the development of housing for all income levels. This includes an evaluation of development standards, permit processing procedures, housing for persons with disabilities, fees, building standards, and other governmental regulations that affect the development of housing. The element must also ensure that the jurisdiction has zoning to accommodate a variety of housing types including multifamily, housing for farmworkers, supportive housing, transitional housing, and emergency shelters. Where identified, the element must include programs to minimize or remove constraints.
- **Sites for shelters.** Housing elements must identify a zone or zones where emergency shelters are permitted without discretionary approval. If such a zone does not exist, the jurisdiction must include a program to create one. (See HCD memo dated December 29, 2022, for additional details on emergency shelters.)
- **Preservation of existing affordable housing.** Housing elements must include an analysis of existing subsidized housing that is at risk of converting to market rate within the next 10 years and the local, state, and federal resources available to preserve the housing as affordable. The element must also include programs to preserve these units where feasible, and to conserve and improve the existing affordable housing stock, including non-subsidized units at risk of demolition.
- **Affirmatively furthering fair housing.** Housing elements must include an assessment of fair housing issues, including patterns, trends, conditions, and practices that result in impediments to fair housing choice and actions the jurisdiction will take to proactively increase access to housing choice and reduce segregation.

Public and HCD Review

In drafting and adopting the element, jurisdictions must engage in a public process that ensures participation by all economic segments of the community. Once the public process is completed, the draft housing element is submitted to HCD for review. Upon receiving the initial draft, HCD has 90 days to issue findings to the jurisdiction as to whether the draft element substantially complies with the law, or if it does not, an explanation of what changes are necessary to bring it into compliance. Once a jurisdiction has made changes to address HCD's findings—often an iterative process during which HCD has 60 days to review each subsequent draft—the final element is adopted by the jurisdiction and submitted to HCD for final approval.

Implementation

Following adoption of the element, the law requires jurisdictions to implement the programs in the housing element and to make planning and land use decisions and approvals consistent with the adopted element. Failure to do so may result in HCD's removal of its finding of compliance.

Results of Noncompliance

Significant penalties apply if the housing element is not updated and certified by HCD. These penalties include, but are not limited to:

- Shorter timelines to accomplish required rezonings.
- Ineligibility or de-prioritization for various state grant and incentives programs.
- Inability to deny certain housing development projects based on inconsistency with local zoning and land use designation ("Builder's Remedy").
- Potential litigation that can result in court-imposed fines of $10,000 to $100,000 per month which can be multiplied by a factor of 6 for continuing noncompliance. Moreover, in any action brought by the Attorney General or HCD to enforce the adoption of housing element revisions, jurisdictions are subject to additional fines of between $10,000 and $50,000 per month for each failure to adopt court-ordered housing element revisions, assessed from the date of initial violation until the date the violation is cured, including all investigation and prosecution costs in a successful lawsuit. Other potential ramifications could include the loss of local land use authority to a court-appointed agent.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Santa Barbara, December 19, 2024	Clarifies that Housing Element Law does not allow local governments to deny by-right review for multifamily housing on reused housing element sites solely because a subdivision is proposed. The housing component must be approved ministerially if at least 20 percent of units are affordable to lower-income households, while the subdivision itself may undergo discretionary review under the Subdivision Map Act and local ordinances.
City of Pleasant Hill, July 10, 2024	Addresses the City's rezoning efforts under Housing Element Law and emphasizes the obligation to ensure that sites identified in its housing element are rezoned to permit residential development by-right at appropriate densities and with sufficient development capacity. The draft rezoning ordinance does not fully comply with state law because it fails to allow residential use by-right on all identified sites.

LEGISLATIVE HIGHLIGHTS

Emergency Shelter Planning AB 2339, Bloom (2022); amended Gov. Code §§ 65583 and 65863	Introduces stricter requirements for jurisdictions in planning emergency shelters. It limits the zones where shelters can be placed, mandates that existing uses on proposed sites do not impede shelter development, and expands the definition of emergency shelters to include facilities like navigation centers.
Required Comment Period AB 215, Chiu (2021); amended Gov. Code, § 65585	Requires jurisdictions to post draft housing elements for public comment at least 30 days before submitting to HCD, with an added 10-day period to respond to comments. Subsequent revisions must be posted online and shared with interested parties at least 7 days in advance. Extends HCD's review period for initial drafts from 60 to 90 days, while keeping the 60-day review window for revised drafts.
Consequences for Late Adoption AB 1398, Bloom (2021); amended Gov. Code, §§ 65583, 65583.2, and 65588	Closes a loophole that allowed jurisdictions to avoid penalties by adopting unapproved housing elements. Requires adoption of an HCD-approved housing element within 120 days of the deadline. If not met, jurisdictions must complete the required rezoning within one year instead of the usual three, replacing the prior four-year update penalty.
Affirmatively Furthering Fair Housing AB 686, Santiago (2018) amended Gov. Code, §§ 65583 and 65583.2, added Gov. Code § 8899.50	Requires that all housing element revisions that occur on or after January 1, 2021 include an assessment of fair housing issues, an analysis of the relationship between available sites and areas of high or low resources, and concrete actions in the form of programs to address identified fair housing issues and/or further promote AFFH.
Determination of Adequate Sites AB 1397, Low (2017); amended Gov. Code, § 65580, 65583, and 65583.2	Increases scrutiny on non-vacant sites (e.g., existing commercial or low-density residential uses) by requiring a detailed analysis of redevelopment potential, considering lease terms, market conditions, and past redevelopment success. If over 50 percent of a jurisdiction's low-income RHNA is on non-vacant sites, existing uses are presumed to block development unless proven otherwise. Restricts reuse of undeveloped sites from past housing elements, limits reliance on very small or large parcels, and requires realistic unit capacity assumptions based on comparable local development patterns.

LIMITATIONS ON DEVELOPMENT STANDARDS

Government Code § 65913.11

INTRODUCTION

As part of the Building Opportunities for All Housing package (2021), Government Code section 65913.11 sets limitations on floor area ratio (FAR) and lot coverage standards that can be imposed on housing projects of 3 to 10 units within multifamily or mixed-use zones. The section specifies minimum FARs and supersedes local lot coverage standards that physically preclude projects from achieving the minimum FARs allowed by state law.

