

California's 2023 Housing Laws

Part I: Housing Law Heavy Hitters

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Holland & Knight



I. Introduction



Housing Law Fundamentals - 2017-2022

- **State Density Bonus Law** - requires an agency to grant a density bonus and/or a certain number of concessions or incentives to developers who agree to construct developments that provide affordable housing.
- **Housing Accountability Act** - provides that a local agency may not reject or make infeasible housing developments without making certain findings.
- **SB 35** (of 2017) - streamlines the approval process for certain qualifying infill developments that provide affordable housing and pay prevailing wages in local communities that have failed to meet their regional housing needs.
- **Housing Crisis Act (SB 330 of 2019, revised in SB 8 of 2021)** - processes reforms, growth cap prohibition, vesting rights and relocation requirements
- **RHNA Reforms (SB 828 (Wiener) and AB 1771 (Bloom))** - aims to make promises in Housing Element reality.

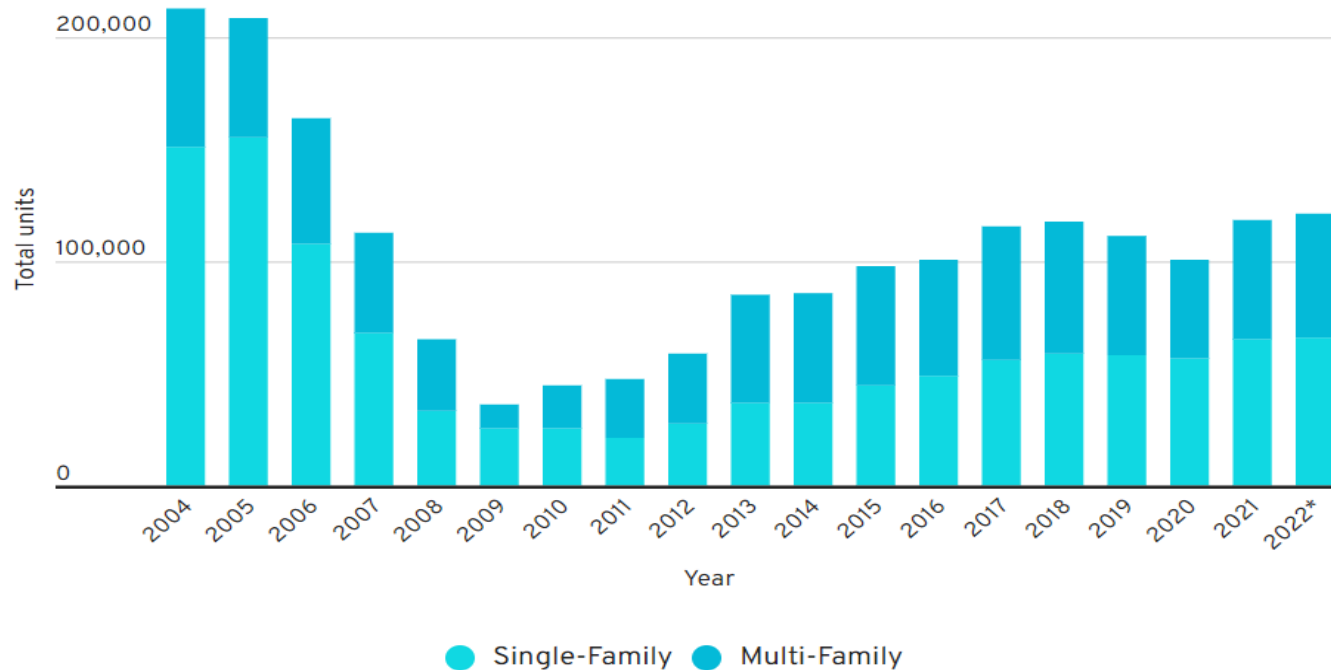
California still isn't building enough housing

“According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least **180,000 new units annually to keep pace** with growth through 2025.”

- Gov. Code § 65589.5(a)(2).

“As Governor, I will lead the effort to develop the 3.5 million new housing units we need by 2025...” (i.e., **500,000 per year**)

- Gavin Newsom, October 2017



Source: Construction Industry Research Board, May 2022 forecast

2022-2023 Highlights

A Big Year for Housing – Sign up for Part II!

