HOLLISTER PLANNING COMMISSION AGENDA

Study Session
August 4, 2022
6:00 PM

CITY OF HOLLISTER
CITY COUNCIL CHAMBERS, CITY HALL
375 FIFTH STREET
HOLLISTER, CA 95023
(831) 636-4360
www.hollister.ca.gov

PUBLIC PARTICIPATION NOTICE

Public Comment is limited to items on the Study Session Agenda

The public may watch the Study Session via live stream at:

City of Hollister YouTube Channel:
https://www.youtube.com/channel/UCu_SKHetqbOiiz5mH6XgpYw/featured

Public Participation:
The public may attend meetings.

NOTICE: The City of Hollister Planning Commission will hold its public meetings in person, with a virtual option for public participation based on availability. The City of Hollister utilizes Zoom teleconferencing technology for virtual public participation; however, we make no representation or warranty of any kind, regarding the adequacy, reliability, or availability of the use of this platform in this manner. Participation by members of the public through this means at their own risk. (Zoom teleconferencing may not be available at all meetings.)

If you wish to make a public comment remotely during the meeting, please use the zoom registration link below:
https://us02web.zoom.us/webinar/register/WN_8WYzW_0qQtaR7_8UEKNYag

CALL TO ORDER – 6:00 PM

PLEDGE OF ALLEGIANCE

ROLL CALL

VERIFICATION OF AGENDA POSTING

STUDY SESSION ITEMS

1. **Net vs. Gross Density**: At the request of the Planning Commission, the Planning Commission and Staff will hold a discussion of the difference between net and gross density, how the City's Zoning Ordinance and General Plan evaluate density, and how the City should calculate the density of a project moving forward.

2. **Changes in State Law related to Density Bonuses, SB 9, and Accessory Dwelling Units**: A discussion of the recent changes in State Law related to Density Bonuses and Accessory Dwelling Units and the new SB 9 related to single family residential development.

ADJOURNMENT

In compliance with Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Division at (831) 636-4360. Notification of 48 hours prior to the meeting will enable the City to attempt to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35. 104 ADA Title II].

Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection at the Development Services Office at 339 Fifth Street, Hollister, Monday through Thursday, 8:30 a.m. to noon, 1:00 p.m. to 4:30 p.m. (Development Services is closed between 12:00 and 1:00 p.m.). Closed on Fridays.

Notice to anyone attending any public meeting: The meeting may be broadcast live on Cable Channel 17 and/or videotaped or photographed. Recent Planning Commission meetings may also be viewed at www.CMAP.com and periodically on Cable Channel 17.

The next Planning Commission meetings are scheduled as follows:

Regular Planning Commission Meeting – Thursday, August 25, 2022
Regular Planning Commission Meeting – Thursday, September 22, 2022

Planning Commission
Study Session Staff Report
August 4, 2022

Item 1

PURPOSE: **Net vs. Gross Density** – A discussion of the difference between net and gross density, how the City's Zoning Ordinance and General Plan evaluate density, and how the City should calculate the density of a project moving forward.

STAFF PLANNER: Eva Kelly, Interim Planning Manager (831) 636-4360
Erica Fraser, AICP, Consulting Planner

ATTACHMENTS:
1. Link to the City's YouTube channel for the June 23, 2022 Planning Commission Public Hearing (https://www.youtube.com/watch?v=pMTj63rkE24)
2. League of California Cities – Understanding Density and Development Intensity
3. Hollister General Plan (current) http://hollister.ca.gov/wp-content/uploads/2014/12/Complete_General_Plan.pdf
4. Final Environmental Impact Report http://hollister.ca.gov/wp-content/uploads/2014/12/2GPFEIRSec4.1-4.2v2.pdf
5. 2016 Housing Element http://hollister.ca.gov/wp-content/uploads/2017/07/Section-2-Final-Housing-Element-April-2016.pdf
6. Net vs. Gross Calculations for Recent Approved Residential Developments

---

BACKGROUND:

During the June 23, 2022 Planning Commission Public Hearing, Chairperson Huboi asked for clarification with regards to how the City evaluates the density of a residential project (https://www.youtube.com/watch?v=pMTj63rkE24, Attachment 1). Specifically, Chairperson Huboi asked if the City evaluates net or gross density and also asked how the City defines each of these terms.

This discussion was related to the Tentative Map and other entitlements that were part of two residential projects before the Planning Commission during the Public Hearing (Public Hearing Items No. 1 and 2). During the discussion of these two items Vice Chair Stephens and

Commissioner Henderson also asked for clarification on how the City should evaluate the density of residential projects. The two development projects before the Commission at that Hearing were continued and the Planning Commission requested that Staff bring the matter before the Commission for a discussion so that the Planning Commission and Staff could determine the best method for reviewing the density of a project going forward.

In response to the feedback received during the Planning Commission meeting, Staff has prepared the following information which provides additional background on the general definitions of net and gross density, how the City's General Plan and Zoning Ordinance regulate density and has made some recommendations to guide future evaluation of the density of residential projects.

Net vs. Gross Density Definition - General

Net density typically is defined as the density of residential lots within a development. This can exclude all roadways (public and private), parks, water retention ponds, etc. However the definition of net density varies from City to City. Gross density is universally defined as the total number of residential dwellings within the total area of a residential development.

The use of gross vs. net density varies from City to City, however most cities use gross when calculating the density of a large project which will typically include an internal roadway system, landscaping, and parks. Gross density is mostly used in General Plans because gross is a macro calculation and the General Plan is an overview of growth and development within the entire City (rather than site specific). The use of gross density is an easier calculation to use when determining the maximum number of dwellings within a large development before design on a project begins. The range allows a developer (or property owner) to estimate the minimum or maximum allowable dwellings on a lot prior to design work. For example, if an Applicant has a 10 acre parcel that is located within the Low Density Residential Land Use Designation (allows 1 – 8 dwelling units per acre), the Applicant can easily see that anywhere from 10 dwelling units up to a maximum of 80 dwelling units can be constructed. This helps the Applicant with the initial planning and layout of the new residential development.

Net density cannot be calculated until the area of the roadway (or other areas that are determined by a City to be excluded from net) is known. Using the example above, the Applicant could use the gross calculation as a starting point, but then must assume a percentage of the site that would be excluded from the net calculation to determine the number of units on the site. As site improvements vary from project to project, this can cause some uncertainty with regarding to the maximum number of residential dwellings allowed.

The following Figure shows an example of a vacant parcel within the City that has a General Plan Land Use Designation of Low Density. If a property owner wanted to know the minimum and maximum number of dwelling units permitted on the lot prior to selling the lot to a developer, a

gross density calculation would be easier because only the allowable range in the General Plan is known as well as the total lot size. For example, if the gross density range was 1 dwelling unit to 8 dwelling units per acre, the property owner can easily determine that a minimum of 7 dwelling units to a maximum of 58 dwelling units are permitted (based on a 7.25 acre lot).

Figure 1 : Example of a Large Undeveloped Parcel in Hollister

As shown in the above example, a developer or property owner would have to make an assumption or guess on how much land would be left over after any areas in the public right-of-way or other items that are excluded from the net density calculation are removed. This is much harder to determine at the macro level.

The net density calculation for a project area cannot be calculated or assumed by the City until a site-specific project with plans is submitted to the City for review.

How the density of a residential development feels to an inhabitant, pedestrian, motorist, or visitor is not dependent on net or gross density. Rather, the way density is felt is due to the overall size and scale of a development, setbacks, lot coverage, housing size, height, design, buffers, parks, and open space. Please note that pursuant to State Law, Accessory Dwelling Units may not be evaluated with regards to maximum density or maximum lot coverage of a site.

For a general overview of density, please refer to the Presentation by the League of California Cities during the Planning Commissioners Academy on March 7, 2019 (Attachment 2).

City of Hollister 2005-2023 General Plan

The General Plan assumes future population growth and future number of additional residential

dwelling units that could be constructed following the adoption of the General Plan. The General Plan is an overview (or big picture look) of the development of the City over a period of time. The Land Use Element and the Housing Element specifically look at the construction of residential dwellings on land identified in the General Plan and on the Land Use Map (Attachment 3)http://hollister.ca.gov/wpcontent/uploads/2014/12/Complete_General_Plan.pdf).

The existing Hollister General Plan is inconsistent with regards to net and gross density. The Land Use Designations included on pages 2.7 – 2.8 for residential parcels states that density for each designation is to be calculated as net density. A definition of net density is not provided in the General Plan.

Table LU2: Land Use Calculations (page 2.6 of the General Plan) includes a list of all of the Land Use Designations in the General Plan and includes the total number of acres designated per use and the maximum permitted intensity. The intensity range for residential units is shown as dwelling units per acre and does not state if gross or net density is to be used, rather it shows the lowest number of dwelling units and the maximum number of dwelling units (Maximum Permitted Density) per acre listed.

Table A23 in Appendix A, Housing Background Data and Tables B-1 and B-2 in Appendix B, Inventory of Housing Sites, provides the potential residential build-out from housing inventory per land use designation (See Attachment 3). Tables A23 and B-1 include each land use type and allowable density ranges and assumes a typical density per acre. This higher end of the allowable range is based on the City's goal of increasing density in the City. This typical density is then calculated by multiplying the typical density based on the total number of acres (not the net acres) to come up with the additional housing capacity within the City (please note that Staff is aware that the capacity in Table A23 and Table B-1 are not consistent).

Table B-2 goes further by providing the total acreage of vacant land per category and the maximum number of units that can be constructed. For example, under Low Density residential, Table B-2 indicates that there was 78 acres of vacant land that that a maximum of 616 dwelling units could be constructed in that land use category. This was calculated by using gross density (net would not be definable at this stage) – 78 total acres x maximum density of 8 = 618 units. As the General Plan is an overview of development of the City, the City is unable to determine the net density of a project site. Therefore when calculating potential units for the General Plan and Housing Element, gross was used. Tables B-3 and B-4 provide additional calculations on the maximum density allowed, however these calculations appear to also be based on gross rather than net density.

The housing numbers provided in Tables A23, B-1, B-2, B-3, and B-4 were used in the preparation of the Environmental Impact Report prepared in conjunction with the General Plan (Attachment 4). The numbers were also used to show compliance with the City's RHNA numbers in the Housing Element included in Attachment 3 as well as the updated 2016 Housing Element included as

Attachment 5 (http://hollister.ca.gov/wp-content/uploads/2017/07/Section-2-Final-Housing-Element-April-2016.pdf).

Hollister Zoning Ordinance

Each residential Zoning District in the City includes a net density range for each District which aligns with the density in Chapter 2, Land Use and Community Design Element of the City of Hollister 2005-2023 General Plan. For example, the R1 (Low Density Residential) Zoning District states that the allowable density is one to eight dwelling units per net acre. This is consistent with the General Plan Land Use Designation of Low Density Residential which permits one to eight dwelling units per acre.

The Zoning Ordinance includes a definition of density in Section 17.02.020:

> "*Density* means the number of dwellings per net acre or land, unless otherwise stated for residential uses."

The term "net" is not defined in the Zoning Ordinance.

The Municipal Code under Title 16, Subdivisions, includes a definition of gross and net density. The definitions included under Section 16.04.040, Definitions, are as follows:

> "*Density, gross* means the ratio of dwelling units to the area that is divided into lots or residential parcels."

> "*Density, net* means the ratio of dwelling units to the area actually divided into lots or residential parcels, together with any open space or residential parcels, together with any open space or recreation areas or nonaccess streets, but excluding all land within access roads right-of-ways."

The Zoning Ordinance further regulates density by imposing minimum lot sizes for each residential zoning district. The following Table shows a breakdown of each residential land use category with the General Plan Density, Zoning Ordinance Density, and the Maximum Lot Size for each designation.

Table 1 – Development and Density Standards for Hollister

Zoning District	General Plan Density	Zoning Ordinance Density	Minimum Lot Size
(RE) Residential Estate	1 dwelling/5 net acres	1 dwelling/5 net acres	5 acres
(R1) Low Density	1 to 8 du/net acre	1 to 8 du/net acre	Interior: 5,500 sq. ft.

Zoning District	General Plan Density	Zoning Ordinance Density	Minimum Lot Size
			Corner: 6,500 sq. ft.
(R2) Two-Family	8 – 12 du/net acre	8 – 12 du/net acre	8,000 sq. ft. per two units
(R3) Medium Density	8 – 12 du/net acre	8 – 12 du/net acre	1 unit: 5,000 sq. ft. 2 units: 6,800 sq. ft. 3 units: 10,000 sq. ft. Parcels of 10,000 sq. ft. or more shall be developed at a ratio of 3 dwelling units for the first 10,000 sq. ft. and 3,600 sq. ft. for each additional unit
(R4) High Density	12 – 35 du/net acre	12 – 35 du/net acre	1 unit: 4,000 sq. ft. 2 units: 6,000 sq. ft. 3 units: 8,000 sq. ft. Parcels of 8,000 sq. ft. or more shall be developed at a ratio of 3 dwelling units for the first 8,000 sq. ft. and 1,240 sq. ft. for each additional unit
(R4-20) High Density Multifamily	12 – 35 du/net acre	20 du/acre – 35 du/acre	One acre
Residential Performance Overlay	Same as the overlying designation	Targeted minimum density of 6 units per net acre	Low Density: 2,500 sq. ft. All Others: Less than 2,500 sq. ft.

As shown above, on a macro level, the City evaluates the overall density of a residential development in the General Plan and Zoning District. Once project plans are received the City further evaluates a project at a micro level to ensure that the design of the development is consistent with the minimum required lot size, which further regulates the density of a development. The City also requires minimum lot depth, width, and coverage in each residential Zoning District which further regulates the density of a residential parcel (Table 17.04-3 Residential Standards for Lot Width, Depth, Coverage and Building Height.

Each of these requirements is intended to provide an applicant with direction on how to design

a project. The overall "feel" and look of the density of a project changes due to landscaping, buffers, lot coverage, setbacks and housing types within a development.

As previously mentioned, the City has been encouraging projects which are on the higher side of the density range to encourage a wide variety of housing types within the City. In order to allow for a mixture of housing types and encourage a variety of types as well as lot sizes, designs and configurations, the City allows a development to apply for a Planned Unit Development. The purpose of a Planned Unit Development is to allow flexibility in design, layout, and density , "while protecting the integrity and character of the residential areas of the City; encourage innovation and the development of affordable housing; and ensure consistency with the General Plan" (Section 17.24.240.A of the Zoning Ordinance).

Furthermore, as shown in Table 1, the City has a special Performance Overlay Zoning District (Section 17.14.010 of the Zoning Ordinance) which allows for smaller lots (as small as 2,500 square feet in the R1 Zoning District) which encourages a developer to provide a mix of housing types in a development. The overall density of the project must remain within the allowable density of the General Plan, however by allowing some lots to be smaller than what is typically required, the developer can achieve a density which is on the higher end of the density range on the overall project site.

Recently Approved Residential Developments in Hollister

Because the City has inconsistently reviewed residential developments with regards to net and gross density, developments of varying density have been approved in previous years. Acreage excluded from the total acreage to come up with the net density of a project has also varied due to a lack of a specific definition in the Zoning Ordinance.

