
MEMORANDUM

To: City of Mission Viejo
From: Townsend Public Affairs, Inc.
Date: September 28, 2022
Subject: Implementation Overview: AB 2011 and SB 6

The purpose of this memo is to provide a more detailed overview of the provisions contained in two landmark measures passed by the Legislature during the 2022 Legislative Session that allow for residential developments in non-residential zoned areas.

OVERVIEW

On August 29, two days before the end of the 2022 Legislative Session, the Legislature passed AB 2011 (Wicks), the Housing and High Road Jobs Act of 2022, and SB 6 (Caballero), the Middle-Class Housing Act of 2022. Both bills address a long-discussed method for increasing housing development potential by unlocking sites currently designated for commercial or retail uses, so long so long as developers utilize either increased labor standards or increased affordability standards. While it was thought that one bill would supersede the other and become law, near the end of the 2022 Legislative Session, legislative leadership announced their seal of approval to both bills. This will give developers the choice to decide which strategy to use when approaching a housing development project in a non-residential zone: comply with stricter labor standards or stricter affordability standards.

On September 28, 2022, the Governor signed both measures into law. Both AB 2011 and SB 6 will become effective July 1, 2023.

AB 2011 (WICKS) THE HOUSING AND HIGH ROAD JOBS ACT OF 2022

AB 2011 provides a streamlined ministerial approval pathway for qualifying multifamily projects on commercial zoned land that meet specified affordable housing targets. The legislation provides two options for eligibility: one where construction is paid for by for 100 percent Below Market Rate (BMR) projects located on commercial zoned land, and a second for mixed-income (typically 15 percent BMR) projects located on commercial corridors.

The following chart details the various provisions included in AB 2011, along with a column explaining the methods by which a local government may exercise discretion over the development process.

	Criteria	Opportunities for Local Government Action
Objective	AB 2011 creates a streamlined, ministerial approval process for multifamily housing developments on commercially zoned property. Developments are subject to strict affordability standards.	
Approval Process	<ul style="list-style-type: none"> • Developments under AB 2011 are ministerially approved and CEQA exempt for qualifying projects. Approval timeline is within 90 days for developments with 150 units or less or 180 days for developments with more than 150 units. 	<ul style="list-style-type: none"> • Local governments are required to identify any inconsistency with qualifying criteria within 60 days for developments with 150 units or less or 180 days for developments with more than 150 units. • Local governments are permitted to conduct design review, but only within the limited timeframe and it must be based on objective standards. • Local governments may adopt an ordinance to implement AB 2011, with the adoption exempt from CEQA.
Location	<ul style="list-style-type: none"> • A zone where office, retail, or parking are a principally permitted use. • Urbanized area or urban cluster. • At least 75 % of the site adjoins parcels developed with urban uses. • Cannot be a site where more than 1/3 of the square footage is dedicated to industrial use. • Cannot be within a very high fire severity zone or contain tribal cultural resources. • Meets exclusionary criteria set forth in SB 35 (Statutes of 2017) and excludes farmlands, wetlands, hazardous waste sites, earthquake fault zones, and flood areas subject to development restrictions. • Not on a site governed by mobile home/recreational vehicle laws or the Special Occupancy Parks Act. • Cannot be within 500 feet of a freeway • Cannot be within 3,200 feet (0.6 miles) of an active oil or gas refinery • Cannot be located on a site that would require the demolition of an historic structure or a site where a prior residential unit was demolished within the last 10 years • Does not apply to planned sites (neighborhood plan, master plan, area plan, urban village plan, etc.) that already permits multifamily housing developments as of January 1, 2022, or by January 1, 2024, already allows multifamily developments on a site via an adopted plan and environmental review process 	
Project Criteria	<ul style="list-style-type: none"> • Project proponent must complete a phase I environmental assessment and mitigate as necessary • Developers must provide notice to commercial tenants and relocation assistance to certain qualifying independently owned commercial tenants. 	