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KEY PROVISIONS

Applicability

This section applies to a legal parcel or parcels that meet either of the following criteria:

- **If in a city:** City boundary includes some portion of either an urbanized area or urban cluster as designated by the United States Census Bureau, or
- **If in unincorporated area**: Parcel(s) is wholly within the boundaries of an urbanized area or urban cluster as designated by the United States Census Bureau.

Minimum Floor Area Ratios

For housing development projects in multifamily or mixed-use zoning districts, local agencies cannot impose an FAR development standard less than the following:

- 1.0 FAR for projects with 3 to 7 units, or
- 1.25 FAR for projects with 8 to 10 units.

Example	Minimum FAR	Minimum Total Floor Area
▶ 3,000 sf parcel ▶ 5 units proposed	1.0	3,000 sf *Average 600 sf per unit*
▶ 8,000 sf parcel ▶ 8 units proposed	1.25	10,000 sf *Average 1,250 sf per unit*
sf = square foot or square feet		

Limitations on Lot Coverage Maximums

The local jurisdiction must also waive the lot coverage requirement if it would preclude the housing development project from achieving the minimum FAR allowed by statute. Lot coverage typically refers to the portion of a site that contains the footprint of a building or a building projection (e.g., bay windows), or is covered by a roofed structure (e.g., covered porch).

Example	Max. Lot Coverage	Applicability of Lot Coverage Requirement
▶ 5,000 sf parcel ▶ 5 units proposed	40%	If the applicant proposes a 5-unit, single-story 5,000 sf development on a 5,000 sf parcel (1.0 FAR, 100% lot coverage), the local agency must waive the 40% maximum lot coverage requirement to allow the project to achieve the minimum FAR of 1.0.

RECENT LEGISLATION

Floor Area Ratio and Lot Coverage Standards SB 478, Weiner (2021); amended Gov. Code, § 65585 and added Gov. Code, § 65913.11.	SB 478 prohibits a local agency from imposing a floor area ratio limit lower than 1.0 for developments of 3 to 7 units, or 1.25 for 8 to 10 units.

DUPLEXES AND LOT SPLITS (SB 9)

Government Code §§ 65852.21, 66411.7

INTRODUCTION

Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home. For additional guidance on SB 9's requirements, please refer to HCD's SB 9 Fact Sheet.

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

KEY PROVISIONS

Applicability in Single-Family Residential Zones

A lot zoned for single-family residential within an urbanized area may be developed by right through two mechanisms, or a combination of both. First, the statute allows an applicant with a qualifying single-family lot to subdivide it into two lots of roughly equal size. Secondly, the law allows an applicant to propose up to four units on a qualifying lot. A jurisdiction may deny an SB 9 application only if the lot split or development project would have a specific adverse impact on public health and safety or the physical environment that cannot be mitigated.

Jurisdictions may impose objective zoning, subdivision, and design standards on both lot splits and housing developments using SB 9. However, local objective standards cannot preclude the development of one or two units of at least 800 square feet each on a qualifying lot. Local objective standards also cannot preclude the creation of two 1,200 square-foot lots. In addition, jurisdictions can only apply objective standards to housing developments proposed using SB 9 if those standards are applied uniformly to development within the underlying zoning district. A jurisdiction may adopt objective standards for housing developments proposed pursuant to SB 9 that are more permissive than the underlying zoning.

For housing developments, jurisdictions may require:

- **Parking.** Off-street parking of up to one space per unit, except no parking can be required if the parcel is within one-half mile walking distance of either a high-quality transit corridor or a major transit stop, or within a block of a car-share vehicle.
- **Setbacks.** A rear and side setback of up to four feet, except where there is an existing structure with less or no setback.

Lot Splits

For lot splits, jurisdictions may require easements where they are required for public services and utilities, and any requirements needed to ensure the parcel has access to

or adjoins a public right-of-way. These requirements should be designed to facilitate access without physically precluding the lot split. Jurisdictions shall not require:

- Dedications of rights-of-way.
- Construction of offsite improvements.
- Conformance with objective standards that are not related to the design or improvement of a parcel.
- The correction of nonconforming zoning conditions.

Maximum Achievable Units, ADUs, and JADUs

SB 9 enables an applicant to achieve up to four units on an eligible lot, with or without an urban lot split. Where an urban lot split is utilized, a local agency must allow two units on each of the resulting lots. On a site that was not created with an urban lot split, an applicant can build up to four units by combining SB 9 with ADU and JADU Law. For example, an applicant may propose two units pursuant to SB 9, and an ADU and JADU. Local agencies should also consult HCD's ADU Handbook for more information on ADU and JADU Law.

Review and Approval Timeline

SB 9 establishes a timeline by which a local agency must approve or deny an application. A complete application for a housing development or urban lot split must be approved or denied within 60 days from the date the local agency receives it. In addition, the Permit Streamlining Act establishes that a local agency must determine whether an application for a development project is complete within 30 days from the date the local agency received the application.

Tenancy Requirements, No Short-Term Rental

A jurisdiction must require that any rental units created under this process be rented for terms greater than 30 days, a provision intended to prevent their use as short-term rentals. In addition, an applicant for an urban lot split must sign an affidavit stating that the applicant intends to live in one of the units as their principal residence for at least three years from the date of approval of the urban lot split unless the applicant is a community land trust or nonprofit organization.

Exceptions

SB 9 provisions do not apply if the proposed unit construction or urban lot split requires the demolition or alteration of housing that:

- Is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;
- Is subject to any form of rent or price control through a public entity's valid exercise of its police power; or
- Has been occupied by a tenant in the last three years.