Table 2 below shows the net and gross density for several residential projects that were previously approved. Because Zoning Ordinance does not define net density, Staff has calculated this density differently from project to project. For the purposes of this review, Staff has defined net as the land leftover after all roads, open space, and stormwater areas are removed from the gross acres of a site. To calculate the net density, Staff took the total acreage of the project site and subtracted the land used for all roads, all open space and all stormwater areas.

Table 2: Approved Projects with Net and Gross Density

Project No.	Project Name	Zoning Designation	Allowable Density	Gross Acres	Gross Units Allowed	Net Acres	Net Units Allowed	Approved Number of Dwelling Units
TM 2013-3	The Villages	R1-L/PZ	1 - 8 du/acre	32.36	33-258	21.38	22-172	155
TM 2015-1	Saddlebrook	R1-L/PZ	1 - 8 du/acre	3.91	4-31	3.13	4-25	43
TM 2014-4	Apricot Lane	R1-L/PZ	1 - 8 du/acre	21.16	22-169	13.66	14-109	100
TM 2014-2	Ladd Ranch	R1-L/PZ	1 - 8 du/acre	19.49	20-155	10.33	11-83	82
TM 2015-4	Orchard Park	R3-M/PZ	8 - 12 du/acre	9.98	80-119	6.3	51-76	82
TM 2018-8	Walnut Park 14	R3-M/PZ	8 - 12 du/acre	4.27	35-51	2.45	20-30	42
TM 2013-5	Cerrato	R3-M/PZ	8 - 12 du/acre	43.72	350-524	29.36	235-353	241
TM 2015-2	Orchard Ranch	R1-L/PZ	1 - 8 du/acre	11.48	12-91	7.56	8-61	53
TM 2014-1	The Cottages	R1-L/PZ	1 - 8 du/acre	5.00	5-40	3.4	4-27	39
PZ 2015-6	CHISPA Buena Vista	R3-M/PZ	8 - 12 du/acre	4.70	38-56	4.54	37-55	53
TM 2015-5	El Cerro	R1-L/PZ	1 - 8 du/acre	4.78	5-38	3.25	4-26	22
TM 2009-2	Twin Oaks	R3	8 - 12 du/acre	24.40	196-292	17.06	137-205	166
S&A 2016-2	Coria Fourplex (Valley View)	R4	12 - 35 du/acre	0.32	4-11	0.32	4-12	4
TM 2016-4	Hillcrest Meadows	R1-L/PZ	1 - 8 du/acre	9.94	10-79	7.132	8-57	48
TM 2013-2	Allendale	R3-M/PZ	8 - 12 du/acre	81.01	649-972	33.95	272-408	343
TM 2018-3	Maple Park	R3-M/PZ	8 - 12 du/acre	5.00	40-60	2.88	23-35	49
S&A 2018-3	240 Sally St	R4	12 - 35 du/acre	0.30	4-11	.30	4-11	3
TM 2018-1	Solorio Park II	R1-L/PZ	1 - 8 du/acre	4.12	5-32	2.9	3-23	37

Project No.	Project Name	Zoning Designation	Allowable Density	Gross Acres	Gross Units Allowed	Net Acres	Net Units Allowed	Approved Number of Dwelling Units
TM 2018-2	Klauer Subdivision	R1	1 - 8 du/acre	2.18	3-17	1.74	2-14	14
TM 2017-3	Mirabella II	R3-M/PZ	8 - 12 du/acre	25.72	206-308	14.12	113-170	170
TM 2016-2	Cerro Verde	R1-L/PZ	1 - 8 du/acre	4.34	5-34	2.953	3-24	19
MS 2019-3	Faria	R1-L/PZ	1 - 8 du/acre	1.23	2-9	0.99	1-8	4
TM 2016-1	Roberts Ranch	R1-L/PZ	1 - 8 du/acre	54.90	55-439	35.63	36-285	241
TM 2015-9	Farmstead	R1-L/PZ	1 - 8 du/acre	1.95	2-15	0.96	1-8	13
TM 2021-1	1620 Buena Vista Rd	R3-M/PZ	8 - 12 du/acre	11.11	89-133	5.27	43-63	130
TM 2021-2	Avalon Village	R3-M/PZ	8 - 12 du/acre	23.48	188-281	12.243	98-147	144

As shown above, both net and gross allow for a wide range of units to be constructed within each development. By using gross density, however, a higher unit count would be allowed in each development. The City has been trying to move away from low density development and has been encouraging higher density construction. In order to encourage the construction of developments at a higher density, the City established the Residential Performance Overlay Zoning District (Section 17.14.010) which allows for a smaller minimum lot size. Developers can also apply for a Planned Development (Section 17.24.240) which allows a developer flexibility in density, design, and site planning. By reviewing projects with respect to gross density, the City will further encourage developers to build a higher density on a residential site.

Hollister 2040 General Plan Update

The City and the General Plan Advisory Committee for the Hollister 2040 General Plan update recognized the issues of the current General Plan with respect to gross and net density. The Committee determined that the new General Plan would regulate development based on gross density for ease of use by the City and property owners as well as to increase density in the City. The current draft of the General Plan lists the allowable density for residential uses as a range of gross density. Once this version is adopted, the City will need to make modifications to the Zoning Ordinance so that the Zoning Ordinance is consistent with the General Plan. These modifications will include removing net density and replacing with gross density.

ANALYSIS:

The City has inconsistently applied the use of gross and net density when reviewing development projects. While the General Plan includes net density, gross was used when calculating the number of dwelling units that could be constructed based on available acreage in each Land Use Category. As discussed previously, this is because Staff cannot determine the net density of a project without having detailed plans. Initial planning of a project would require both the City and a property owner or applicant to determine the density range based on gross density.

The City's definition of net density in the Subdivision Ordinance does not include private roads in the calculation of net. There is little difference in the overall feeling of the density of a project site based on public or private roads.

Additionally, the definition does not exclude other required elements such as required parks or open space, community facilities, stormwater ponds, and any buffers which also affects how the density of a residential development is viewed by inhabitants.

Take for example the following scenario in the Low Density Land Use Designation (1 to 8 dwelling units per acre):

Project A = 10 acre site:

- 1 acre park
- .25 acres for landscape buffer
- 2 acres public roadway
- .25 acres stormwater pond

If this development was reviewed by the City with respect to the current definition of net in the Subdivision Ordinance, the site would allow 8 to 64 units per acre (for the purposes of net, only the roadway is removed from the total acre acres, leaving 8 acres). The site were to be evaluated using gross density, the project site would allow a total of 10 to 80 units per acre. By reviewing the project based on gross density, this would allow for the inclusion of a variety of housing types and sizes and would meet the City's goal of increasing density within the City and providing for a variety of affordable housing types.

As shown in Table 2, by utilizing gross, rather than net density, the City will allow for a higher density to be constructed in each development. The use of gross also requires a minimum dwelling unit number which is higher than what can be constructed under net which further encourages a higher density of a site.

A change in how the City evaluates the density of a project must be made in order to allow development projects currently under Staff review go to the Planning Commission for review. Additionally, changes must be made so that the City can establish specific requirements to aide

in the consistent review of residential developments with respect to density.

RECCOMENDATION:

In order to move forward and allow residential development to occur in the City prior to the adoption of the Hollister 2040 General Plan, Staff recommends that the City modify the existing General Plan as well as the Zoning Ordinance to require all residential projects to be reviewed based on gross density. This allows the City to begin uniformly reviewing the density of residential developments moving forward.

Staff recommends the following modifications be made to the current General Plan (Hollister 2005-2023 General Plan):

- Modify the land use designations on page 2.7 to remove the word net from the Residential Estate, Low Density Residential, and Medium Density Residential categories
- Modify the land use designations on page 2.8 to remove the word net from the High Density Residential and Mixed Use Commercial and Residential categories.

Staff recommends the following modifications be made to the Zoning Ordinance to clarify how the City will review a project with regards to density:

- Delete the existing definition of density in Chapter 17.02.020 and include a new definition which reads "Density, gross means the number of primary residential dwellings per acre of land within a project site."
- Under Chapter 17.04 – Residential Zoning Districts, remove the word net from Sections 17.04.010 A – H
- Table 17.04-2 Residential Lot Size, Lot Area and Density Requirements by District – remove the word net
- Section 17.04.050.A.2 – remove the word net
- Section 17.04.010.A – remove the word net from the Residential Performance Overlay Zoning Districts

Staff recommends that the definitions in Chapter 16, Subdivisions, remain to be consistent with subdivisions approved in the past.

The proposed modifications to the existing City of Hollister 2005-2023 General Plan and the Zoning Ordinance are consistent with the way the City will review and determine density once the updated 2040 General Plan is adopted. By reviewing density on a gross, not net, basis the City will utilize a calculation that is easier for the City as well as Applicants and property owners and will allow for residential developments to be constructed at the highest density.

Staff recommends that all residential developments be consistently reviewed based on gross

density moving forward. Additionally, all projects approved by the City should meet the all requirements of the Zoning District and General Plan Land Use Designation in which it is located. The Planning Commission may direct Staff to establish a Planning Commission Policy which further iterates these requirements and can be used to direct Applicants on the method the City will use to evaluate their project.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The proposed modifications discussed above are consistent with the City of Hollister 2005-2023 General Plan Final Environmental Impact Report (EIR), adopted December 2005 (State Clearinghouse No. 2004081147). Table 4.1B, Summary of Land Use Changes on page 4.1-7 of the EIR lists the total number of acres to be developed in the City. This is the total number and will not change with the proposed modifications. The EIR evaluates the potential number of new housing units that could be constructed as part of the 2005-2023 General Plan. This number was calculated by multiplying a "typical density" of each category by the total number of acres (gross acres, not net) within the City as shown on Table A23: Additional Housing Capacity Resulting from Proposed Changes in Residential Land Use (page A.24 of Appendix A to the General Plan). The total housing capacity shown in this Table is referenced in the Final EIR.

Because the impacts of development related to the General Plan was evaluated based on a typical density, a change from net to gross would not result in the construction or more or fewer dwelling units than what was anticipated. Furthermore, maximum density was calculated on a gross basis (Table B-2 of the Hollister 2005-2023 General Plan). Both numbers are reference in the Final EIR.

Therefore, the proposed modifications to the General Plan is consistent with the Final EIR adopted for the 2005-2023 General Plan because the modification would not result in the construction of additional units beyond what was previously studied, which was an assumed density for each land use designation. No further CEQA review is required based on the proposed modifications listed under Recommendations.

CONCLUSION:

A consistent method of determining the density of a residential development should be utilized by the City. Gross density allows the City to determine the overall development potential of a site without detailed plans being drawn up. Further, established standards related to minimum lot size, setbacks, and lot coverage provide additional requirements related to the overall density of a project and each lot within a development.

The proposed modifications to evaluate the gross, not net, density of a residential development allows the City to determine the overall development potential of a site without detailed plans being drawn up. Net density requires the submittal of detailed plans so that public roads can be

eliminated from the overall site area and determines the density of the remaining land. Minimum lot size, setbacks, and lot coverage further regulate the density of a development and each parcel within a residential development.

In order to be consistent with the Draft Hollister 2040 General Plan which will review density based on gross, not net, density Staff is has recommended modifications to the existing General Plan and the Zoning Ordinance to remove net density and replace with gross density to allow Staff to consistently review proposed residential developments.

The proposed modifications are consistent with the Final Environmental Impact Report adopted for the City of Hollister 2005-2023 General Plan and further CEQA review is not required.

Understanding Density and Development Intensity

RITU RAJ SHARMA
Senior Associate
DAHLIN

SCOTT LEE
Principal Planner
City of Livermore

PETE NOONAN
Housing Manager
City of West Hollywood

Meet Your Speakers

Density: *The amount of development per acre permitted on a parcel under the applicable zoning, commonly measured as dwelling units per acre (du/ac).*

Site Area: 12 acres
Units: 240 units

Density: 240 units/12 acres =
20 du/ac

Definition

LOW → HIGH

UP TO 12 DU/	13- 24 DU/AC	20-30 DU/AC	+40 DU/AC
• SINGLE FAMILY, DUETS, • FRONT OR ALLEY LOADED • 1, 2 OR 3 STORIES	• TOWNHOMES • FRONT OR ALLEY LOADED • 2 OR 3 STORIES	• WALKUP APARTMENTS • SURFACE PARKED • 3 STORIES	• PODIUM OR WRAPS • STRUCTURED PARKING • 4 STORIES

Densities & Building Typologies

Understanding How Densities Differ

- What impacts densities
- All densities are not created equal

Density: *is expressed in units per net acre (which excludes rights-of-way) for residential uses.*

Site Area: 12 acres
Net Area: 8 acres (less roads)
Units: 240 units

Density: 240 units/8 acres = **30 du/ac**

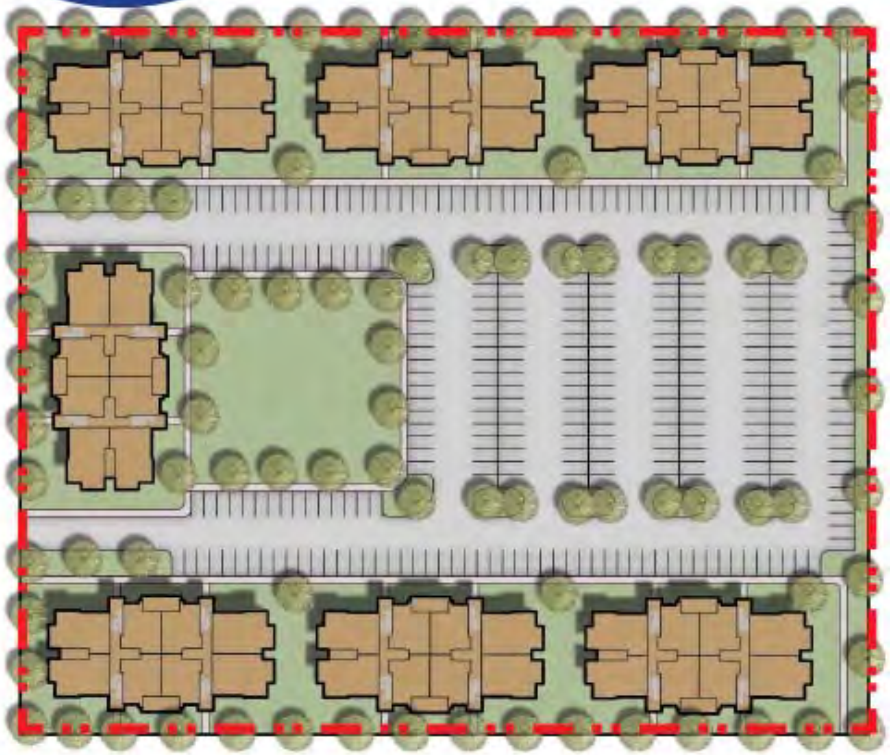
Definition of Density

- 1.3 acres
- 4 story building
- A mix of 1, 2 and 3 bedrooms
- 48 units @ 12 unit/floor