	<ul style="list-style-type: none"> Project must be multifamily (5 or more homes for sale or rent) 	
Affordability Requirements	<p><i>For 100% Affordable Housing Developments in Commercial Zones:</i></p> <ul style="list-style-type: none"> 100% for lower-income (for sale or rent) units Deed restriction for 55 years (rental) or 45 years (owner-occupied) <p><i>For Mixed-Income Housing Along Commercial Corridors (“Commercial corridor” means a highway as of at least 70 and not greater than 150 feet.)</i></p> <ul style="list-style-type: none"> Rental: 8% very low income plus 5% extremely low income, or 15 % lower income Owner-Occupied: 30% moderate income or 15% lower income Units must adhere to same bedroom/bathroom ratios and have the same quality appliances and finishes as market rate units 	<ul style="list-style-type: none"> Local governments may adopt more stringent inclusionary requirements
Labor Standards	<ul style="list-style-type: none"> Prevailing wage required Health care contributions Projects with 50 units or more must use contractors who employ construction craft employees or let subcontractors for at least 1,000 hours to participate in apprenticeship programs 	
Development Requirements	<p><i>For 100% Affordable Housing Developments in Commercial Zones:</i></p> <ul style="list-style-type: none"> Residential density must meet or exceed density deemed appropriate to accommodate lower income individuals in the jurisdiction Development must meet objective standards for existing zoning designation if the parcel already accommodates multifamily or residential use standards. Development must be consistent with housing density objective zoning standards <p><i>For Mixed-Income Housing Along Commercial Corridors (“Commercial corridor” means a highway of at least 70 and not greater than 150 feet.)</i></p> <ul style="list-style-type: none"> Development density determined by certain factors, including whether the jurisdiction is deemed metropolitan, along with the parcel’s proximity to major transit stops. Height limitations apply to developments based on their proximity to transit and city populations: <ul style="list-style-type: none"> 35 feet for commercial corridors of less than 100 feet 45 feet for sites on a commercial corridor of 100 feet in width or greater 65 feet for sites that are within one-half mile of a major transit stop or are within a city with a population of greater than 100,000 and <u>is NOT within the Coastal Zone.</u> Require step backs in the amount equal to 7 feet multiplied by the floor number, beginning on the 2nd floor of the development. 	<ul style="list-style-type: none"> Developments must meet applicable objective standards for the closest zone in the city that allows multifamily residential use. For mixed income developments: Local governments may require that up to ½ of the ground floor of the project be dedicated to retail use. (Cannot be removed pursuant to a concession under Density Bonus Law)

SB 6 (CABALLERO) THE MIDDLE-CLASS HOUSING ACT OF 2022

Unlike AB 2011, SB 6 does not provide a ministerial approval process, but does allow for residential developments on commercially zoned parcels without rezoning. Additionally, SB 6 differs from AB 2011 in that it contains no affordability requirements. To utilize SB 6 provisions, developers must instead adhere to more stringent labor standards which include prevailing wage and the use of a skilled and trained workforce.

The following chart details the various provisions included in SB 6, along with a column explaining the methods by which a local government may exercise discretion over the development process.

	Criteria	Opportunities for Local Government Action
Objective	SB 6 allows residential development on property zoned for retail and office space without needing a rezoning, so long as developers pay construction personnel a prevailing wage and use a skilled and trained workforce. The legislation does not include affordability standards – hence the name “Middle-Class Housing Act of 2022.”	
Approval Process	<ul style="list-style-type: none"> No ministerial approval process like AB 2011. Instead makes project approval an “allowable use” if specified conditions are met, including requirements relating to density, public notice, comment, hearing, or other procedures, site location and size, consistency with sustainable community strategy or alternative plans, prevailing wage, and a skilled and trained workforce. 	<ul style="list-style-type: none"> Local governments may adopt an ordinance to implement SB 6, with the adoption exempt from CEQA.
Location	<ul style="list-style-type: none"> A zone where office, retail, or parking are a principally permitted use. Urbanized area or urban cluster that is not on a site or adjoined to any site where more than 1/3 of the square footage is dedicated to industrial use Development site must be less than 20 acres 	
Project Criteria	<ul style="list-style-type: none"> Project must be a housing development project that includes residential units or a mixed-use project where at least half of the square footage is designated residential use. Project must be consistent with approved sustainable community strategy or alternative plan If commercial tenants exist in prospective development site, project managers must provide relocation assistance to certain qualifying independently owned tenants. 	<ul style="list-style-type: none"> Local governments may exercise project development discretion by requiring it adhere to sustainable communities Strategy (SCS) criteria
Affordability Requirements	None.	<ul style="list-style-type: none"> Local governments may adopt more stringent inclusionary requirements
Labor Standards	<ul style="list-style-type: none"> Prevailing wage required Skilled and trained workforce required An exception to these standards is only granted if, after a specified bidding process, less than 2 prequalified contractors promising to use a skilled and trained workforce bid on the project 	

<p>Development Requirements</p>	<ul style="list-style-type: none"> • Residential density must meet or exceed density deemed appropriate to accommodate lower income individuals in the jurisdiction pursuant to housing element law. • Development subject to local zoning, parking, design, and other ordinances. • Local code requirements applicable to processing and permitting of residential developments in a zone that allows for the housing with the density allowed by SB 6. • Development must adhere to all objective local standards, other than those that expressly prohibit residential use or standards that allow for a lower density than prescribed by housing element law, including impact fee requirements. 	<ul style="list-style-type: none"> • Developments must meet applicable objective standards including design, parking, and zoning.
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LOOKING AHEAD

To best prepare for the implementation of AB 2011 and SB 6 provisions – effective July 2023 – local governments should begin developing objective standards for the zoning and design review of parcels and developments that may be subject to by-right approval under the bills’ provisions. Additionally, local governments should consider adopting implementation ordinance for both pieces of legislation.