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)

Density:

- **AB 2334** (reforms to the State Density Bonus Law to define "base density" and provide further concessions for 100 % 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 ½ mile of transit)
- **AB 2536** (limits on 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)

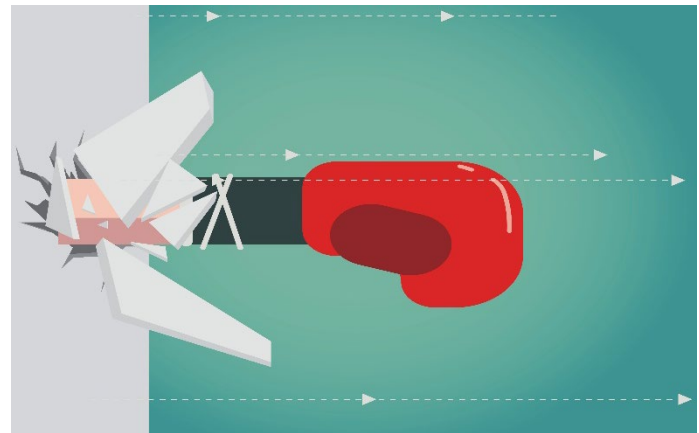
Planning, Equity and Lower-Income Housing Opportunities:

- **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)

2022-2023 Highlights

In This Webinar

- **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 2097** (prohibiting minimum parking requirements within ½ mile of transit)

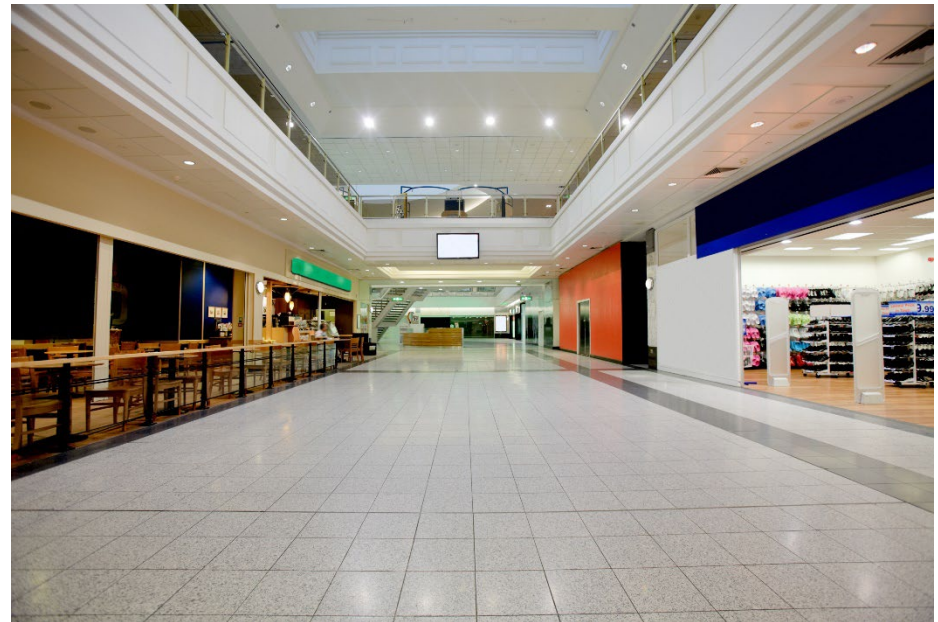


II. AB 2011 and SB 6: Housing on Commercially Zoned Sites



Assembly Bill 2011 and Senate Bill 6

- Both aim to unlock the potential for housing production on sites currently designated for commercial or retail uses.
- The laws will take effect on **July 1, 2023** – not in January.
- Each law has its own detailed process for establishing permissible density and other applicable development standards.
- In total, the two laws create three potential pathways for residential use for projects meeting labor requirements:
 1. AB 2011: Ministerial approval for qualifying 100% BMR projects.
 2. AB 2011: Ministerial approval for qualifying ~15% BMR projects on “commercial corridors.”
 3. SB 6: Qualifying projects need not seek rezoning.



AB 2011: Ministerial, CEQA-exempt review

- **Ministerial**, California Environmental Quality Act (CEQA)-exempt, time-limited approval process for multifamily housing developments on commercially zoned property.
- Projects must pay **prevailing wages** to construction workers.
- The law provides two BMR options:
 - **100% BMR** projects and
 - Mixed-income (typically **15% BMR**) projects on "**commercial corridors**."
 - "Commercial corridor" is a highway that is not a freeway with a right-of-way of 70-150'
- Eligibility is further limited by numerous site and project criteria requiring careful review.
- Very similar to SB 35 of 2017, a law that the Holland & Knight team has substantial experience invoking to achieve project approvals.
- AB 2011 sunsets in 2033.

SB 6: No rezoning required

- **Key benefits:**

- Allows residential development on property zoned for retail and office space without a rezoning.
- Allows project applicants to invoke the Housing Accountability Act (HAA) to limit local discretion to deny or condition approval.
- No BMR requirements (but local requirements may apply).
- Fewer site exclusions than AB 2011.