- 1.3 acres
- 4 story building
- Only 1 bedrooms
- 64 units @ 16 unit/floor

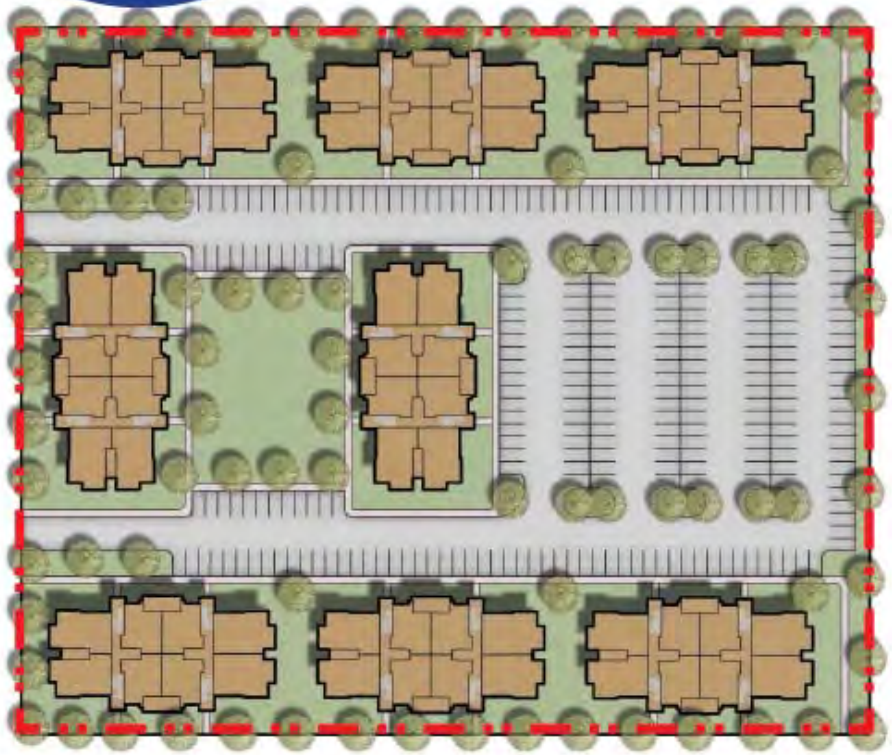
Unit Size and Mix

24 du/ac



- 168 units (105 1-BD, 63 2-BD)
- 315 spaces required
- Parking: 1.5/1-BD, 2.5/2-BD

28 du/ac



- 192 units (120 1-BD, 72 2-BD)
- 264 spaces required
- Parking: 1/1-BD, 2/2-BD

Parking Ratios

Planning & Accommodating Densities

- Invisible Densities
- Visible Densities

Invisible Densities

- Blends with the neighborhood character
- Best for integration within existing neighborhoods

- Attached ADU

- Detached ADU

Invisible Densities: Accessory Dwelling Units

Big Home (New Construction)

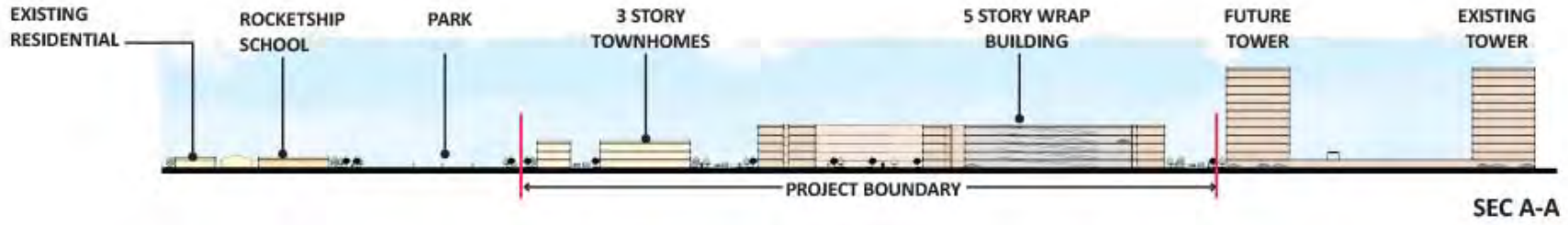
Single Family to Condo Conversion

Invisible Densities: “Big Home” Concept

Visible Densities

- Highly visible intervention
- Should be located adjacent to services and transit
- Careful attention to edges and transitions to surrounding context

Location & Adjacency



Location & Adjacency

Regulating Large Residential Buildings

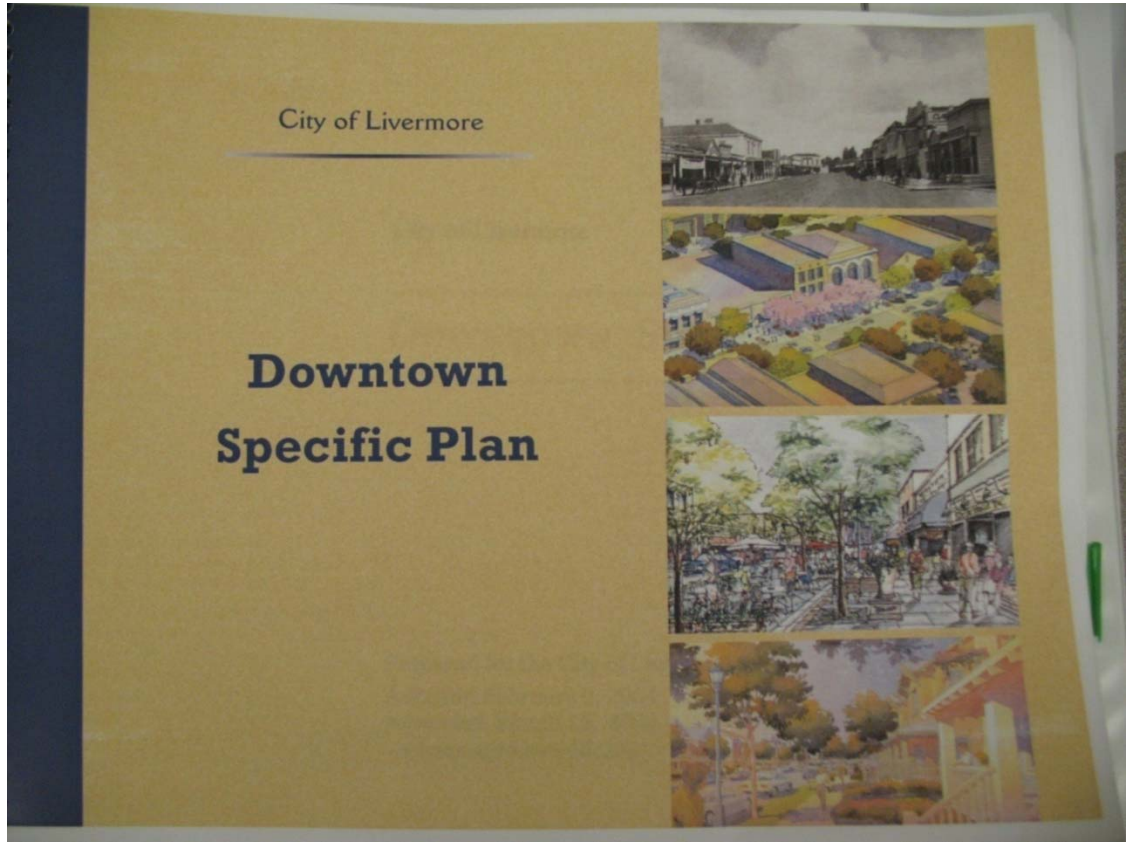
Scott Lee, Principal Planner
City of Livermore

City of Livermore Location Map

Suburban City with a Historic Downtown

Recent Multi-Family Residential Buildings

How to Regulate the Design of Large Residential Buildings to Fit the Community



- Establish design standards based on community input

Residential Development Standards: Level 1 (Basic Standards Found in a Zoning Code)

- Density
- Floor Area Ratio (FAR) or Lot Coverage
- Maximum Building Height
- Minimum Setbacks

Getting Buildings that Fit the Community

Residential Development/Design Standards: Level 2 (Shaping the Box)

- Wall Plane Changes
- Roofline Changes
- Increased Upper Story Setbacks
- Height Exceptions for Architectural Features (Tower)
- Setback Exceptions for Architectural Features (Bay Window, Trellis)
- Segmenting Building Mass
- Open Space Requirement (Balconies, Rooftop Terrace)

Residential Design Standards: Level 3 (Minding the Details)

- Horizontal Articulation of Base, Middle, and Top
- Vertical Orientation of Windows
- Insetting Windows (No Flush Windows)
- Roof Overhangs (No Flush or Clipped Eaves)
- Consistency in Architectural Style
- Emphasize Main Pedestrian Entrance
- De-Emphasize Vehicle Entrance

Case Study: Legacy Livermore Mixed-Use Development

- 4 Acre Site Downtown
- 222 Apartment Units
- 14,000 Square Feet Commercial Space
- 55 Dwelling Units per Acre
- 3 to 4 Stories in Height

View of Apartment Building
Northeast Corner

View of Mixed-Use Building
Southeast Corner

Case Study: Legacy Livermore Mixed-Use Development

View of Apartment Building
East Side

View of Mixed-Use Building
Southwest Corner

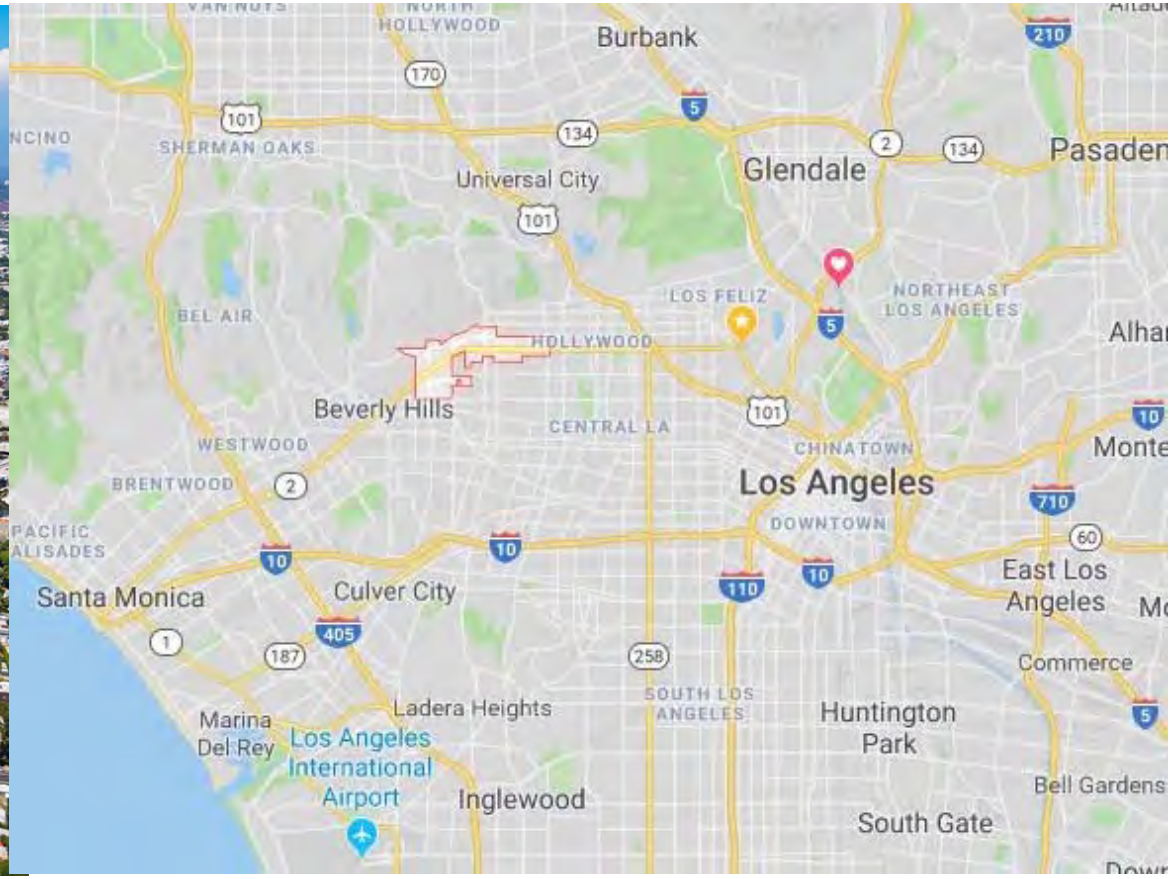
Case Study: Legacy Livermore Mixed-Use Development

Takeaways

- Know the community's expectations for design
- Fine tune the development standards to achieve community expectations: Go beyond the basic standards
- Augment with design standards and guidelines
- Keep the standards as objective as possible

