



AGENDA REPORT

Meeting Date

04/11/2023

Prepared By: Elaine Lister, Director of Community Development
Budgetary Review By: Cheryl Dyas, Director of Administrative Services / City Treasurer
Submitted By: Dennis Wilberg, City Manager

Agenda Title

Housing Law Overview

Recommended Action

Receive and file the report.

Executive Summary

In recent years, the California Legislature has enacted a large volume of significant new housing laws. At the March 28, 2023, City Council meeting, Council Member Kelley expressed her and the public's concerns regarding some of these new laws, and in particular, how they relate to the site located at 27001 La Paz Road, owned by ValueRock Realty. As the Council will recall, ValueRock Realty submitted an application to the City in October 2021, to amend the City of Mission Viejo Development Code and establish a mixed-use zoning district, including a mix of permissible land uses and development standards. This application followed the developer's incomplete planning application to develop the site, as well as change the zoning and general plan designation from the current Office Professional designation. The proposed "Gardens" project included ground floor retail totaling 48,000 sq. ft., four upper stories of residential development with 234 apartments, and both surface and structured parking for 626 spaces. On May 10, 2022, the City Council adopted Resolution 22-09 denying the ValueRock Realty requested Development Code Amendment to create mixed-use standards for their project. The result of this action was that the development application could not move forward without the appropriate zoning to accommodate the project. The development application was subsequently withdrawn by ValueRock Realty.

At this time, the City does not have a planning application from ValueRock Realty, nor anyone else, for this site and it is difficult to speculate as to any project details. To address Council and community concerns, however, following is a brief summary of some of the more pertinent laws that could come into play regarding this property, as well as a list the of newer housing laws in general and a PowerPoint and some links to resources which may be helpful in understanding these laws.

AB 2011, Affordable Housing and High Road Jobs Act of 2022, is intended to permit residential development on sites currently zoned and designated for commercial or retail uses. (Signed into law by Governor on September 29, 2022, and becomes effective July 1, 2023). This bill creates a CEQA-exempt, ministerial approval process for multifamily housing developments on sites within a zone where office, retail or parking is the current principally permitted use. The law provides for slightly different qualifying criteria for (1) 100-percent affordable projects, and (2) mixed-income projects located in "commercial corridors." AB

2011 projects must pay prevailing wages to construction workers, among other labor standards.

All AB2011 projects:

- Provides for streamlined Ministerial Approval (e.g., for projects with more than 150 units, must be processed in 180 days)
- Must propose a multifamily housing development project.
- May perform design review, but limited to objective standards only
- Exempt from CEQA
- FOR RENTAL PROJECTS: 8 percent must be very-low income and 5 percent extremely low-income; OR 15 percent lower income
- Units are subject to recorded deed restriction: 55 years for rental units
- The site cannot be zoned for housing, unless zoned for multifamily residential use (e.g., the site cannot be zoned for single-family residential development)

For Mixed Income Projects:

- (Non-Metropolitan Jurisdictions): For sites of one acre or greater located on commercial corridor of less than 100 ft in width, 30 units/acre; For sites within one-half mile of major transit stop, 70 units/acre
- Height limit applicable shall be the greater of the following:
 - Height currently permitted on the parcel;
 - For site on commercial corridor of less than 100 feet in width, 35 feet;
- No parking may be required except requirements related to bicycle parking, electric vehicle parking spaces or parking spaces accessible to persons with disabilities
- For portion of property that fronts commercial corridor, no setbacks may be required
- All parking must be set back at least 25 feet
- On ground floor, building must abut within 10 ft of the property line for at least 80% of frontage
- Height limitations apply: these are based on the street right-of-way. We can anticipate 35-foot height limit, but that can change.

SB 6, the Middle-Class Housing Act of 2022, is intended to permit residential development on sites currently zoned and designated for commercial or retail uses. (Signed into law by Governor on September 29, 2022, goes into effect on July 1, 2023.) SB6 does not provide a ministerial approval pathway, but does allow residential use on commercially zoned property without requiring a rezoning. To invoke the law, however, applicants must commit both to prevailing wages for workers and to "skilled and trained workforce" requirements.