- **Key limitations:**

- Does *not* provide a ministerial approval pathway.
- Requires prevailing wage and "skilled and trained workforce" apprentice requirements for project labor (although the law provides an "off ramp" if fewer than two bidders bid for a contract under the "skilled and trained workforce" requirement).
- Likely to be used most frequently in lower-cost areas of the state and on sites where AB 2011 is not available.

	AB 2011 100% Affordable in Commercial Zones	AB 2011 Mixed-Income Along Commercial Corridors	SB 6
Approval	<ul style="list-style-type: none"> Ministerial, CEQA-exempt, 90 or 180 days. 		<ul style="list-style-type: none"> Normal approval pathway.
BMR Units (LI = low-income, VLI = very low income, ELI = extremely low income)	<ul style="list-style-type: none"> 100% BMR units. 	<ul style="list-style-type: none"> <u>Rental</u>: 8% VLI + 5% ELI, or 15% LI <u>Owner-occupied</u>: 30% MI, or 15% LI 	<ul style="list-style-type: none"> None (but local inclusionary requirements apply)
Labor	<ul style="list-style-type: none"> Prevailing wage Health care/apprenticeship requirements for > 50 units. 		<ul style="list-style-type: none"> Prevailing wage “Skilled and trained” (w/ off-ramp)
Location, Site and Project Criteria (MFR = Multifamily residential)	<ul style="list-style-type: none"> Zone where office, retail, or parking are a principally permitted use. If in a “neighborhood plan” (e.g., Specific Plan) area, must be zoned for MFR in that plan. Site must satisfy SB 35 criteria, be in an urban area, have a Phase I ESA completed, and must not allow for housing within 500 feet of a freeway or 3,200 feet of an oil/gas refinery, among numerous other requirements. Commercial tenant notice and relocation assistance. <ul style="list-style-type: none"> “Mixed-income” project must be on a commercial corridor and on a site of less than 20 acres. 		<ul style="list-style-type: none"> Zone where office, retail, or parking are a principally permitted use. Site must be in an urban area on a site of less than 20 acres, among other numerous criteria. Not adjoined to site where >1/3 area is industrial use. Must be 50% residential uses. Commercial tenant notice and relocation assistance.
Development Standards (OS=Objective standards. SCS = Sustainable communities strategy)	<ul style="list-style-type: none"> Density must meet or exceed density to accommodate housing for LI households (10-30 du/ac) Must meet OS for the closest MFR zone. 	<ul style="list-style-type: none"> Standards determined by statute (20-80 du/ac). Must meet OS for the closest zone in the city that allows MFR use. No parking required, except EV. 	<ul style="list-style-type: none"> Density must meet or exceed appropriate density to accommodate housing for lower income households (10-30 du/ac) Consistent with SCS. Must meet other applicable OS.

What is the Builder's Remedy?

- Builder's Remedy is a housing development streamlining tool that provides developers the option to file an application for a housing development project with **at least 20 percent lower-income BMR housing** that is not in conformance with a jurisdiction's zoning or General Plan.
- A jurisdiction must make one of **five findings** to deny a 20% lower income project (per Gov Code 65589.5(d)):
 1. The jurisdiction has a **compliant housing element** and has **met or exceeded its RHNA**.
 2. The project would have a **specific, adverse impact upon public health or safety**, and no feasible mitigation is possible.
 3. The denial or imposition of conditions is required to comply with **state or federal law**.
 4. The project is proposed on land zoned for **agriculture or resource preservation** and is surrounded on at least two sides by such land.
 5. The project is **inconsistent with both the zoning ordinance and general plan land use designation** and the jurisdiction has a **compliant housing element**.

What is the Builder's Remedy?

The Builder's Remedy is not the result of new legislation, it is a relatively old provision of the Housing Accountability Act.

However, the Builder's Remedy has garnered attention for recent use in Southern California jurisdictions.

CEQA among other issues remains untested.

A preliminary application under SB 330 is advisable.

The statutory deadline to submit compliant housing elements for the 6th RHNA Cycle was October 15, 2021 for many Southern California jurisdictions and is January 21, 2023 for Bay Area governments.

III. AB 2097: Parking Reductions



AB 2097: No Parking Minimums within Half-Mile of Public Transit

Prohibits agencies from imposing minimum parking requirements on *residential, commercial or other development projects* located within a **1/2 mile of public transit**.

There is an exception to this prohibition where an agency finds that inability to impose parking requirements would negatively impact:

- 1) a jurisdiction's **ability to meet its regional housing needs** for low- and very low-income households;
- 2) a jurisdiction's **ability to meet special housing needs** for the elderly or persons with disabilities;
- 3) **existing residential or commercial parking facilities** located within a ½-mile of the housing development project.

Findings must be made **w/n 30 days** of receiving a complete application.