Achieving Affordability in New Residential Development

Pete Noonan AICP CEP, Housing Manager
City of West Hollywood



City of West Hollywood

INCORPORATED IN
1984

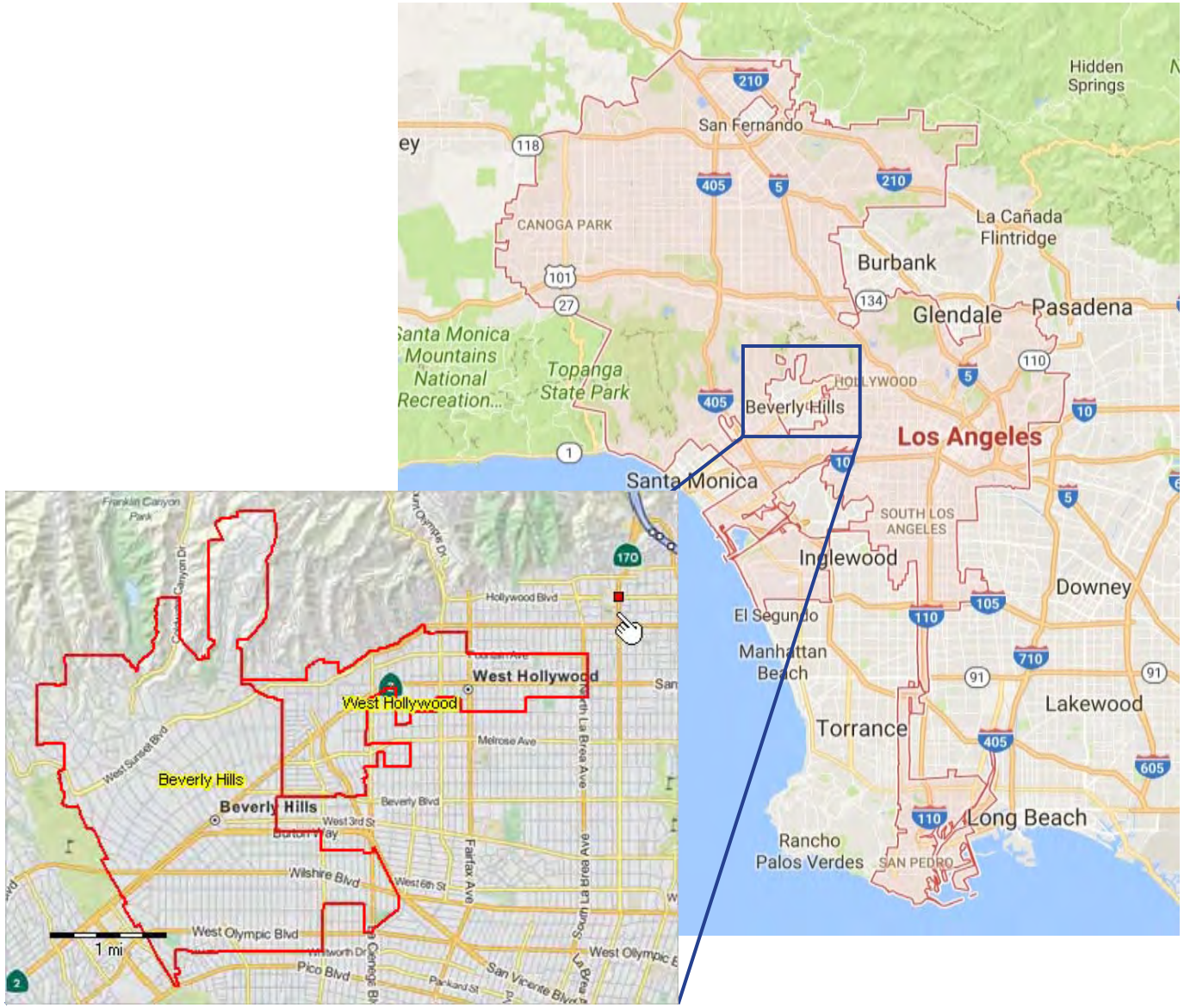
POPULATION
34,650

1.9 Square Miles

LOCATED BETWEEN
BEVERLY HILLS AND LOS ANGELES

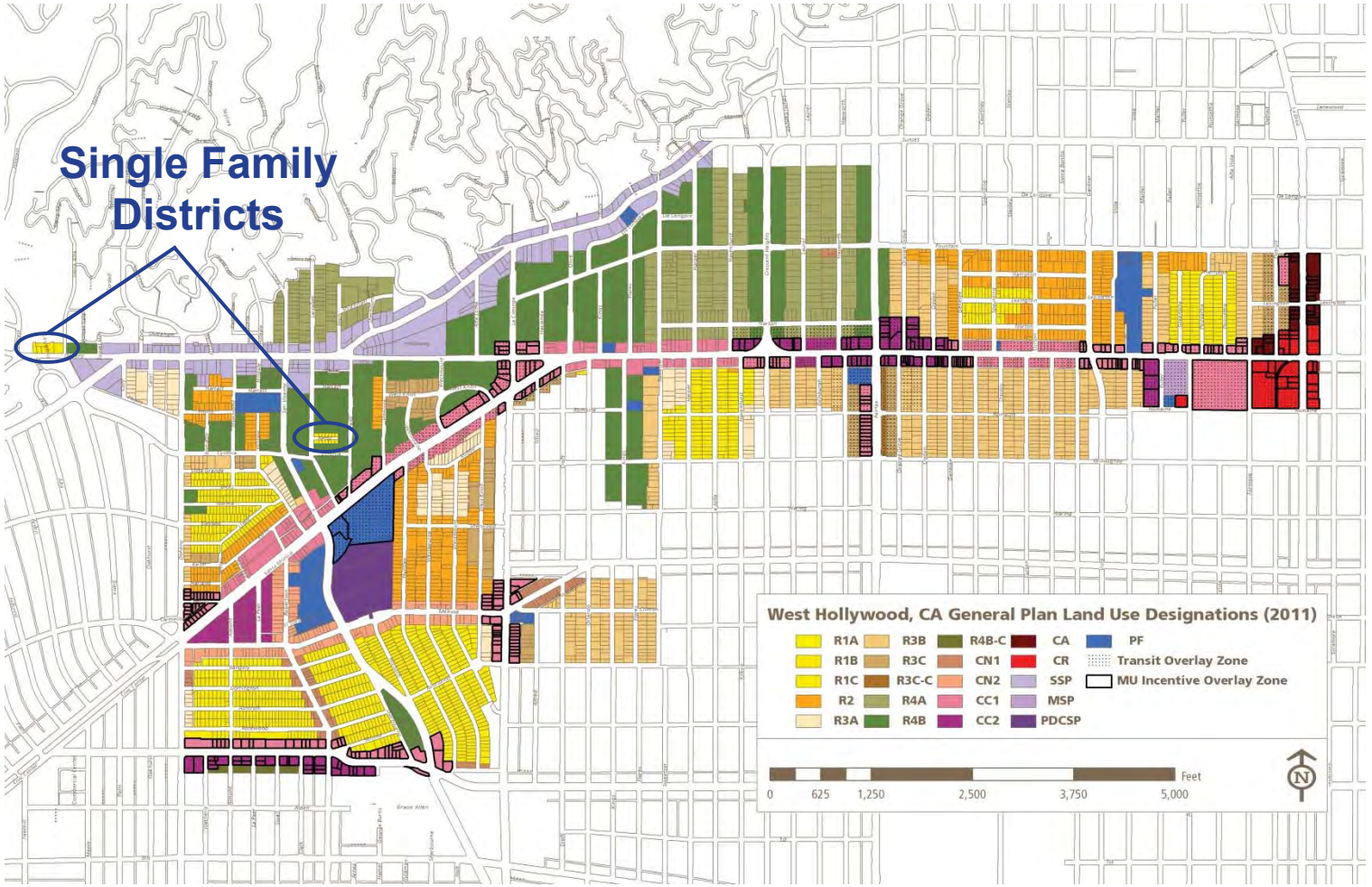
DIVERSE POPULATION

- LGBT COMMUNITY
- RUSSIAN SPEAKING COMMUNITY
- SENIORS



A Little About West Hollywood

Primarily Multi-Family Districts
Commercial Corridors



Housing Element Requirements:

- Identify adequate sites
- Encourage development for all income levels
- Support development for very-low, low, and moderate income households
- Remove government constraints

- **Set quantified objectives** for housing development and rehabilitation based on Community's unique needs.

State Requirement – Demonstrate Commitment to Housing

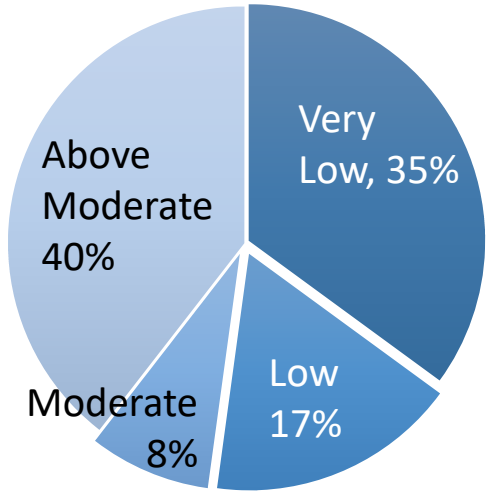
Higher than LA Region:

Seniors
Single person households

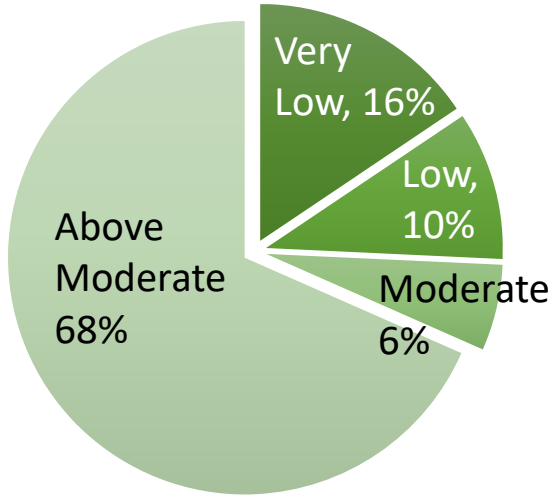
Household Income

31% Very Low
16% Low
8% Moderate
45% Above Moderate

Renter Households



Owner Households



West Hollywood's Housing Need

Income & Housing Affordability

Affordable Income

	Very Low	Low	Moderate
1-Person	$33,950	$40,740	$67,900
2-Person	$38,800	$46,560	$77,600
3-Person	$43,650	$52,380	$87,300
4-Person	$48,450	$58,140	$96,900

Affordable Rent

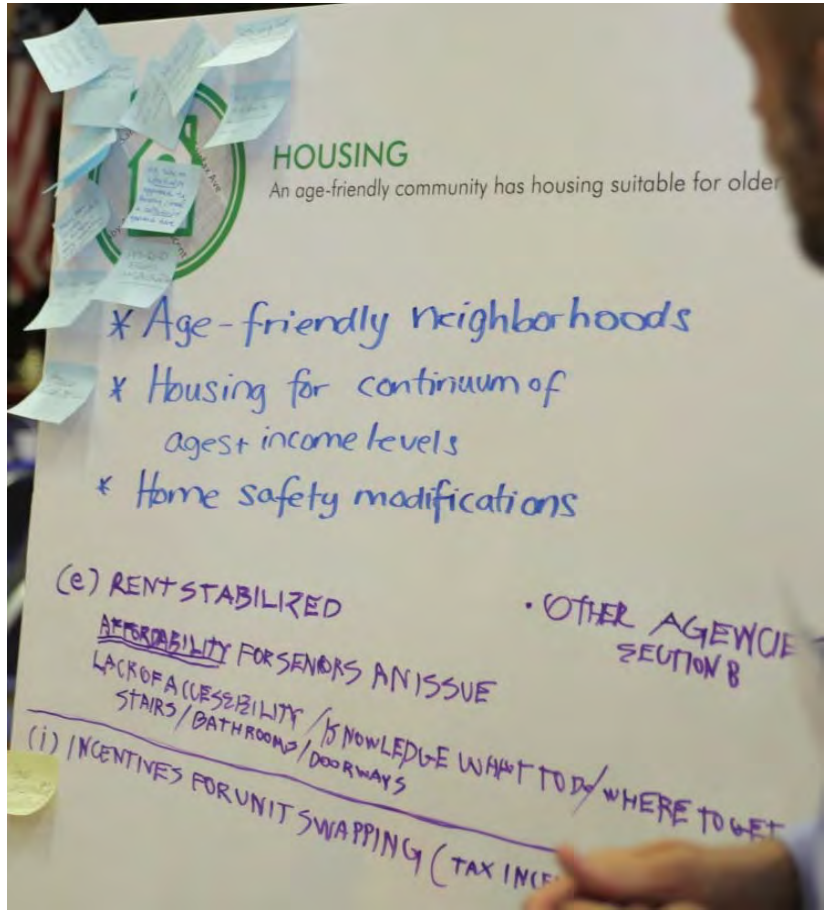
	Very Low	Low	Moderate
Studio	$848	$1,358	$1,696
1-bed	$909	$1,455	$1,818
2-bed	$1,091	$1,746	$2,182

California State Tax Credit Program

Primary Strategic Goal: Affordable Housing

- Mixed Income Housing
  (Inclusionary Zoning)
- Special Needs/Senior Housing

- *In-lieu Fee Option (2-10 unit projects)*
- *Commercial Impact Fee (10,000+ new floor area)*



2 – 10 Unit Projects

- 1 Affordable Unit
- *Optional* Fee In-Lieu

11+ Unit Projects

- 20% Affordable Requirement
  - Half Lower Income
  - Half Moderate Income

Mixed Income Housing (Inclusionary Zoning)

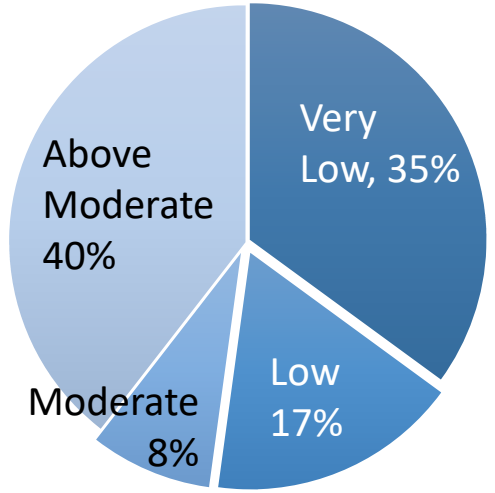
58 Units Delivered

154 Units in Pipeline

2017

Renters	**80%**
Owners	20%

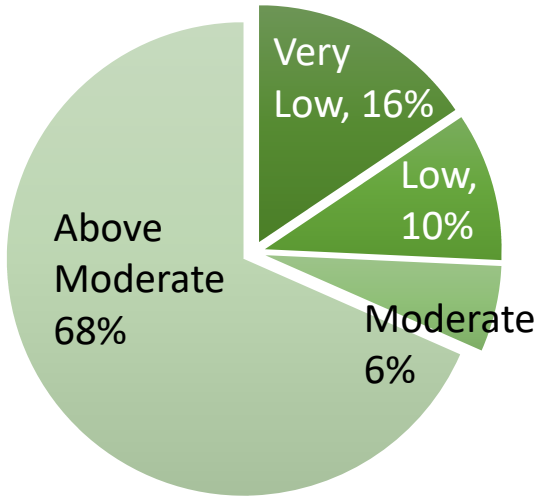
Renter Households



Production	Units	Cumulative Total
1986-2013	106	106
2014-2016	158	264
2017	58	322
Pipeline	154	476

Very Low	Low	Moderate	Market Rate
117	130	75	1311

Owner Households



Inclusionary Zoning Production

Case Study:
Commercial Corridor Mixed-Use

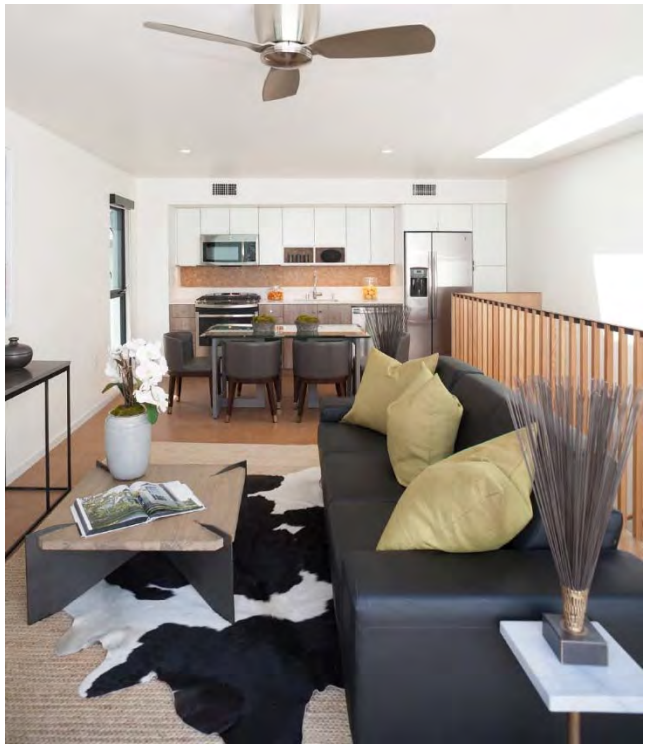
Local Inclusionary Zoning Requirement

36 d/u	Percent Affordable	Units Calc'd	Units (round up)
Local Affordable Requirement	20%	7.2	8

State Density Bonus Allowed

	Units	Percent Afford.	State Density Bonus
Low	4	11.1%	35% max.
Very Low	4	11.1%	
Total Affordable	8		
Bonus	13		36 units x 35% 10' addt'l height
Project	48		

A Peek Inside Affordable Housing…



Can you tell which buildings are affordable?