SB 9 provisions also do not apply to:

- A parcel where units were withdrawn from the rental market pursuant to the Ellis Act in the last 15 years.
- A contributing structure within a historic district or a historical resource on the State Historic Resource Inventory, or a contributing structure within a historic property, historic district, or landmark under a local ordinance.
- Specified environmentally sensitive, hazardous, or protected lands, such as wetlands, prime farmland, etc., as listed in Government Code section 65913.4, subdivision (a)(6)(B)- (K) as that subdivision read on September 16, 2021. These exemption areas must not be more or less restrictive than what is provided in statute.
- Parcels previously created under SB 9 lot split provisions are not eligible for further lot splits.
- Parcels adjacent to a lot created through an SB 9 lot split if that lot was split by the same owner or someone working in concert with the owner.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Riverside, March 21, 2025	SB 9 requires that standards cannot be applied to SB 9 units unless they are applied uniformly to development within the underlying zone, that neighborhood noticing requirements cannot be imposed as a condition of approval for urban lot splits, and that side or rear setbacks greater than four feet cannot be imposed above the first floor for SB 9 units.
City of Fort Bragg, February 19, 2025	SB 9 requires ministerial approval for up to two primary units and/or lot splits in single-family residential zones and outlines that local ordinances cannot impose conflicting standards. The City of Fort Bragg's ordinance omits required references to key legal provisions, imposes restrictions not uniformly applied in single-family zones, sets overly restrictive ADU size limits, and includes site exclusion and utility requirements that conflict with SB 9.
City of Laguna Beach, September 19, 2024	SB 9 requires ministerial approval of housing developments with up to two units and/or lot splits in all single-family residential zones. The ordinance improperly excluded the Residential/Hillside Protection (R/HP) zone, misapplied site exclusion criteria for fire and fault hazard zones, and incorrectly imposed an owner-occupancy requirement for SB 9 developments, which SB 9 does not allow.
City of Long Beach, August 9, 2024	Objective zoning, subdivision, and design standards shall not preclude an urban lot split from occurring. The letter also explains how a local agency can require access to new lots.

City of Menlo Park, July 11, 2024	A local agency cannot require park dedication in-lieu fees (commonly known as Quimby fees) as a condition of approval for SB 9 urban lot splits.

LEGISLATIVE HIGHLIGHTS

Historic Districts and Resources AB 1061, Quirk-Silva (2025); amended Gov. Code, §§ 65852.21 and 66411.7.	Clarifies exclusions and protections for historic districts and historic landmarks under SB 9. Proposed lot splits cannot result in demolition or alteration of a contributing structure in a historic district.
Strengthening SB 9 SB 450, Atkins (2024); amended Gov. Code, §§ 65852.21 and 66411.7, and Section 4 of Chapter 162 of the Statutes of 2021	SB 450 strengthens and clarifies the provisions of SB 9 by limiting the regulatory authority of local governments over SB 9 projects. The bill aims to prevent cities from imposing excessive design and zoning restrictions that hinder the development of duplexes and lot splits in single-family residential zones. By standardizing approval processes and reducing regulatory barriers, SB 450 ensures that SB 9 fulfills its goal of increasing housing density across California.

MIDDLE CLASS HOUSING ACT (SB 6)

Government Code § 65852.24

INTRODUCTION

The Middle Class Housing Act of 2022 (Chapter 659, Statutes of 2022), commonly referred to as "SB 6" was signed into law on September 28, 2022. The law aims to address California's housing shortage by providing that housing is an allowed use, without the need for rezoning, on eligible commercially-zoned sites provided that a proposed development meets specified requirements. The statute does not create a specific ministerial approval process but allows project applicants to use the option to combine SB 6 with the existing Streamlined Ministerial Approval Process ("SMAP") available under Government Code section 65913.4.

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KEY PROVISIONS

The statute allows for residential development on commercially zoned sites where office, retail, or parking are a principally permitted use. Eligible developments must comply with site eligibility criteria and development-specific requirements. For example, a site cannot be on or adjacent to an industrial use, and a development must meet specified density and comply with local development standards and inclusionary housing requirements, if applicable. A proposed development may be either entirely residential or mixed-use with at least 50 percent of the square footage of the new construction associated with the project designated for residential use.

The statute does not automatically mandate a specific review process for applications submitted under SB 6. However, a project sponsor may utilize the streamlined process specified in Government Code section 65913.4 ("SMAP") for a project that meets the criteria of both statutes. In addition, SB 6 projects are entitled to the protections of the Housing Accountability Act (HAA) and may utilize State Density Bonus Law (SDBL) to qualify for a density bonus, waiver, or incentive/concession.

Local Implementation

SB 6 is applicable to local jurisdictions without an implementing ordinance, although a local jurisdiction may choose to adopt a local ordinance. Local agencies have the option to exempt certain parcel(s) from SB 6. However, to do so, local agencies must show that there is no net loss in residential density from the exempted parcel(s) by making written findings supported by substantial evidence that either the lost residential density:

- Is concurrently reallocated to other parcel(s), or
- Can be accommodated on a site(s) that allows a density at or above the density specified in Government Code section 65583.2, subdivision (c)(3)(B) in excess of the acreage required to accommodate the jurisdiction's share of lower income housing..

Middle Class Housing Act vs. Affordable Housing and High Road Jobs Act

The Middle Class Housing Act was signed into law at the same time as the Affordable Housing and High Road Jobs Act in Government Code sections 65400, 65585, and 65912.100, commonly referred to as "AB 2011." Both statutes broadly create opportunities for housing on commercially zoned sites, but key differences include:

- **Review process**. While AB 2011 creates a streamlined ministerial process and projects are exempt from the California Environmental Quality Act (CEQA), SB 6 does not. SB 6 on its own does not mandate a specific review process; however, it creates an option for project applicants to invoke SMAP (Government Code section 65913.4) if the developer wants to pursue a ministerial approval process.
- **Eligibility**. SB 6 and AB 2011 each have their own set of site eligibility and development requirements. Some of these requirements are the same, while others are not. For example, both statutes provide that the site must allow office, retail, or parking use and cannot be located on or adjacent to an industrial use. Generally, AB 2011 has a more extensive list of eligibility requirements compared to SB 6—AB 2011 itself has different requirements depending on the project affordability.
- **Affordability**. SB 6 does not establish a specific affordability requirement for eligible projects but instead defers to a local government's inclusionary housing requirement if there is one in place. AB 2011 has a specific set of affordability requirements (one for 100 percent affordable projects and another for mixed-income) whether or not a local government has its own inclusionary housing requirements.
- **Labor provisions**. SB 6 includes more extensive "skilled and trained workforce" requirements in addition to prevailing wage requirements. AB 2011 requires prevailing wage but does not include "skilled and trained workforce" requirements.