AB 2097: No Parking Minimums within Half-Mile of Public Transit

- The public agency may not make the exception findings where:
 - 1) a minimum of **20%** of the units are dedicated to very low-, low- or moderate-income households, students, the elderly or persons with disabilities;
 - 2) the development contains **20 residential units or less**; or
 - 3) the development is **subject to other applicable parking reductions** provided by law (e.g. SDBL).
- Future predictions – will this law result in less use of State Density Bonus Law (with requirement for affordable housing)?



IV. Post-entitlement Processing



AB 2234: Timelines for Post-Entitlement Permits

- The Permit Streamlining Act establishes timelines for local governments to determine the completeness of an entitlement application, and a timeline to act on the application once it is complete.
- However, there are usually no clear timelines governing the ***post-entitlement*** permit process.
- AB 2234 borrows familiar aspects of the Permit Streamlining Act process and applies those standards to "**post-entitlement housing development permits**", including, but not limited to:
 - building permits
 - demolition permits
 - permits for minor or standard excavation, grading or off-site improvements.

AB 2234: Timelines for Post-Entitlement Permits

- With respect to these post-entitlement housing development permits:
 - Public agencies must **publish formal application checklists** and examples of complete applications for specific types of housing developments.
 - Local agencies must **respond to an application within 15 business days** by identifying any specific information from the published checklist that was missing from the application, or else the application becomes "deemed complete."
 - Local agencies must **complete their review of any complete application** within:
 - **30 business days** (for developments with 25 homes or fewer) or
 - **60 days** (for developments with more than 25 homes).

Application for permission

Please read this page first.

Important: This form should NOT be used for the following types of application

Householder Application – Form PHD
Listed Building Consent – Form LB1
Conservation Area Consent – Form A1
Advertisement Consent – Form A1

Before completing this form, please complete Form P1 and the 'E' Applying for Planning Permission, Matters and Other Planning Consent.

It is your responsibility to submit all the relevant information in your planning application to be that failure to comply will be being immediately returned.

Ways we can help you

- Read the Explanatory Permission, Approve Planning Consents P1 (included within)
- Visit our website
- Discuss any of Planning Officer

What you will need to submit

Plans and Drawings

Have you included Ordnance Survey based site location plans to scale, clearly showing the site outlined in red, ensuring that lands required for access to the public road and for the septic tank are included within the red line? ☐

Have you submitted the required number and type of fully annotated detailed drawings to an appropriate scale? ☐

Site Location Plan (x 7 copies) ☐

Site layout/Block Plan (x 7 copies) ☐

Floor Plans (x 7 copies) ☐

Elevations (x 7 copies) ☐

Cross Sections (x 7 copies) ☐

Existing and Proposed Levels (x 7 copies) ☐

Fee

Have you enclosed the correct fee? ☐

Reserved Matters

If you are applying for Reserved Matters approval following the grant of Outline permission, are all the conditions of the Outline approval met? (If not, the Reserved Matters approval cannot be sought and Full permission should be sought instead.) ☐

Declaration

The information 'I/We have given in this Form P1 and accompanying plans is correct and complete to the best of my knowledge and belief.

*I / We apply for planning permission for the development described in this application and the accompanying plans.

Signature of *Applicant/Agent _____ Date _____

* Delete as appropriate

AB 2234: Timelines for Post-Entitlement Permits

Exceptions:

- The local government may exceed the time limit for review where:
 - (1) **the application requires review by an outside agency** or
 - (2) if the local government **makes formal findings** that the application permit might have a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written **public health or safety** standards, policies, or conditions" in effect at the time the application was deemed complete.

Consequences for noncompliance:

- A local agency's failure to comply with the specified timelines is a **violation of the Housing Accountability Act (HAA)**, exposing the local agency to the attorney's fees, mandamus relief and potential fines provided by the HAA.

V. Concluding Thoughts and Q&A



More Presentations in this Series

California's 2023 Housing Laws Part II: A Deeper Dive and the Broader Picture

In this session of our annual legislative recap, Holland & Knight attorneys will highlight the [other notable housing laws](#) that did not receive as much high-profile coverage. These include laws intended to facilitate:

- Streamlining
- Density
- Accessory dwelling units (ADUs)
- Increased bedroom counts
- Disposal of surplus property
- Planning, equity and lower-income housing opportunities

Our presenters will include practical tips on how to apply the best aspects of these laws to your project through a mix of entitlement and litigation strategies. This webinar will include context on prior laws, and discuss how the continuing Housing Element adoption process will shift the regulatory landscape.

Speakers:

[Daniel Golub](#) | Partner, San Francisco
[Chelsea Maclean](#) | Partner, San Francisco
[Kevin Ashe](#) | Associate, Orange County
[William Sterling](#) | Associate, San Francisco

Date/Time:

Wednesday, December 7, 2022
12:00 – 1:00 p.m. PT

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