Case Study:
Mid-Density Multi-Family District (100% Affordable)

Local Affordable Housing Bonus

11 d/u	Percent Affordable	Bonus Units	Total
Local Affordable Bonus	100%	11	22
	1 addt'l story		

- Income level served = 30% - 50% AMI
- Special needs, Transitional Age Youth

	As Built	Not built (same volume)
Units	22	45
Stories	5	5
Parking	1 level On-grade	2 levels Subterranean
Cost/Unit	$770,000	$600,000

Case Study:
Mid-Density Multi-Family District (100% Affordable)

Local Affordable Housing Bonus

11 d/u	Percent Affordable	Bonus Units	Total
Local Affordable Bonus	100%	11	22
	Reduced Parking		

- Income level served = 30% - 50% AMI
- Special needs, Transitional Age Youth

	By-Right Project	Ideal Project *(Not Built)*
Units	22	45
Stories	4	5
Parking	1 level On-grade	2 levels Subterranean
Cost/Unit	$770,000	$600,000

Higher Densities Support Affordable Housing

Development Type	Affordable Bonus	Additional 1/2 Floor	Additional Full Floor
Allowable Units	22	34	45
Height/Stories	45' / 4	55' / 4.5	55’ / 5
Residential Floor Area	24,368	28,429	40,613
Circulation	(4,874)	(5,686)	(8,123)
Livable Area	19,494	22,743	32,491
Private Open Space (60sqft/U)	(1,320)	(2,040)	(2,700)
Common Area	(1,817)	(2,070)	(2,979)
Unit FA Possible	18,174	20,703	29,791
Average Unit Size	743	548	596
Parking	1 level	1 level	2 levels
Parking Location	Ground Floor	Ground Floor	Subterranean

Residential Density Impacts Development Costs!

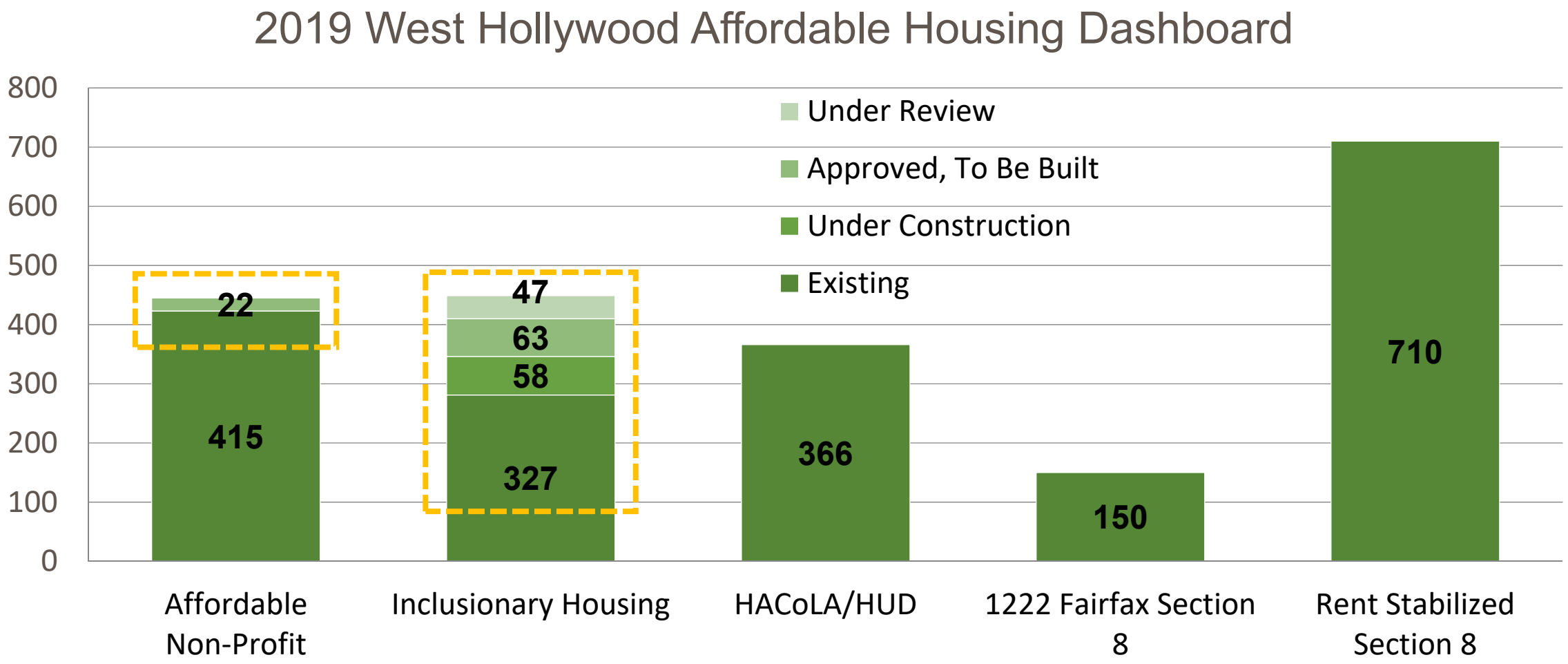
- Six projects currently under construction in the Los Angeles area
- Number of units greatly impacts project costs
- TCAC per unit cost estimate $440,000

Units	Target Population	Total Costs	Per Unit
22	Special Needs, TAY	$16, 884,610	$770,000
23	Special Needs	$15,290,623	$650,000
93	**Senior**	**$32,739,739**	**$355,000**
93	**Family**	**$45,440,000**	**$488,000**
42	Special Needs	$24,815,000	$600,000
41	Special Needs	$25,138,061	$600,000

Case Study:
Low Density In-fill (Affordable ADU Program)

Cost	$25K/unit available for predevelopment
Benefit	200 units
Pros	Promotes infill housing, expands affordable housing supply
	Serves 30%-50% AMI
	Relatively little public subsidy required, financing through partners and Section 8 vouchers

- Professionals guide owners through design, permitting, construction, and financing.
- Financing through credit union, refinance existing mortgage and fund ADU.
- Homeowner rents to Section 8 tenant for minimum five years.
- Social service organizations pair owners with tenants and support services.



Meeting Affordable Housing Needs

Takeaways

- Important to understand and actively work to meet community housing needs
- More units does not always mean larger buildings
- Density is a useful tool for lowering costs
- Promote an affirmative housing message, actively engage in community dialogue
- The State is likely to continue increasing oversight of local housing policy going forward

Q&A

PROJECT INFO				ZONING			NET DENSITY INFO								GROSS DENSITY CALCS			NET DENSITY CALCS				
PROJECT #	PROJECT NAME	GROSS ACREAGE	TOTAL # OF UNITS	ZONE	MIN DENSITY	MAX DENSITY	MIN LOT SIZE (SF)	# UNITS ON MIN LOT	MAX LOT SIZE (SF)	# UNITS ON MAX LOT	PUBLIC ROADS (EST. ACRES)	PRIVATE ROADS (EST. ACRES)	STORMWATER (EST. ACRES)	PARKS & OPEN SPACE (EST. ACRES)	PROJECT	MIN UNITS	MAX UNITS	MIN LOT	MAX LOT	LESS PUBLIC ROADS	LESS ALL ROADS	LESS ALL ROADS AND SW	LESS ALL NON-RESIDENTIAL USES
TM 2013-3	The Villages	32.36	155	R1-L/PZ	1	8	4999	1	12278	1	7.46	0.19	0	3.33	4.79	33	258	8.71	3.55	6.22	6.27	6.27	7.25
TM 2015-1	Saddlebrook	3.91	43	R1-L/PZ	1	8	2635	1	3828	1	0	0.64	0	0.14	11	4	31	16.53	11.38	11	13.15	13.15	13.74
TM 2014-4	Apricot Lane	21.16	100	R1-L/PZ	1	8	5670	1	9462	1	5.32	0	0	2.18	4.73	22	169	7.68	4.6	6.31	6.31	6.31	7.32
TM 2014-2	Ladd Ranch	19.49	82	R1-L/PZ	1	8	4250	1	11450	1	7.59	0	1.57	0	4.21	20	155	10.25	3.8	6.89	6.89	7.94	7.94
TM 2015-4	Orchard Park	9.98	82	R3-M/PZ	8	12	2840	1	7790	1	3.09	0	0.35	0.24	8.22	80	119	15.34	5.59	11.9	11.9	12.54	13.02
TM 2018-8	Walnut Park 14	4.27	42	R3-M/PZ	8	12	2520	1	4955	1	0	1.12	0.45	0.25	9.84	35	51	17.29	8.79	9.84	13.31	15.51	17.11
TM 2013-5	Cerrato	43.72	241	R3-M/PZ	8	12	4500	1	96267.6	1	0.64	11.07	0.53	2.12	5.51	350	524	9.68	0.45	5.59	7.53	7.66	8.21
TM 2015-2	Orchard Ranch	11.48	53	R1-L/PZ	1	8	5700	1	13237	1	3.24	0	0.68	0	4.62	12	91	7.64	3.29	6.43	6.43	7.01	7.01
TM 2014-1	The Cottages	5.00	39	R1-L/PZ	1	8	2502	1	32036	1	1.6	0	0	0	7.8	5	40	17.41	1.36	11.47	11.47	11.47	11.47
PZ 2015-6	CHISPA Buena Vista	4.70	53	R3-M/PZ	8	12	5000	1	107372	40	0.16	0	0	0	11.28	38	56	8.71	16.23	11.67	11.67	11.67	11.67
TM 2015-5	El Cerro	4.78	22	R1-L/PZ	1	8	5012	1	7994	1	1.34	0	0.19		4.6	5	38	8.69	5.45	6.4	6.4	6.79	6.79
TM 2009-1	Twin Oaks	24.40	166	R3	8	12	3661	1	7069	1	0	6.33	0	1.01	6.8	196	292	11.9	6.16	6.8	9.19	9.19	9.73
S&A 2016-2	Coria Fourplex (Valley View)	0.32	4	R4	12	35	14000	4	14000	4	0	0	0	0	12.45	4	11	12.45	12.45	12.45	12.45	12.45	12.45
TM 2016-4	Hillcrest Meadows	9.94	48	R1-L/PZ	1	8	5282	1	10956	1	2.578	0.06	0.17	0	4.83	10	79	8.25	3.98	6.52	6.58	6.73	6.73
TM 2013-2	Allendale (SF only)	79.69	283	R3-M/PZ	8	12	3209	1	13540	1	15.74	0	0.84	30.48	3.55	638	956	13.57	3.22	4.43	4.43	4.48	8.67
TM 2013-2	Allendale (Total)	81.01	343	R3-M/PZ	8	12	3209	1	57499.2	60	15.74	0	0.084	30.48	4.23	649	972	13.57	45.45	5.26	5.26	5.26	9.88
TM 2018-3	Maple Park	5.00	49	R3-M/PZ	8	12	2520	1	2835	1	0	1.77	0	0.35	9.8	40	60	17.29	15.37	9.8	15.17	15.17	17.02
S&A 2018-3	240 Sally St	0.30	3	R4	12	35	13043	3	13043	3	0	0	0	0	10.02	4	10	10.02	10.02	10.02	10.02	10.02	10.02
TM 2016-3	Solorio Park I (SF only)	3.60	40	R3-M/PZ	8	12	3792	1	4659	1	2.05	0	0.74	0	11.11	29	43	11.49	9.35	25.81	25.81	49.38	49.38
TM 2016-3	Solorio Park I (Duets only)	4.47	37	WG	20	35	1809	1	3073	1	2.05	0	0.74	0	8.28	90	156	24.08	14.18	15.29	15.29	22.02	22.02
TM 2016-3	Solorio Park I (Total)	8.07	77	R3 & WG	?	?	1809	1	4659	1	2.05	0	0.74	0	9.54	#VALUE!	#VALUE!	24.08	9.35	12.79	12.79	14.58	14.58
TM 2018-1	Solorio Park II	4.12	37	R1-L/PZ	1	8	3829	1	13411	4	1.11	0	0.11	0	8.98	5	32	11.38	12.99	12.29	12.29	12.76	12.76
TM 2018-2	Klauer Subdivision	2.18	14	R1	1	8	6003	1	14230	3	0.44	0	0	0	6.42	3	17	7.26	9.18	8.04	8.04	8.04	8.04
TM 2017-3	Mirabella II	25.72	170	R3-M/PZ	8	12	3390	1	13296	1	9.27	0	0	2.33	6.61	206	308	12.85	3.28	10.33	10.33	10.33	12.04
TM 2016-2	Cerro Verde	4.34	19	R1-L/PZ	1	8	5338	1	8329	1	1.187	0	0.20	0	4.38	5	34	8.16	5.23	6.03	6.03	6.43	6.43
MS 2019-3	Faria	1.23	4	R1-L/PZ	1	8	12942	1	13842	1	0	0.24	0	0	3.25	2	9	3.37	3.15	3.25	4.02	4.02	4.02
TM 2016-1	Roberts Ranch	54.90	241	R1-L/PZ	1	8	6000	1	19265	4	15.01	0	0.78	3.48	4.39	55	439	7.26	9.04	6.04	6.04	6.16	6.76
TM 2015-9	Farmstead	1.95	13	R1-L/PZ	1	8	2874	1	3517	1	0.99	0	0	0	6.67	2	15	15.16	12.39	13.54	13.54	13.54	13.54
TM 2021-1	1620 Buena Vista Rd	11.11	130	R3-M/PZ	8	12	3156	2	6508	3	0.43	4.00	0	1.41	11.7	89	133	27.6	20.08	12.17	19.44	19.44	24.65
TM 2021-2	Avalon Village	23.48	144	R3-M/PZ	8	12	3066	1	6696	1	8.79	0.29	0	2.157	6.13	188	281	14.21	6.51	9.8	10	10	11.76

SENATE BILL 9 (SB 9): AN OVERVIEW

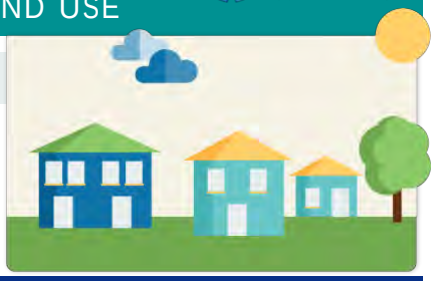
WHAT IT IS AND HOW IT IMPACTS RESIDENTIAL LAND USE

Technical Assistance for Local Action HOUSING

ASSOCIATION OF BAY AREA GOVERNMENTS

Senate Bill 9 (SB 9) is a new California State Law taking effect January 1, 2022.

Similar to previous state legislation on Accessory Dwelling Units (ADUs), SB 9 overrides existing density limits in single-family zones. SB 9 is intended to support increased supply of starter, modestly priced homes by encouraging building of smaller houses on small lots.



SB 9 WAIVES DISCRETIONARY REVIEW AND PUBLIC HEARINGS FOR:

BUILDING TWO HOMES
ON A PARCEL IN A SINGLE-FAMILY ZONE

&

SUBDIVIDING A LOT INTO TWO
THAT CAN BE SMALLER THAN REQUIRED MIN. SIZE

Used together, this allows **4 HOMES** where 1 was allowed before.

SB 9 CAN BE USED TO: *Add new homes to existing parcel • Divide existing house into multiple units • Divide parcel and add homes*

WHAT IT CAN MEAN FOR DEVELOPMENT OF NEW HOMES

Illustrations are based on a preliminary analysis of the law. Details are subject to change and are for informational purposes only.