LEGISLATIVE HIGHLIGHTS

Expanded Housing Development on Commercial Sites AB 2243, Wicks (2024); amended Gov. Code, §§ 65852.24, 65912.101, 65912.111, 65912.112, 65912.113, 65912.114, 65912.121, 65912.122, 65912.123, and 65912.124, and added Gov. Code, § 65912.106	Amends both SB 6 and AB 2011 to broaden the scope of residential developments permissible in commercial zones. It allows mixed-income projects on regional mall sites under 100 acres and in narrower commercial corridors and extends eligibility to projects within 500 feet of a freeway.

MINIMUM PARKING REQUIREMENTS (AB 2097)

Government Code § 65863.2

INTRODUCTION

Assembly Bill (AB) 2097 (Chapter 459, Statutes of 2022) prohibits local jurisdictions from imposing parking minimums on residential, commercial, or other development, if the project is located within one-half mile of a major transit stop. Parking minimums may still be imposed on projects that include an event center or transient lodging, such as hotels, motels, and bed and breakfast inns, as well as housing developments under limited circumstances. HCD published an AB 2097 Technical Advisory to assist local and regional agencies, the development community, and members of the public with the implementation of the law.

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KEY PROVISIONS

AB 2097 prohibits minimum parking requirements on any eligible residential, commercial, or other development project located within one-half mile of public transit. This law applies without exception to a housing development project in any of the following situations:

- The development dedicates at least 20 percent of units to very low-, low-, or moderate-income households, students, the elderly, or persons with disabilities.
- The development contains fewer than 20 housing units.
- The development is subject to parking reductions under any other applicable law.

Major Transit Stop

The term “major transit stop” is defined as a site that contains any of the following:

- Existing rail or bus rapid transit station.
- Ferry terminal served by a bus or rail transit service.
- Intersection of two or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute periods.

Major transit stops that are included in the applicable regional transportation plan (RTP) also qualify, including if they are planned for in the future or if bus service has been reduced or altered since the RTP was adopted.

Exceptions

Public agencies may make written findings, supported by a preponderance of the evidence in the record, within 30 days of the receipt of a completed application for

certain residential, commercial, or other developments, that not imposing parking minimums would have a substantially negative impact on any of the following:

- Ability to meet very low-income or low-income regional housing need allocation (RHNA).
- Ability to meet special housing needs for the elderly or persons with disabilities.
- Existing residential or commercial parking within one-half mile of the housing development project.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Los Angeles, March 29, 2024	Project is eligible for AB 2097 because planned major transit stops identified in the Regional Transportation Plan are also considered eligible.
City of Los Angeles, March 8, 2024	Explains the calculation of service frequency for local/rapid bus lines in determining a "major transit stop" for the implementation of AB 2097.

LEGISLATIVE HIGHLIGHTS

Increases Frequency of Transit Headway Times AB 2553, Friedman (2024); amended Pub. Res. Code, § 21064.3	Amends the definition of "major transit stop" to include an intersection of two or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute periods. Previously, the frequency interval was 15 minutes or less during the peak commute periods.

NO NET LOSS LAW

Government Code § 65863

INTRODUCTION

The No Net Loss Zoning Law requires jurisdictions to maintain adequate sites to accommodate their unmet share of the Regional Housing Needs Allocation (RHNA) at each income level at all times. Specifically, a jurisdiction may not reduce the residential density of any parcel identified in the housing element site inventory, or otherwise relied upon to meet its RHNA, unless it makes findings that the reduction is consistent with the general plan and that adequate sites remain to accommodate the remaining RHNA for each income level. If a reduction in density leaves a jurisdiction with insufficient adequate sites, it can still approve the reduction if it also identifies sufficient additional adequate sites to cover the shortfall.

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Similarly, if a development project is approved at a lower density than the number of units assumed for that site in the housing element by income level, the jurisdiction must make specific findings that sufficient capacity remains in the inventory or additional adequate sites are identified within 180 days of that approval. HCD encourages jurisdictions to zone for housing above their RHNA requirements (130 to 150 percent) to avoid triggering the No Net Loss Zoning Law. See HCD's memorandum on Housing Element No Net Loss Law for more information.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Santa Clara, August 9, 2024	Assist the City with its decision-making regarding a specific project, including its exemptions from minimum density provisions under No Net Loss.

LEGISLATIVE HIGHLIGHTS

Development that Includes Less Units by Income Category SB 166, Skinner (2017); amended Gov. Code, § 65863	Expanded the law to require that a jurisdiction must make findings to allow development on a housing element site with fewer units by income category than indicated in the adequate sites inventory. Jurisdictions must also maintain an adequate supply of multifamily sites to accommodate lower-income housing and are prohibited from denying a project on the basis that the project would require compliance with this obligation.

PORTIONS OF THE PERMIT STREAMLINING ACT

Government Code §§ 65940, 65940.5, 65941, 65941.1, 65943, 65944, 65945

INTRODUCTION

The Permit Streamlining Act (PSA) requires that cities and counties (including charter cities and counties) and special districts publish a list of specific information that will be required from any development project applicant. The PSA specifies a time limit of 30 calendar days for a local jurisdiction to review an application and either provide an applicant with a list of items that were not included in the application or make a determination that the application is complete. If a determination is not made within the 30-day period, the application is automatically deemed complete. The PSA also allows an applicant to submit a preliminary application which confers benefits under the Housing Accountability Act (HAA), "freezing" the applicable fees and development standards that apply to the project at the time of a preliminary application submittal.