- Proposed housing development must be either:
 - Project that includes residential units only; OR
 - Mixed-use project with at least 50 percent of the square footage dedicated to residential use
- NO affordable Housing Requirements unless local inclusionary requirements applicable
- Prevailing wage required
- "Skilled and trained workforce" required
- Must comply with local zoning, parking, design and other ordinances, local code requirements and procedures applicable to the processing and permitting of a housing development in zone that allows for housing with above-described density
- If more than one zoning designation allows for above-described density, the applicable zoning standards shall be those for the zoning designation for the closest parcel that allows residential use at density that is appropriate to accommodate lower-income households pursuant to housing element law
- If existing zoning designation for the parcel allows residential density that exceeds housing element law density, the existing zoning designation applies
- Must comply with all other objective local requirements for a parcel (except those that prohibit residential use or allow residential use only at a lower density) including impact fee and inclusionary housing requirements

Builder's Remedy

Since 1990, California's Housing Accountability Act (HAA) has provided a so-called builder's remedy that allows developers of affordable housing projects to bypass the zoning code and general plan of cities that are out of compliance with the Housing Element Law. (Gov't Code § 65589.5(d).) To qualify, 20% of the units in the project must be affordable to lower-income households, or 100% affordable to moderate-income households. The project can be blocked by the City

if the City can show the project is inconsistent with the city's zoning and the land-use designation of its general plan (as of the date the application was deemed complete), and the city "has adopted a revised housing element" in accordance with [statutory deadlines] that is in substantial compliance with state law. The HAA does not exempt projects from CEQA, and though CEQA has some exemptions for housing projects, they require compliance with the city's general plan and zoning. Accordingly, any builder's remedy project would almost certainly have to run the gauntlet of an EIR.

Additional Housing Legislation

Streamlining:

- **AB 2011** (CEQA-exempt ministerial approval pathway on commercially zoned land for qualifying residential development that meets affordable housing targets and pays prevailing wages)
- **SB 6** (allowing residential use on commercially zoned property without requiring a rezoning for projects that pay prevailing wages and meet "skilled and trained workforce" requirements)
- **AB 2234** (enforceable timelines for local governments to issue post-entitlement ministerial building permits)
- **AB 2295** (allowing educational employee housing on land owned by school districts or county office of education)
- **SB 886** (CEQA exemption for qualifying university housing development projects)
- **AB 2668** ("cleanup" of SB 35's streamlined ministerial approval process)
- **SB-35** allows qualifying development projects with certain minimum affordable housing guarantees to move more quickly through the local government review process and restricts the ability of local governments to reject these proposals. At least 50% of the proposed residential units must be dedicated as affordable to households at 80% AMI for either rental or ownership projects.

Density:

- **AB 2334** (reforms to the State Density Bonus Law to define "base density" and provide further concessions for 100 percent BMR projects in low VMT areas)
- **AB 1551** (Density Bonus Law benefits for mixed-use projects)
- **AB 682** (Density Bonus Law benefits for shared/co-living housing)

Parking Reform and Other Cost Reductions:

- **AB 2097** (prohibiting minimum parking requirements within a half-mile of public transit)
- **AB 2536** (limits on agencies' ability to adopt connection fees and capacity charges)

Accessory Dwelling Units (ADUs) and Increased Bedroom Counts:

- **AB 2221** (comprehensive "cleanup" of ADU laws)
- **SB 897** (increased height limits for ADUs; allowing detached ADUs on lots with proposed multifamily dwellings)
- **AB 916** (maximizing bedroom counts within existing units)

Surplus Property:

- **SB 561, AB 2233 and AB 2592** (codification and expansion of Surplus Lands Executive Order prioritizing the use of surplus state-owned land for affordable housing)

Planning, Equity and Lower-Income Housing Opportunities:

- **SCA 2** (propose for 2024 ballot the repeal of state constitutional article requiring voter approval of certain "low rent housing projects")
- **AB 2094 and AB 2653** (greater requirements for annual reports on housing progress)
- **AB 2339** (planning for emergency shelters and clarifying Housing Element Law)
- **AB 2873** (promoting diversity in affordable housing development)

Additional Resources:

<https://goldfarbblipman.com/wp-content/uploads/2022/10/AB-2011-vs-SB-6-Comparison-Chart.pdf>

<https://www.hklaw.com/en/insights/publications/2022/10/california-2023-housing-laws-what-you-need-to-know>

Fiscal Impact:

Amount Requested: \$

Sufficient Budgeted Funds Available?: (If no, see attached fiscal analysis)

Prog/Fund #: Category: Pers. Optg. Cap. -or- CIP#: Fund#:

Previous Relevant Council Actions for This Item

Attachments

PowerPoint presentation