	VACANT LOT	LOT WITH SINGLE-FAMILY HOME	LOT WITH NONCONFORMING DUPLEX*	LOT WITH SINGLE-FAMILY HOME AND AN ADU
BEFORE	A1	B1	C1	D1
	No units	*1 unit*	*Up to 2 units (nonconforming)*	*1 unit + 1 ADU/JADU*
ADD UNITS, NO LOT SPLIT	A2	B2	C2	D2
	Up to 2 units + 2 ADUs/JADUs	*Up to 2 units + 2 ADUs/JADUs*	*No additional units*	*Can add 1 addtl. unit + 1 ADU/JADU*
ADD UNITS AND LOT SPLIT	A3	B3	C3	D3
	Up to 4 total units	*Up to 4 total units*	*Up to 4 total units*	*Up to 4 total units*

*Legally constructed but not currently permitted. Check your local ordinance for nonconforming use policies.

USING SB 9 WITHOUT A LOT SPLIT:

- Without a lot split, SB 9 does not limit the number of ADUs or JADUs (B2, D2) - but other laws might.
- SB 9 *could be interpreted* to allow 2 new units beyond an existing unit (up to 3 units/lot, plus any allowed ADUs/JADUs).

USING SB 9 WITH A LOT SPLIT:

- SB 9 does not require jurisdictions to approve more than 4 units total, including any ADUs/JADUs.

SINGLE-UNIT DEVELOPMENTS

SB 9 can be used to develop single units - but projects must comply with all SB 9 requirements.

DOES THE PROJECT QUALIFY?

2-UNIT DEVELOPMENTS AND LOT SPLITS

- Single-family lot (usually R-1)
- Located in an urbanized area or urban cluster[1]
- Not in state/local historic district, not an historic landmark
- Meets requirements of SB35 subparagraphs (a)(6)(B)-(K)[2]:

PROPERTY CANNOT BE:

- o Prime farmland or farmland of statewide importance (B)
- o Wetlands (C)
- o Identified for conservation or under conservation easement (I+K)
- o Habitat for protected species (J)

PROPERTY CANNOT BE (UNLESS MEETING SPECIFIED REQUIREMENTS):

- o Within a very high fire hazard safety zone (D)
- o A hazardous waste size (E)
- o Within a delineated earthquake fault zone (F)
- o Within a 100-year floodplain or floodway (G+H)

- Project would not alter nor demolish:
  - o Deed-restricted affordable housing
  - o Rent-controlled housing
  - o Housing on parcels with an Ellis Act eviction in last 15 yrs
  - o Housing occupied by a tenant currently or in last 3 yrs[3]

Addtl. Qualifications for 2-UNIT DEVELOPMENTS

- Project does not remove more than 25% of exterior walls on a building that currently has a tenant or has had a tenant in the last 3 yrs *even if the rental unit itself isn't altered*

Addtl. Qualifications for LOT SPLITS

- Lot is split roughly in half - smaller lot is at least 40% of the original lot[4]
- Each new lot is at least 1,200ft^2 [5,6]
- Lot is not adjacent to another lot split by SB 9 by the same owner or "any person acting in concert with the owner"
- Lot was not created by a previous SB 9 split[7]

LIMITATIONS APPLIED

2-UNIT DEVS. AND LOT SPLITS

- Agencies MUST only impose objective[8] zoning standards, subdivision standards, and design standards (they may impose a local ordinance to set these standards)
  - o These standards MUST not preclude 2 units of at least 800ft^2
- Projects must follow local yard, height, lot coverage, and other development standards, EXCEPT:
- A local agency MAY NOT require rear or side setbacks of more than 4 feet, and cannot require any setback if utilizing an existing structure or rebuilding a same-dimensional structure in the same location as an existing structure
- Project MAY be denied if a building official makes a written finding of specific, adverse impacts on public health or safety based on inconsistency with objective standards, with no feasible method to mitigate or avoid impact
- Agency MAY require 1 parking space/unit, unless the project is:
  - o Within 1/2 mile of "high-quality transit corridor" or "major transit stop"[9]
  - o Within 1 block of a carshare vehicle
- Agency MUST require that units created by SB 9 are not used for short-term rental (up to 30 days)
- Agency MUST allow proposed adjacent or connected structures as long as they comply with building codes and are "sufficient to allow separate conveyance"
- HOAs MAY restrict use of SB 9

2-UNIT DEVS

- Without a lot split, agency CANNOT use SB 9 to limit ADUs/JADUs *e.g., lot can have 2 primary units+1 ADU+1 JADU*
- Agency MUST include # of SB 9 units in annual progress report
- For properties with on-site wastewater treatment, agency MAY require a percolation test w/in last 5 years or recertification within last 10 years

LOT SPLITS

- Agency MAY approve more than 2 units on a new parcel *including ADUs, JADUs, density bonus units, duplex units*
- Project MUST conform to all relevant objective reqs. of Subdivision Map Act
- Agency MAY require easements for provision of public services and facilities
- Agency MAY require parcels to have access to, provide access to, or adjoin public right of way
- Project MUST be for residential uses only
- Applicant MUST sign affidavit stating they intend to live in one of the units for 3+ years[10]
- Agency MUST include number of SB 9 lot split applications in annual progress report
- Agency CANNOT require right-of-way dedications or off-site improvements
- Agency CANNOT require correction of nonconforming zoning conditions

RELATIONSHIPS TO OTHER LAWS

CEQA Does not apply to 2-unit or lot split approvals or ordinances implementing 2-unit or lot split provisions

COASTAL ACT Applies, but no public hearings needed for duplex and lot split coastal development permits

HOUSING CRISIS ACT Local ordinances cannot impose restrictions that reduce the intensity of land use on housing sites *(including total building envelope, density, etc.)*

SB8 SB 9 projects are subject to Permit Streamlining Act deadlines

SB478 Does not apply to single-family zones

KEY DECISIONS FOR AGENCIES TO MAKE

WHETHER TO REQUIRE:

- 1 parking space per unit
- *2-UNITS* Septic tank percolation tests
- *2-UNITS* Owner-occupancy
- *SPLIT* Public services/facilities easement
- *SPLIT* Right-of-way easements

WHETHER TO ALLOW:

- Creation of lots <1,200ft^2
- *SPLIT* >2 units/new lot

DEFINE:

- Objective zoning/subdivision/design review standards
- "Acting in concert with owner"
- "Sufficient for separate conveyance"

CREATE:

- Application forms and checklists
- Recording of deed restrictions for short-term rentals and future lot splits
- Owner-occupancy affidavit

[1] Defined by the Census Bureau
[2] See Section 65913.4(a)(6) Exclusions for full details and definitions
[3] Lot can split, then new units added to the lot w/o the Ellis-affected building
[4] Each lot can be smaller than required minimum lot size
[5] This number can be lowered by local ordinance
[6] If min. size is 1,200ft^2, this requires a 2,400ft^2 lot, or 3,000ft^2 if a 60/40 split
[7] This does not apply to previous lot splits taken under usual Map Act procedures
[8] "Objective" as defined by the Housing Accountability Act
[9] See Sections 21155 and 21064.3 of the Public Resources Code for definitions
[10] Unless the applicant is a land trust or qualified non-profit

17.22.040 Accessory dwelling units.

Where allowed by this Zoning Ordinance, an accessory dwelling unit, as that term is defined in California Government Code Section 65852.2(j)(4), shall be constructed as follows:

A. No more than one additional accessory dwelling unit shall be permitted on any single-family parcel.

B. An additional accessory dwelling unit may only be allowed on a residential parcel with one existing single-family detached accessory dwelling unit, and the accessory dwelling unit may be within, attached to or detached from the existing main dwelling unit. If detached, the accessory dwelling unit shall be separated from the main dwelling unit a minimum of ten feet. The accessory dwelling unit may be rented, although rental is not required.

C. The parcel upon which the additional accessory dwelling unit is to be established shall conform to all of the standards of the applicable residential zoning district (e.g., height, setbacks, parcel coverage, etc.).

D. The minimum size of the parcel upon which the additional accessory dwelling unit may be built shall be 6,750 square feet on an interior lot and 8,000 square feet on cul-de-sac or knuckle lots.

E. The additional accessory dwelling unit shall not exceed one story, or in the case of an accessory dwelling unit constructed over a garage or a unit located within the primary unit, shall not exceed the height limit of the applicable zoning district unless the applicant demonstrates a compelling need to exceed the height requirement and it can be demonstrated that the additional height will not preclude solar access and that the massing of the structure will not be out of scale or overwhelm the adjoining properties.

F. The maximum living floor area of the accessory dwelling unit shall not exceed 850 square feet.

G. The minimum living floor area of the accessory dwelling unit shall be 150 square feet.

H. The additional dwelling unit shall be architecturally compatible with the main dwelling unit, and shall contain separate kitchen and bathroom facilities and a separate entrance.

I. The additional accessory dwelling unit shall be provided with off-street parking, in addition to that required for the main dwelling unit, in compliance with Section 17.18.060, unless the accessory dwelling unit meets the exemptions described in California Government Code Section 65852.2(e).

J. Both the main dwelling unit and the additional accessory dwelling unit shall each be provided with a minimum of 450 square feet of usable private open yard area.

K. The additional accessory dwelling unit shall be metered separately from the main dwelling unit for electricity, gas, and water/sewer services. However, the owner of the accessory dwelling unit shall not be required to pay for the connection fee or capacity charge for water and/or sewer for the accessory dwelling unit. For the purposes of impact fees, the accessory dwelling unit shall be charged as a multi-family unit as applicable.

L. In the case of a lot with an existing dwelling unit of less than 850 square feet, a principal unit may be constructed in compliance with the applicable standards for single-family dwellings.

M. In the case of a unit utilizing alley access, the minimum setback shall be ten feet.

N. A detached accessory dwelling unit shall be separated from the principal unit by a minimum of ten feet.

O. The applicant for the required administrative permit review shall be the owner of the subject property as well as the resident of either one of the dwelling units;

P. This section shall not validate any existing illegal "additional" dwelling unit. An application for an Administrative Permit Review may be made in compliance with Section 17.24.160 to convert a non-permitted "additional" unit to a conforming legal "additional" accessory dwelling unit, and the standards and requirements for the conversion shall be the same as for a newly proposed "additional" accessory dwelling unit.

Q. The following findings shall be made, in addition to those outlined in Section 17.24.160, in order to approve an Administrative Permit for an additional accessory dwelling unit:

1. That the additional accessory dwelling unit is compatible with the design of the main dwelling unit and the surrounding neighborhood in terms of bulk, exterior treatment, height, landscaping, length, parcel coverage, scale and width and will not cause excessive noise, traffic, or other disturbances to the existing residential neighborhood or result in significantly adverse effects on public services and resources; and

2. That the additional accessory dwelling unit will not contribute to a high concentration of these units sufficient to change the character of the surrounding residential neighborhood.

(Ord. 1038, § 2, 2008; Ord. 1083, § 6, 2012; Ord. 1138 § 2, 2017; Ord. 1177 , §§ 3, 4, 2019)

SB-9 Housing development: approvals. (2021-2022)

Date Published: 09/17/2021 09:00 PM

Senate Bill No. 9

CHAPTER 162

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require 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, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24 months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require 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, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this

section and the authority contained in Section 66411.7.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) The terms “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(3) “Local agency” means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined

in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, "unit" means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) "Objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars ($236,790) or more to construct, improve, or finance the construction or improvement of

public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars ($236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) “Public improvements,” as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency’s adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider’s application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and

sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.




California Department of Housing and Community Development

Accessory Dwelling Unit Handbook

Where foundations begin

Updated December 2020

Table of Contents

Understanding Accessory Dwelling Units (ADUs) and Their Importance

California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

****

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

What is an ADU?

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Terner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about $450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to Accessory Dwelling Unit Laws

In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

This recent legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.

- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).

- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ, Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).

.

.

Frequently Asked Questions: Accessory Dwelling Units[1]

1. Legislative Intent

a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

Government Code 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

[1] Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

"objective zoning standards" and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

  Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

  Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

  Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

  Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) & (a)(5).)

B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU? A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on

a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking? Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subds. (a)(1)(D)(x)(I) and (j)(11).)

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

(1) Accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
(3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.

D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is "Proportionately"?

"Proportionately" is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for

utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

b. **One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
c. **One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
d. **Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
e. **Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

J) Renter and Owner-occupancy

- **Are rental terms required?**

  Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subds. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

  No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

  However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

  No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subds. (a)(1)(D)(xii) and (e)(3).)

  Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

  Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC's website www.energy.ca.gov. You may email your questions to: title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml.

3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subds. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet "beyond the physical dimensions of the existing accessory structure" to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): **"Manufactured home,"** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency's Regional Housing Needs Allocation?**

Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must

include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU ordinance?**

  No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

  Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

  Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

  Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

  Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as *"…a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution*" and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

  Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

  Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the California Coastal Commission 2020 Memo and reach out to the locality's local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

  For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

Resources

Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

Combined changes from (AB 3182 Accessory Dwelling Units)
and (AB 881, AB 68 and SB 13 Accessory Dwelling Units)

(Changes noted in strikeout, underline/italics)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.
(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.
(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.
(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.
(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:
(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:
(i) 850 square feet.
(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.
(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.
(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:
(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
(5) When there is a car share vehicle located within one block of the accessory dwelling unit.
(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:
(A) One accessory dwelling unit ~~or~~ ***and*** one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
(ii) The space has exterior access from the proposed or existing single-family dwelling.
(iii) The side and rear setbacks are sufficient for fire and safety.
(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.
(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:
(i) A total floor area limitation of not more than 800 square feet.
(ii) A height limitation of 16 feet.
(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.
(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.
(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.
(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.
(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.
(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
(2) (A) If the department finds that the local agency’s ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
(i) Amend the ordinance to comply with this section.
(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
(3) (A) If the local agency does not amend its ordinance in response to the department’s findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department’s findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
(j) As used in this section, the following terms mean:
(1) “Accessory dwelling unit” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
(A) An efficiency unit.
(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.
(3) “Efficiency unit” has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
(4) “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
(5) “Local agency” means a city, county, or city and county, whether general law or chartered.
(6) “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
(7) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
(8) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
(9) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
(10) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
(1) The accessory dwelling unit was built before January 1, 2020.
(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.
(Becomes operative on January 1, 2025)

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

65852.2.
(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:
(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
(viii) Local building code requirements that apply to detached dwellings, as appropriate.
(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
(6) *(A)* This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed

accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ *imposed except that, subject to subparagraph (B),* a local agency may require *an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or* that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not

more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
(ii) The space has exterior access from the proposed or existing single-family dwelling.
(iii) The side and rear setbacks are sufficient for fire and safety.
(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.
(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:
(i) A total floor area limitation of not more than 800 square feet.
(ii) A height limitation of 16 feet.
(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.
(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.
(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).
~~(4)~~ *(5)* A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.
~~(5)~~ *(6)* A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.
~~(6)~~ *(7)* Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.
(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home.~~ *dwelling.*
(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the

Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
(i) Amend the ordinance to comply with this section.
(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
(j) As used in this section, the following terms mean:
(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
(A) An efficiency unit.
(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
(5) "Local agency" means a city, county, or city and county, whether general law or chartered.
(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit

applications for accessory dwelling units.
(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
(1) The accessory dwelling unit was built before January 1, 2020.
(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in strikeout, underline/italics) (AB 3182 (Ting)):

4740.
(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or her~~ *their* separate interest.
~~(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~
~~(c)~~ *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:
(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.
(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.
~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.
~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.
~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting)):*

4741.
(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.
(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.
(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a

governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.
(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.
(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.
(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.
(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).
(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code ~~is~~ was amended to read (AB 68 (Ting)):
65852.22.
(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:
(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.
(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:
(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.
(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.
(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the proposed or existing single-family residence.
(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:
(A) A cooking facility with appliances.
(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.
(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.
(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.
(e) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.
(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.
(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.
(h) For purposes of this section, the following terms have the following meanings:
(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 ~~is~~ was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

17980.12.