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HCD has enforcement authority over portions of the PSA. For additional details, please see HCD's Preliminary Application for Development webpage and Appendix C of HCD's Housing Accountability Act Technical Assistance Advisory.

KEY PROVISIONS

Preliminary Applications (Government Code § 65941.1)

Applicants may opt to submit a preliminary application for any proposed housing development project, proper submission of which entitles the project to benefits under the HAA. The 17 necessary components of a preliminary application for a proposed housing development project are specified in state law and include: site location; existing uses; proposed land uses; and any known historic and cultural resources and siting within a very high fire hazard severity zone, wetland, or hazardous waste site, among other requirements. HCD provides a preliminary application template for local jurisdictions as well as a standardized form that proposed development project applicants may use if the local jurisdiction has not established their own preliminary application.

Upon submission of a complete preliminary application, applicable fees and development standards that apply to the project will be frozen until the development project applicant submits a full application. The purpose of the "freeze" is to ensure applicable standards, ordinances, policies, fees, or any other adopted measure applied to the developer do not change during the entitlement timeframe. The proposed development applicant must submit a full application within 180 days of submitting a complete preliminary application, or the preliminary application lapses. Local

jurisdictions are not required to provide a response to the applicant confirming that the preliminary application is complete.

The PSA allows an applicant to make modifications to their project while preserving the preliminary application, within limits. If an applicant increases the number of residential units or square footage of construction by 20 percent or more (excluding increases resulting from a density bonus, incentives, concessions, or waivers), the preliminary application will no longer be in effect and the applicant must submit a new preliminary application containing information reflecting the changes.

Full Applications (Government Code §§ 65940, 65943, 65944, & 65945)

Application Checklist

Local jurisdictions are required by the PSA to publish online one or more detailed checklists of the information they require for development applications. This includes a certification of compliance with the state's list of hazardous waste sites; a statement that the submittal is an application; and identification of whether the project is under a low-level flight path, special use airspace, and within 1,000 feet of a military installation, if applicable to the jurisdiction.

30-Day Review and Completeness Determination

Local jurisdictions have 30 calendar days after the receipt of a development project application to determine in writing whether the application is complete. Applications are automatically deemed complete if written findings are not made and provided to the development project applicant within the 30-day timeframe. Mutually agreed upon extensions by the jurisdiction and development project applicant are permissible for full applications.

If the local jurisdiction determines the project application is incomplete, it must provide the applicant a detailed list of items that were not complete, as well as indicate how the development project applicant may satisfy incomplete items. The list of incomplete items is limited only to those that were listed in the jurisdiction's application checklist on the date that the applicant submitted the full application.

Resubmittal and Subsequent Review

Upon receipt of an incompleteness determination, the development applicant must resubmit incomplete project application information within 90 days of receiving written identification of the missing information; otherwise, the preliminary application expires. If the applicant did not submit a preliminary application, no resubmittal deadline is imposed on the applicant. Subsequent reviews by the local jurisdiction of a resubmitted application shall not request any additional information not previously requested in the initial review.

Appeal of Incompleteness Determination

Development project applicants may submit a written appeal if the application materials are determined to not be complete. A local jurisdiction must provide a final written determination on an appeal no later than 60 calendar days after receipt of the written appeal, or the application is automatically deemed complete.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Gilroy, July 23, 2024	Local jurisdictions must separate planning review for incompleteness and inconsistency items.
City of Beverly Hills, June 26, 2024	The PSA prohibits local jurisdictions from using the absence of the general plan amendment or zoning change application as a reason to determine a project application is incomplete if the requirement was not on the submittal requirement checklist.
City of Berkeley, December 7, 2023	The PSA requires local jurisdictions to determine in writing whether an application is complete within 30 calendar days after the application is received. Calendar days include weekends, holidays, and any City Hall closures. HCD recommends that the completeness review begins at application submittal.
Town of Los Gatos, August 30, 2024	Local jurisdictions should allow the payment of permit fees at the time the full application is submitted. The 90-day period following an incompleteness determination for a full application resets once the applicant resubmits the application. Applicants and local governments may mutually agree to an extension of the 90-day period.

RECENT LEGISLATION

Online Application Information SB 489, Arreguín (2025); amended Gov. Code, §§ 56300 and 65940.	Requires local agency formation commissions (LAFCos) to publish online their written notices, policies, procedures, and forms necessary for a complete application on a change of organization or reorganization, such as an annexation. Public agencies also must post online the list of information to determine completeness of a housing development project application.
Centralized Application Portal AB 920, Caloza (2025); added Gov. Code, § 65940.3.	Requires jurisdictions with a population of greater than 150,000 to create a centralized application portal that allows for status tracking of submitted applications.
Expanded Definition, Revised Approval Timeline AB 130, (2025); amended Gov. Code,	Requires local agencies to approve or disapprove a ministerial project application within 60 days of receiving a complete application (except for projects submitted under AB 2011.) Expands the PSA definition of a "development project" to include any ministerial housing development project

§§ 65940, 65941.1, and 65943.	requiring an entitlement permit, excluding postentitlement phase permits. Note, the PSA already required review for completeness of all housing development projects.
Submittal Requirements and Processing Timelines SB 330, Skinner (2019); added Gov. Code, § 65941.1	The provisions of SB 330 that apply statewide relate to the processing and approval of housing development project applications. The bill: ▶ Creates a "preliminary application" that developers can submit in advance of the full development application. A preliminary application becomes vested once a project proponent has submitted the 17 items enumerated in statute along with the permit processing fee. This "freezes" the applicable ordinances, policies, standards, and fees in place at that time. The preliminary application is considered valid so long as the project's size (in terms of square footage or units) does not change by 20 percent or more. ▶ Requires HCD to create a standard form that a housing development project applicant can use to submit a preliminary application. ▶ Requires jurisdictions to determine whether a proposed housing development project site is a historic site at the time the application is deemed complete. ▶ Requires project applicants to submit a full development application with 180 days of submitting a preliminary application. ▶ Reduces the time a jurisdiction has to approve or disapprove a residential project from 120 days to 90 days after certification of an environmental impact report (EIR) and from 90 days to 60 days if the project includes at least 49 percent affordable units.

RENTAL INCLUSIONARY HOUSING

Government Code §§ 65850 and 65850.01

INTRODUCTION

HCD has the authority to review a feasibility study for an inclusionary ordinance that requires more than 15 percent of the units in a rental housing development be affordable to lower-income households. HCD may conduct such a review if a jurisdiction fails to permit at least 75 percent of its above-moderate income regional housing needs allocation (RHNA) over five consecutive years, or if the jurisdiction fails to submit an annual progress report (APR) over two consecutive years.

Inclusionary housing, often referred to as inclusionary zoning, is a policy tool used by local jurisdictions to ensure that housing development meets the needs of all economic segments of the community. Inclusionary housing policies can be tailored to local circumstances. Under an inclusionary housing policy, a jurisdiction requires or incentivizes developers to include affordable units in their projects. For additional details, please see HCD's Rental Inclusionary Housing memorandum.

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KEY PROVISIONS

Local Authority

Cities and counties, including charter cities, may adopt ordinances requiring that a portion of residential rental units be affordable to households with moderate, low, very low, or extremely low incomes. The law applies to ordinances adopted after January 1, 2018.

Local inclusionary policies vary in terms of the percentage of affordable units that must be provided, at what income level(s), and for how long units must remain affordable. Jurisdictions typically require some mix of units affordable to low- and very low-income households, but in some high-cost markets, moderate-income units are also part of the requirement. Some jurisdictions require that inclusionary units remain affordable in perpetuity, although many policies require a 55-year affordability term for rental units and a 30- or 45-year term for for-sale units.

The law also mandates that any inclusionary housing ordinance applied to rental housing must offer developers alternative means of compliance. These alternatives may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or the acquisition and rehabilitation of existing units.

HCD Review Authority

If HCD asks to review a feasibility study, the review is limited to whether a qualified entity prepared the study and whether the study followed best professional practices. HCD is prohibited from requesting to review a feasibility study more than 10 years from the date of adoption or amendment of the ordinance. A jurisdiction is not required to prepare a feasibility study at the time it adopts or amends an inclusionary ordinance (although doing so is considered a best practice), nor are there any statutory limits on the design of local inclusionary policies.

LEGISLATIVE HIGHLIGHTS

Inclusionary Housing: Reports AB 2663, Grayson (2024); added Gov. Code, § 65906.6	Enhances transparency around the collection and use of in-lieu fees collected under local inclusionary housing ordinances. Starting January 1, 2026, local agencies that collect these fees must annually publish the amount collected and whether the funds are intended for any specific project. In addition, every five years, jurisdictions must report the total amount collected over that period and identify the projects funded with those fees.
Rental Inclusionary Ordinance AB 1505, Bloom (2017); amended Gov. Code, § 65850; added Gov. Code, § 65850.01	Restores and clarifies the authority of local jurisdictions to require inclusionary housing in rental developments. Prior to AB 1505, a 2009 appellate court interpreted local inclusionary policies as violating a landlord's right to set initial rents for new tenants under the Costa Hawkins Rental Housing Act.

STREAMLINED MINISTERIAL APPROVAL PROCESS

Government Code § 65913.4

INTRODUCTION

State law allows a streamlined ministerial approval process (SMAP) for certain multifamily housing development projects if a jurisdiction is not making sufficient progress toward its regional housing need allocation (RHNA). This process is commonly referred to as "SB 35" (Chapter 366, Statutes of 2017) or "SB 423" (Chapter 778, Statutes of 2023) in reference to the enacting legislation.

HCD reviews each local jurisdiction's permit data received through the Annual Progress Report (APR) that jurisdictions must submit to HCD each year. HCD then uses the permit data, along with the jurisdiction's housing element compliance status, to determine which local jurisdictions are subject to SMAP and whether a jurisdiction is subject to SMAP for proposed projects with either 10 percent or 50 percent affordability. The determination is made at the end of year four and year eight of the housing element planning period for each region. For the small number of jurisdictions with a five-year planning period, HCD makes determinations based upon a pro-rata share of the RHNA for the first three years in the planning period.

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To find out where SMAP is currently available to developers and in which affordability category, or to download HCD's SMAP Guidelines, which offer more details and information to implement the statute, visit https://www.hcd.ca.gov/community-development/accountability-enforcement/statutory-determinations.shtml.

KEY PROVISIONS

To be eligible for SMAP, a proposed project must be a multifamily development (containing two or more attached units) that is consistent with the objective zoning and design review standards in effect at the time the project proponent submits the application. Projects can include rental or ownership units. Any additional density or any concessions and development standard reductions or waivers to which the project is entitled under State Density Bonus Law (SDBL) shall be considered consistent with objective zoning, design review, and subdivision standards. Projects must be on an infill site (i.e., a site in an urbanized area where at least 75 percent of the perimeter is developed with urbanized uses) that is zoned for residential development or residential mixed-use development where two-thirds of the square footage is for residential use.

Affordability Requirements

All affordability requirements in SMAP projects are calculated based on the base project (i.e., not including any units added as a result of a density bonus). Units must be deed-restricted for 55 years for rental projects and 45 years for for-sale projects. If there are

local inclusionary housing requirements that require more affordable units, that policy applies rather than SMAP affordability requirements.

10 Percent Affordability

A developer can request SMAP for qualifying projects in any of the following situations:

- The jurisdiction has failed to permit half of its *above moderate-income* RHNA share in the first half of the housing element planning period or all of its above moderate-income RHNA share by the end of the housing element planning period,
- The jurisdiction has failed to submit its latest APR to HCD by the required deadline,
- The jurisdiction did not adopt a housing element found in substantial compliance with Housing Element Law by HCD by the statutory deadline.

Projects with more than 10 units of housing must deed-restrict at least 10 percent of the units for very low-income households (for rental projects) or lower-income households (for for-sale projects). Projects with fewer than 10 units of housing are exempt from this affordability requirement.