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:
(A) The accessory dwelling unit was built before January 1, 2020.
(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.
(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.
(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).
(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.
(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
AB 587 Accessory Dwelling Units

Effective January 1, 2020 Section 65852.26 ~~is~~ was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The property was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

(1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1
AB 670 Accessory Dwelling Units

Effective January 1, 2020, Section 4751 ~~is~~ was added to the Civil Code, to read (AB 670 (Friedman)):

4751.

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability

to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6
AB 671 Accessory Dwelling Units

Effective January 1, 2020, Section 65583(c)(7) of the Government Code ~~is~~ was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 ~~is~~ was added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.
(b) The list shall be posted on the department's internet website by December 31, 2020.
(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

Attachment 2: State Standards Checklist

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling.	65852.2(a)(1)(D)(ii)
	The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.	65852.2(a)(1)(D)(iv), (c)(2)(B) & C)
	Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.	65852.2(a)(1)(D)(vii)
	Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)(I

Attachment 3: Bibliography

ACCESSORY DWELLING UNITS: CASE STUDY (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

THE MACRO VIEW ON MICRO UNITS (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

SECONDARY UNITS AND URBAN INFILL: A Literature Review (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

RETHINKING PRIVATE ACCESSORY DWELLINGS (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

Regulating ADUs in California: Local Approaches & Outcomes (44 pp.)

By Deidra Pfeiffer
Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes (8 p.)

By David Garcia (2017)
Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.
In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver (29 pp.)

By Karen Chapple et al (2017)
Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain (37 pp.)

By Darrel Ramsey-Musolf (2018)
University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

Planning Commission
Study Session Staff Report
August 4, 2022
Item 2

PURPOSE: **Changes in State Law Related to Density Bonuses, SB 9 and Accessory Dwelling Units** – A discussion of the recent changes in State Law related to Density Bonuses and Accessory Dwelling Units and the new Senate Bill 9 related to single family residential development.

STAFF PLANNER: Eva Kelly, Interim Planning Manager (831) 636-4360
Erica Fraser, AICP, Consulting Planner

ATTACHMENTS:

1. Text of Senate Bill 9
2. SB 9 Graphic Illustration (ABAG)
3. Section 17.22.040, Accessory Dwelling Units, of the Hollister Zoning Ordinance
4. Accessory Dwelling Unit Handbook (California Department of Housing and Community Development)
5. Chapter 17.04, Article II, Density Bonuses, of the Hollister Zoning Ordinance
6. Government Code Sections 65915-65918, Density Bonuses and Other Incentives

---

BACKGROUND:

Several changes in State Law and the introduction of Senate Bill 9 (SB 9) have occurred since the Zoning Ordinance was last updated. SB 9 was signed into law on September 16, 2021 and took effect on January 1, 2022. SB 9 allows property owners within a single-family residential zone (Hollister's R1 (Low Density Residential) Zoning District) to build two units and/or to subdivide their lot into two parcels, which would allow a maximum of four residential dwellings to be constructed.

Several changes in State Law have been made since Section 17.22.040, Accessory Dwelling Units, of the Hollister Zoning Ordinance was last modified in 2019. On January 1, 2021, several changes to State Law were introduced to further reduce barriers to the construction of ADUs and to streamline the process for approval. Section 17.22.040 of the Zoning Ordinance is not consistent with current State Law.

Several changes in State Law and a court ruling have changed how a City can evaluate a density bonus request. Density bonuses in Hollister are regulated under Chapter 17.04, Article II which was last updated in 2011. The current Article II, Density Bonus is not consistent with the current State Law.

Because the City's Zoning Ordinance is not up to date with the current SB 9 as well as changes in State Law regarding ADUs and Density Bonuses, the City must review applications for the items against the Government Code and cannot use the Zoning Ordinance.

Tonight's discussion is an overview of the new SB 9 and the changes in State Law related to ADUs and Density Bonuses.

ANALYSIS:

Senate Bill 9 (SB 9)

Senate Bill (SB) 9 took effect on January 1, 2022 and is not codified in the current Zoning Ordinance. The purpose of SB 9 is to increase density in single family neighborhoods (the most expensive type of housing to own or rent) and to increase housing units in the State and to create more inclusive neighborhoods.

SB 9 applies to all single-family residential zoned properties with several key exceptions:

- Environmentally sensitive areas (i.e. farmland, wetlands, protected habitats, or easements);
- Environmental hazard areas (such as a fault zone) if mitigations are not possible;
- Historic properties and districts;
- Properties where the Ellis Act was used to evict tenants at any time in the last 15 years; and
- Additionally, demolition is generally not permitted for units rented in the last 3 years, rent-controlled units, or units restricted to people of low or moderate incomes.

SB 9 requires ministerial approval of the following:

- Two-unit Housing Development – Two homes on an eligible single-family residential parcel (whether the proposal adds up to two new housing units or adds one new unit to one existing unit).

- Urban Lot Split - A one-time subdivision of an existing single-family residential parcel into two parcels. This would allow up to four units (unless a jurisdiction decides to allow additional units).

Two-Unit Housing Development

Under the provisions of SB 9, a person can request to construct a maximum of two primary dwellings units (attached or detached) on a single family residential parcel. The following requirements apply to all two-unit housing developments under SB 9:

- The City must review and process an application for a SB 9 development ministerially without any discretionary/subjective review;

- Development of a two-unit residential development and an Urban Lot Splits is not subject to the California Environmental Quality Act;

- Minimum four foot interior side and rear yard setbacks;

- Front yard and street side setbacks shall be the same as the regulations for the zoning district in which it is located unless it precludes the construction of two 800 square foot units on the subject property;

- If the existing dwelling unit is demolished to make way for a new two-unit residential development, the City cannot impose any setback requirements that are above what was existing on the site prior to the dwelling being torn down;

- The residential dwellings may be attached as long as they meet building code safety standards;

- All uses are restricted to residential uses only;

- Provide a minimum of one off street parking space per unit unless the subject property is located within ½ mile, walking distance, to a major transit stop and then no parking spaces are required;

- The City may restrict the short term rental of dwelling units created by SB 9 to a term of greater than 30 days;

- The City must allow an ADU or JADU to be constructed per primary dwelling unit if the lot was not previously split under SB 9;

- The design of the unit must comply with any objective design standards or design

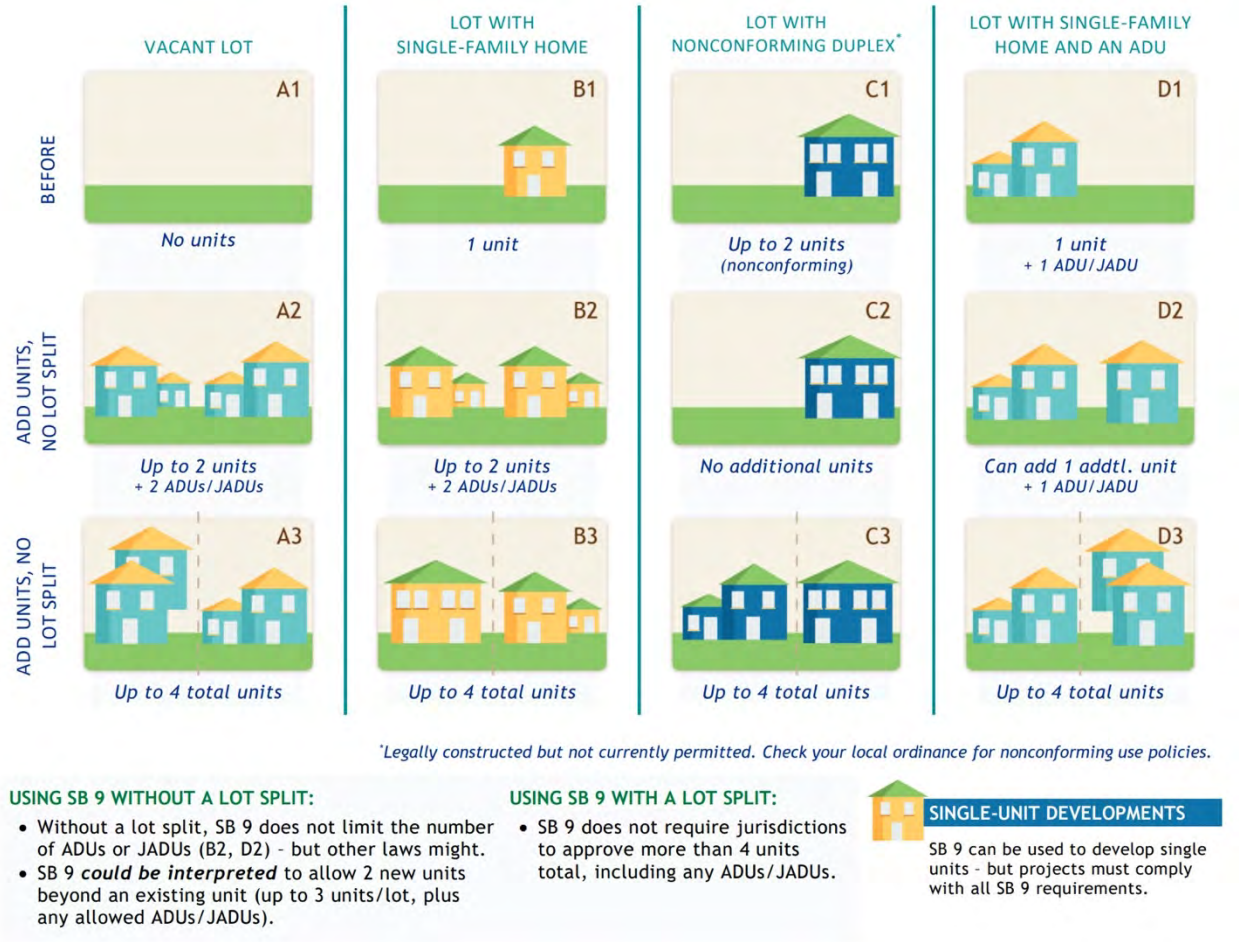
guidelines the City has adopted for the Zoning District in which the property is located.

Urban Lot Splits

Under the provisions of SB 9, a person may choose to divide an existing residential parcel into two new parcels (otherwise known as an Urban Lot Split). This split may be conducted one time only and the two lots created by the lot split cannot be split later into additional lots. All Urban Lots Splits are required to comply with the following:

- Each new lot must be a minimum of 1,200 square feet in size;
- The Urban Lot Split must result in lots of approximately equal size provided that one parcel shall not be smaller than 40 percent of the size of the original parcel;
- The property owner must intend to occupy one of the units as their principle residence for a minimum of three years;
- A maximum of two dwelling units are allowed on each lot;
- The same development standards for a two-unit development (as stated above) shall also apply for the construction of dwelling units on the new parcel.

The following graphic prepared by the Association of Bay Area Governments illustrates potential scenarios that could occur on a single-family property under SB 9 (please also refer to Attachment 2 for more information):



Under SB 9, the City must review and process applications for SB 9 two-unit housing developments and urban lot splits ministerially without any discretionary/subjective review or CEQA. The City may only deny an SB 9 proposal if the Building Official finds that it would have a "specific, adverse impact [as defined by the law], upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact." Any denials must be based on objective, identified public health and safety standards, policies, or conditions that existed when the application was submitted.

The City's Zoning Ordinance does not include provisions that would allow the development of units permitted by SB 9. Minor modifications to allowable residential uses in the Zoning Ordinance as well as a new section in the Zoning Ordinance dedicated to these type of developments would be required in order to comply with SB 9.

Accessory Dwelling Units (ADUs)

An Accessory Dwellings Unit (ADU) is an accessory dwelling with complete living facilities for one

or more persons. There are several types of ADUs including:

- Detached – which means the ADU is separated from the primary dwelling unit or structure;
- Attached – which means the ADU is attached to the primary structure on a lot;
- Converted Existing Space – which is any space on a lot with a primary dwelling unit (i.e. master bedroom, garage, storage space, accessory structure, etc.) that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU) - which is a specific type of conversion of an existing space within a single-family residence that is contained entirely within that structure.

The City regulates Accessory Dwelling Units under Chapter 17.22.040 of the Zoning Ordinance (Attachment 3). This Ordinance was last updated in 2019, but is not consistent with the changes in State Law which are summarized below.

The following changes to State Law have been made with regards to how the City processes review of an Application for an ADU:

- The Application for an ADU or JADU shall be deemed approved if the City has not acted on a complete application within 60 days (reduced from 120 days);

- Requires ministerial approval of an application for a Building Permit in a residential or mixed use zone to create one ADU and one JADU per lot;

- Establishes impact fee exemptions and limitations; and

- Prohibits Covenants, Codes and Restrictions that restrict the construction of or use of and ADU or JADU.

The following changes to State Law have been made which restrict how a City can review ADUs which are not consistent with the City's current Zoning Ordinance:

- Allows for the rental of a ADU or JADU even if the ADU or JADU was approved with a condition that restricted the unit being rented;

- Prohibits requirements which require a minimum lot size for construction of an ADU;

- Eliminates owner occupancy requirements for ADUs approved between January 1, 2020 – January 1, 2025;

- Prohibits a City from establishing a maximum size of an ADU of less than 850 square

feet, or 1,000 square feet if the ADU has one or more bedrooms;

- When an ADU is created through the conversion of a garage, carport, or covered parking, the City may not require replacement off-street parking;

- The accessory structure definition has been modified to read "a structure that is accessory or incidental to a dwelling on the same lot as the ADU";

- Allows a City to identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation housing needs;

- Allows a JADU to be constructed within the walls of a proposed or existing single family residence and eliminates the required inclusion of an existing bedroom or interior entry into the residence;

- An ADU does not count towards the allowable density of a lot;

- Parking requirements for an ADU may not exceed one parking space per unit or bedroom, whichever is less and may be provided as tandem parking on a driveway;

- There is no limit on the number of bedrooms in an ADU; and

- An ADU is also permitted on a lot where an SB 9 lot split has occurred (as long as there are no more than two total dwelling units on each parcel).

For additional information regarding ADUs, please refer to the Accessory Dwelling Unit Handbook, prepared by the California Department of Housing and Community Development, included as Attachment 4. As mentioned above, the existing Zoning Ordinance is not consistent with State Law and changes to the Ordinance will need to be made in order to comply with State Law.