50 Percent Affordability

A developer can request SMAP for qualifying projects in which at least 50 percent of the units are deed-restricted for lower-income households if the jurisdiction has met above-moderate income RHNA targets but has failed to permit at least half of its *low- or very low-income* RHNA share in the first half of the housing element planning period or all of its low- or very low-income RHNA share by the end of the housing element planning period.

San Francisco Bay Area Jurisdictions

Within the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and San Francisco, jurisdictions underproducing above moderate-income housing have an alternative for meeting affordable housing requirements. Projects are eligible for SMAP if they dedicate 20 percent of units to households earning up to 100 percent of the area median income (AMI), provided that the average affordability of these units remains at or below 80 percent of AMI.

Site Eligibility

SMAP is not applicable to sites in environmentally sensitive locations, including certain areas of the coastal zone, prime farmland or farmland of state importance, wetlands, very high fire hazard severity zones (VHFHSZ) that have not adopted fire hazard mitigation measures, a hazardous waste site, certain flood-hazard areas, an earthquake fault zone (unless the development complies with seismic protection building code standards), conservation lands, and protected habitat. In addition, it cannot be used on sites where the project would require the demolition of deed-restricted housing affordable to lower- or moderate-income households, rent-controlled housing, housing that has been occupied by tenants within the past 10 years, or a historic structure. It also cannot be used on any site where housing that had been occupied by tenants was demolished within the past 10 years.

Tribal Consultation

Once an applicant submits a Notice of Intent to develop pursuant to SMAP, the jurisdiction must engage in a confidential consultation process with any California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development to identify and protect tribal cultural resources. The consultation process must follow strict statutory timelines and procedures. The parties to the consultation process are the jurisdiction and the relevant tribe or tribes. The developer may participate upon agreement of the tribe or tribes, which can rescind their agreement at any time. A developer may not proceed with a SMAP application in any of the following circumstances:

- There is a tribal cultural resource on the project site that is on a national, state, tribal, or local historic register.
- The parties to the consultation have not documented an enforceable agreement on treatment of tribal cultural resources.
- The parties to the consultation do not agree as to whether a potential tribal cultural resource will be affected by the project.

Labor Requirements

SMAP projects are also subject to labor requirements. SMAP projects of more than 10 units must pay prevailing wages. Projects of 50 or more units must also use an apprenticeship program and make healthcare expenditures for employees. For projects that are over 85 feet in height, developers are required to use a skilled and trained workforce. One hundred percent affordable projects are exempt from the skilled and trained workforce requirements and projects with 10 or fewer units are exempt from requirements for prevailing wage, skilled and trained workforce, apprenticeship programs, and health care expenditures.

SMAP Timeline

Jurisdictions must follow prescribed timelines when reviewing SMAP project applications.

- **Projects with 150 units or fewer.** The jurisdiction must determine whether the project is consistent with objective standards within 60 days of receiving the application and complete any design review within 90 days. Reviews of any resubmittals to address written feedback from the jurisdiction must be completed within 30 days.
- **Projects over 150 units.** The jurisdiction has 90 days to determine whether the project is consistent with objective standards and 180 days to complete any design review. However, it is recommended that the consistency review and design review should be done concurrently. If the jurisdiction fails to provide documentation of either consistency or inconsistency or fails to complete design review within the relevant timeframe, the project is automatically deemed consistent. Reviews of any resubmittals to address written feedback from the jurisdiction must be completed within 30 days.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Los Angeles, June 5, 2024	Subsequent permits following a SMAP entitlement, such as tree removal, are also subject to ministerial review.
City of Ojai, December 12, 2023	SMAP requirements include tribal consultation, timing of consistency review, timing of design review, objective standards, SMAP eligibility regarding urban uses, and SDBL.

RECENT LEGISLATION

Clarifications in Coastal and Fire Zones; Update Labor Provisions; Planning Director Approval SB 423, Wiener (2023); Amended Gov. Code, § 65913.4.	SB 423 extends SMAP through 2036 and makes the following additional changes: ▶ Allows SMAP in coastal zones with the approval of a ministerial Coastal Development Permit and adds clarifying provisions for sites located in VHFHSZ. ▶ Clarifies that SMAP does not apply to equestrian districts for project applications submitted on or after January 1, 2024, but before July 1, 2025. ▶ Removes skilled and trained workforce requirements based on the date of development, population, and number of housing units, and whether a project has 50 or more units, or if a project is over 85 feet in height. ▶ Clarifies that the city's planning director or equivalent must approve a project if it is consistent with objective standards while maintaining provision for design review. ▶ Removes "public oversight" from the design review process and requires the local government to approve a development that meets all objective design standards. ▶ Adds a new process for SMAP projects proposed in low or moderate resource areas, or areas of high segregation and poverty, requiring a public meeting before full application submittal. ▶ Changes to methodology and eligibility, based on lack of housing element compliance.
Tribal Consultation AB 168, Aguiar-Curry (2020); Amended Gov. Code, §§ 65400, 65913.4, and 65941.1.	Establishes a tribal consultation process requiring a developer to first submit a notice of intent in the form of a preliminary application prior to submitting a SMAP application.

STARTER HOME REVITALIZATION ACT

Government Code §§ 65852.28, 65913.4.5, and 66499.41

INTRODUCTION

The Starter Home Revitalization Act (SHRA) aims to address California's housing shortage by streamlining approval for small-scale residential projects of ten or fewer units on urban lots under five acres zoned for multifamily residential use. The statute mandates a ministerial, non-discretionary approval process, reducing local government delays and facilitating infill development. By cutting regulatory burdens, SHRA promotes homeownership opportunities, particularly for low- and moderate-income families, while maintaining protections against tenant displacement and environmentally sensitive site development.

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KEY PROVISIONS

SHRA requires ministerial approval of qualifying housing projects within 60 days, after which applications are deemed approved if no action is taken. The law applies to urban lots under five acres, zoned for multifamily residential use, and located in incorporated cities or large urban counties. It limits local restrictions, prohibiting excessive setbacks, parking mandates, and low floor area ratios that would reduce allowable housing density. The law allows for up to ten lots and a maximum of ten total units.

Housing projects must comply with local inclusionary housing requirements and may be structured as fee simple ownership, common interest developments, or community land trusts. SHRA protects existing renters by prohibiting redevelopment that displaces rent-controlled or tenant-occupied housing. Environmentally sensitive areas, including farmland, wetlands, and fire hazard zones, are ineligible for development. The law exempts projects from CEQA review, further accelerating approvals while maintaining affordability and urban housing growth.

RECENT HCD TECHNICAL ASSISTANCE LETTERS

City of Oakland, February 19 2025	The City cannot require a conditional use permit for qualifying projects and must reduce setback and open space requirements if they preclude development at the allowed density. SHRA mandates ministerial approval, ensuring streamlined development. The City may only deny a project if it can prove an unavoidable public health and safety risk.
City of Hayward, January 28 2025	SHRA applies broadly to any zoning district allowing multifamily housing, including high-intensity mixed-use zones. Condominium projects qualify under the law and that units can be rented after ownership transfer.

LEGISLATIVE HIGHLIGHTS

Expansion of Streamlined Housing Approvals for Vacant Single-Family Lots SB 1123, Caballero (2024); amended Gov. Code, § 65852.28 and 66499.41	Expands SHRA by enabling property owners in single-family zones to utilize the same streamlined, ministerial approval process available to multifamily parcels. The bill was intended for small-scale housing developments, facilitating the creation of up to 10 units, excluding ADUs. This amendment increased housing opportunities in areas previously restricted to large lots with a maximum density of one single-family home and promoted higher density, entry-level homeownership. Additionally, the bill clarified language to ensure that various lower-cost homeownership models, such as tenancies in common and community land trusts, were eligible under SHRA. SB 1123 took effect on July 1, 2025.
Streamlined Approval for Small Urban Housing Projects SB 684, Caballero (2023); added Gov. Code, §§ 65852.28, 65913.4.5, and 66499.41	Requires local agencies to ministerially approve certain small-scale housing developments and subdivisions—specifically, projects with 10 or fewer residential units on urban lots of 5 acres or less. The bill creates new streamlined processes for parcel and tentative/final map approval and prohibits local governments from imposing specific zoning and design standards that would hinder such developments.

SURPLUS LAND ACT

Government Code §§ 54220–54234

INTRODUCTION

The Surplus Land Act (SLA) aims to make local public land that is no longer needed for government purposes available for building affordable homes. The SLA serves as a "right of first refusal" law that mandates that local agencies in California offer surplus land for sale or lease to affordable housing developers and certain other entities before making it available to other individuals or entities. Assembly Bill 1486 (Chapter 664, Statutes of 2019) strengthened the SLA by tasking HCD with oversight and enforcement authority, requiring greater transparency, and prioritizing affordable housing.

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

Local agencies, including cities, counties, special districts, redevelopment agencies, housing authorities, etc., must notify affordable housing developers when disposing of surplus public land when an exemption to the SLA cannot be met.

Exemptions to the SLA include affordable housing projects that meet specific affordability and other development criteria, transferring property to another local agency for the receiving agency's use, and land with valid legal restrictions that prohibit housing, among others. For additional information, see Public Lands for Affordable Housing Development and the Updated SLA Guidelines (2024).

KEY PROVISIONS

For non-exempt surplus land, local agencies must send a notice of availability (NOA) to the following parties:

- HCD
- Any local public entity within the jurisdiction where the surplus land is located
- Developers who have notified HCD of their interest in developing affordable housing on surplus local public land

Once the NOA is sent, interested parties may respond during a mandatory 60-day period. If interest is received, the local agency must engage in good faith negotiations, after the 60-day period ends, for a minimum of 90 days with all interested developers proposing housing with least 25 percent affordable units. The local agency must prioritize proposals with the most affordable housing units proposed, followed by the deepest level of affordability.

After negotiations conclude, the local agency must submit a disposition summary to HCD at least 30 days before the disposition of surplus land. The required information includes:

- Description of disposition form
- Adopted "surplus land" declaration
- NOA sent
- Evidence NOA was sent to all required entities
- Summary of negotiations (if applicable)
- Draft affordability covenant and/or equity sharing agreement

If a local agency cannot come to price or terms after the full 90-day good faith negotiation period, then the local agency must provide HCD the above information with a draft 15 percent affordability covenant.

HCD reviews all SLA "surplus land" and "exempt surplus land" dispositions and provides a findings letter to the local agency noting compliance. HCD also provides technical assistance to local agencies and other stakeholders.

RECENT HCD FINDINGS LETTERS

City of Rancho Cordova, March 10, 2025	The City of Rancho Cordova designated a two-acre parcel as "exempt surplus land" under the SLA for Phase 4 of Mather Veterans Village, which will include 69 affordable units for very low-income homeless and/or disabled veterans. Because the project meets exemption criteria—such as dedicating at least 80 percent of the property to housing and ensuring long-term affordability, it is not subject to the standard surplus land disposition process.
Sacramento Regional Transit District, December 11, 2024	The Sacramento Regional Transit District complied with the SLA in its plan to sell its Midtown Administrative Complex, issuing proper notices and selecting The Code Solution, Inc. to develop 304 rental units. The project includes 25 percent affordable units across various income levels, and HCD confirmed all SLA requirements were met.

LEGISLATIVE HIGHLIGHTS

Surplus Land Act Amendments – Exemptions and Negotiations SB 747, Caballero (2023); amended Gov. Code, §§ 54220-54234	Establishes an administrative process for certain types of exempt dispositions. The bill clarifies that "participating in negotiations" did not include certain activities required to determine if a project meets the criteria for "exempt" affordable housing developments.
Surplus Land Act Amendments –	Expands exemption for affordable housing projects and removes the requirement that surplus land be put out to

Exemptions for Developments with Affordable Housing AB 480, Ting (2023); amended Gov. Code, §§ 54221–54230.5 and 54234	open, competitive bid for certain housing developments. The bill creates an exemption for surplus land totaling 10 or more acres that is put out to an open, competitive bid for a development with certain requirements, including affordable housing.