Density Bonus

The State Density Bonus Law (Sections 65915-65918 of the California Government Code, Attachment 6) allows developer to seek a density bonus in exchange for donating land or for building affordable projects. A density bonus means the increase over the otherwise maximum allowable gross residential density established by the City, the amount of which varies based on the type and percentage of affordable housing provided by the Developer.

The following Table summarizes the percentage of bonus granted by the Target Group (level of affordability) and the percentage of affordable units that are provided on-site. The density bonus granted by the current Density Bonus State Law is higher than what is currently listed in Hollister's

Zoning Ordinance.

Table 1: Density Bonus by Target Group and Percentage of Development Affordability

Target Group	Minimum % Target Units	Bonus Granted	Additional Bonus for Each 1% Increase in Target Units	% Target Units Required for Maximum 50% Bonus
Very Low Income	5%	20%	2.5%	15%
Low Income	10%	20%	1.5%	24%
Moderate Income (Common Interest Development, Condo or PUD only)	10%	5%	1%	44%
Senior Citizen Housing Development	100%	20%	–	–
100% Affordable Project (includes bonus units)	100%	80%[1]	–	–

[1] If the housing development is located within one-half mile of a major transit stop, the city shall not impose any maximum controls on density [Gov. Code. Sec. 65915 (f)(3)(D)(ii)]

In addition to granting a density bonus, the City is required to provide one or more incentives or concessions to each project which qualifies for a density bonus (see Table 1). The following have been identified as a concession or incentive under the Government Code:

- A reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or

- Approval of mixed use zoning; or

- Other regulatory incentives or concessions which actually result in identifiable and actual cost reductions.

The number of incentives that can be granted are based on the percentage and type of affordable housing provided in the development.

Several changes have been made to the State Density Bonus Law since the City's Density Bonus Ordinance was amended in 2011. The following changes to have been made which are not consistent with the City's current Ordinance:

- The City must allow for a higher density bonus as listed in Table 1;

- The City must grants a density bonus for the provision of units for foster youths, disabled veterans, homeless and college students;

- The Law now allows a density bonus for mixed-use projects;

- The State Law establishes parking requirements which are lower than what is in the Zoning Ordinance (granted based on the provision of affordable housing, a Developer may also seek an incentive to further reduce required on-site parking);

- The State Law establishes affordable housing restrictions which are different from what is in the current Zoning Ordinance;

- A City is required to clearly show what information must be submitted for a complete density bonus application;

- Current law increases the total number of incentives the City must provide (up to four incentives);

- A City must grant a density bonus for the provision of a childcare facility on residential and commercial and industrial projects; and

- Permits the City to grant a floor area ratio bonus rather than a tradition density bonus for high density projects adjacent to public transit.

As mentioned above, the existing Zoning Ordinance is not consistent with State Law and changes to the Ordinance will need to be made in order to comply with State Law.

CONCLUSION:

The City's Zoning Ordinance is not consistent with State Law with respect to Density Bonuses and Accessory Dwelling Units. Additionally, SB 9 recently took effect and the Hollister Zoning Ordinance does not allow for the additional dwellings allowed under this Senate Bill. Modifications to the Zoning Ordinance are required in order to comply with current regulations.

RECCOMENDATION:

Staff recommends that the Planning Commission provide Staff with direction/comments and direct Staff to do the following:

- Draft a new Ordinance related to SB 9 for inclusion into the Zoning Ordinance; and

- Make minor modifications in the Zoning Ordinance so that the Zoning Ordinance is consistent with the new Ordinance related to SB 9; and

- Modify Section 17.22.040, Accessory Structures, so that this Section is consistent with State Law; and

- Modify Chapter 17.04, Article II, Density Bonus, so that this section is consistent with State Law.

NEXT STEPS:

Should the Planning Commission direct Staff to make the modifications mentioned above, Staff will bring draft Ordinances to the Planning Commission for review during a Public Hearing for recommendation to the City Council.

Most of the current Zoning Ordinance has not been amended since 2008. Staff is aware of several changes to the Zoning Ordinance that both the Planning Commission and City Council would like made. Additionally, changes will be required once the Hollister 2040 General Plan is adopted, which is currently being drafted. Once the General Plan is adopted, Staff intends to overhaul the entire Zoning Ordinance to reflect desired changes, changes required by the General Plan and to make the Zoning Ordinance more user friendly. Staff intends to bring the modifications to the Planning Commission for review during several Study Sessions prior to a Public Hearing.

ARTICLE II. DENSITY BONUS

17.04.070 Purpose and definitions.

A. *Purpose.* In accordance with Sections 65915, 65915.5 and 65917 of the California Government Code, the purpose of this Article is to provide density bonuses, incentives, or concessions for the production of housing for very-low, lower, and moderate-income households, senior households, and for the provision of day care centers and donations of land. In enacting this Article, it is also the intent of the City to implement the goals, objectives, and policies of the City's General Plan Housing Element and to establish a City density bonus for the provision of affordable senior housing.

B. *Definitions.* The following definitions shall apply to this Article:

Affordable ownership cost means a reasonable down payment and an average monthly housing cost during the first calendar year of occupancy, mortgage insurance, property taxes and property assessments, homeowner's insurance, homeowner's association dues, if any, and all other dues and fees assessed as a condition of property ownership, which does not exceed: (1) 30 percent of 50 percent of area median income for very-low income households; (2) 30 percent of 70 percent of area median income for lower-income households; and (3) 30 percent of 120 percent of area median income for moderate-income households. Area median income shall be adjusted for assumed household size based on unit size as follows: one person in a studio dwelling unit; two persons in a one-bedroom dwelling unit; three persons in a two-bedroom dwelling unit; four persons in a three-bedroom dwelling unit; five persons in a four-bedroom dwelling unit; and six persons in a five-bedroom dwelling unit. The City Council, by resolution, shall establish guidelines for determining affordable ownership cost.

Affordable rent means monthly rent, including a reasonable allowance for garbage collection, water, electricity, gas, and other heating, cooking, and refrigeration fuels, and all mandatory fees charged for use of the property, which does not exceed: (1) 30 percent of 50 percent of area median income for very-low income households; or (2) 30 percent of 60 percent of area median income for lower-income households. Area median income shall be adjusted for assumed household size based on dwelling unit size as follows: one person in a studio dwelling unit; two persons in a one-bedroom dwelling unit; three persons in a two-bedroom dwelling unit; four persons in a three-bedroom dwelling unit; five persons in a four-bedroom dwelling unit; six persons in a five-bedroom dwelling unit. The City Council, by resolution, shall establish guidelines for determining affordable rent.

Area median income means the annual median income for San Benito County, adjusted for household size, as published periodically in Title 25, Section 6932, California Code of Regulations, or its successor provision, or as established by the city of Hollister in the event that such median income figures are no longer published periodically in the California Code of Regulations.

Concessions means such regulatory concessions as defined in Section 17.04.280 (Development Incentives or Concessions) of this Article.

Day care center means a facility approved and licensed by the State, other than a family day care home, that provides non-medical care on less than a 24-hour basis, including infant centers, preschools, extended day care facilities, adult day care and elderly day care facilities. Day care center does not include residential care facilities, residential service facilities, interim housing, or convalescent hospitals/nursing homes.

Density bonus means an increase in the number of dwelling units over the otherwise maximum allowable residential density as established in the land use element of the Hollister General Plan in accordance with State law and this Article. This definition has the same meaning as "Density Bonus" defined in Section 65915 of the California Government Code.

Density bonus program guidelines means guidelines adopted by resolution of the City that outline the criteria and procedures for implementing density bonuses or other regulations.

Density bonus units means those residential dwelling units approved pursuant to this Article, which exceed the otherwise allowable maximum allowable residential density for the development site.

Development standard means a site or construction condition that applies to a residential development pursuant to any ordinance, General Plan Element, Specific Plan, or other City condition, law, policy, resolution, or regulation. A "site and construction condition" is a development regulation or law that specifies the physical development of a site and buildings on the site in a residential development.

First approval means the first of the following approvals to occur with respect to a residential development: Specific Plan, Development Agreement, Planned Unit Development Permit, Tentative Map, Minor Subdivision, Conditional Use Permit, Site Plan Review, or Building Permit.

Incentives means such regulatory incentives as defined in Section 17.04.280 (Development Incentives or Concessions) of this Article.

Lower-income households means households whose income does not exceed the low income limits applicable to San Benito County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, adjusted for household size.

Maximum allowable residential density means the maximum number of dwelling units permitted in a residential project by the City's zoning ordinance and by the land use element of the General Plan on the date that the application for the residential project is deemed complete, excluding any density bonus. If the maximum density allowed by the zoning ordinance is inconsistent with the density allowed by the land use element of the General Plan, the General Plan density shall prevail.

Moderate-income households means households whose income does not exceed the moderate income limits applicable to San Benito County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, adjusted for household size.

Non-restricted units means all dwelling units within a residential development except the target units.

Qualifying residents means persons eligible to reside in senior housing as defined in California Civil Code Section 51.3.

Residential development means any project requiring any Specific Plan, Development Agreement, Planned Unit Development Permit, Tentative Map, Minor Subdivision, Conditional Use Permit, Site Plan Review, or Building Permit, for which a development review application has been submitted to the City, and which would create five or more additional dwelling units by construction or alteration of structures.

Senior housing Type 1 means a senior citizen housing development of 35 dwelling units or more as defined in California Civil Code Section 51.3, or a mobile home park that limits residency based on age requirements for older persons pursuant to California Civil Code Section 798.76 or 799.5. This definition pertains to the density bonus allowed for senior housing dwelling units allowed in accordance with the State Density Bonus provisions.

Senior housing Type 2 means a residential development of five dwelling units or more designed for residency by qualifying residents in accordance with California Civil Code Section 51.3 and in which a minimum of 35 percent of the dwelling units are provided at an affordable housing cost as required in Section 17.04.200 (City Density Bonus for Affordable Senior Housing Type 2). This definition applies to the density bonus allowed for senior housing dwelling units in accordance with the city of Hollister Density Bonus provisions.

Target unit means a dwelling unit within a housing development that is reserved for sale or rent to, and is made available at an affordable rent or affordable ownership cost to: very-low, lower, or moderate-income

households, or is a dwelling unit in a senior housing development, and which qualifies the residential development for a density bonus and other incentives or concessions pursuant to Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing) of this Article.

Very-low income households means households whose income does not exceed the very-low income limits applicable to San Benito County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, adjusted for household size.

(Ord. 1071, § 9, 2011)

17.04.080 State density bonuses for construction of affordable and senior housing.

A. *Basic Density Bonus in Accordance with State Law (Very-Low and Lower-Income Units).* A residential development is eligible for a 20 percent density bonus if it includes at least five dwelling units, and the applicant seeks a density bonus and agrees to construct at least one of the following:

1. Ten percent of the total dwelling units of the residential development as dwelling units affordable to lower-income households; or

2. Five percent of the total dwelling units of the residential development as dwelling units affordable to very-low income households.

B. *Basic Density Bonus in Accordance with State Law (Moderate-Income Ownership Units).* A residential development is eligible for a five percent density bonus if it includes at least five dwelling units, is a common interest development as defined in Civil Code Section 1351, all the dwelling units in the development are offered to the public for purchase, and the applicant seeks a density bonus and agrees to construct ten percent of the total dwelling units as ownership units affordable to moderate-income households.

C. *Basic Density Bonus in Accordance with State Law (Senior Housing Type 1).* A senior housing Type 1 development is eligible for a 20 percent density bonus if it includes at least 35 dwelling units, and the applicant seeks a density bonus. Senior housing Type 1 developments are not required under State law to be affordable to very-low, lower, or moderate-income households to be eligible for this bonus.

D. *Additional Density Bonus in Accordance with State Law.* The density bonus to which the applicant is entitled shall increase if the percentage of affordable housing units exceeds the base percentage established in subsections A or B above, as follows:

1. *Very-Low Income Units.* For each one percent increase above five percent in the percentage of dwelling units affordable to very-low income households, the density bonus shall be increased by two and one-half percent up to a maximum of 35 percent.

2. *Lower-Income Units.* For each one percent increase above ten percent in the percentage of dwelling units affordable to lower-income households, the density bonus shall be increased by one and 1½ percent up to a maximum of 35 percent.

3. *Moderate-Income Ownership Units.* For each one percent increase above ten percent of the percentage of ownership units affordable to moderate-income households, the density bonus shall be increased by one percent up to a maximum of 35 percent.

E. The requirements of this section and Section 17.04.120 (Incentives or Concessions in Accordance with State Law) are minimum requirements and shall not preclude a residential development from providing additional affordable dwelling units or affordable dwelling units with lower rents or sales prices than required by these sections.

(Ord. 1071, § 9, 2011)

17.04.100 Calculation of density bonus.

A. When calculating the number of permitted density bonus units, any calculations resulting in fractional dwelling units shall be rounded to the next larger whole number.

B. The density bonus units shall not be included when determining the number of target units required to qualify for a density bonus. When calculating the required number of target units, any calculations resulting in fractional dwelling units shall be rounded to the next larger whole number.

C. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing). Regardless of the number of target units, no residential development may be entitled to a total density bonus of more than 35 percent except senior housing Type 2 pursuant to Section 17.04.200 (City Density Bonus for Affordable Senior Housing Type 2).

D. Each residential development is entitled to only one density bonus, which may be selected by the applicant based on the percentage of either very-low income target units, lower-income target units, or moderate-income ownership target units, or the project's status as either a senior housing Type 1 or 2 development. Density bonuses from more than one category may not be combined, except that bonuses for land dedication pursuant to Section 17.04.140 (State Density Bonus for Land Donation) may be combined with bonuses granted pursuant to this subsection, up to a maximum of 35 percent, and an additional square footage bonus for day care centers may be granted as described in Section 17.04.160 (State Density Bonus or Incentive or Concession for Day Care Centers).

(Ord. 1071, § 9, 2011)

17.04.120 Incentives or concessions in accordance with State law.

A residential development is eligible for incentives and concessions as defined in Section 17.04.280 (Development Incentives or Concessions) if it includes at least five dwelling units, and the applicant seeks a density bonus and agrees to construct affordable dwelling units as follows:

A. *Very-Low Income Units.* A residential development is entitled to one incentive or concession for a project that includes at least five percent of the dwelling units for very-low income households; two incentives or concessions for a project that includes at least ten percent of the dwelling units for very-low income households; and three incentives or concessions for a project that includes at least 15 percent of the dwelling units for very-low income households.

B. *Lower-Income Units.* A residential development is entitled to one incentive or concession if it includes at least ten percent of the dwelling units for lower-income households; two incentives or concessions if it includes at least 20 percent of the dwelling units for lower-income households; and three incentives or concessions if it includes at least 30 percent of the dwelling units for lower-income households.

C. *Moderate-Income Ownership Units.* A residential development with ownership units affordable to moderate-income households is entitled to one incentive or concession for a project that includes at least ten percent of the ownership units for moderate-income households; two incentives or concessions for a project that includes at least 20 percent of the ownership units for moderate-income households; and three incentives or concessions for a project that includes at least 30 percent of the ownership units for moderate-income households.

(Ord. 1071, § 9, 2011)

17.04.140 State density bonus for land donation.

A. When an applicant for a residential development seeks a density bonus for the donation and transfer of land for the development of units affordable to very-low income households, as provided for in this Section 17.04.140, the residential development shall be eligible for a 15 percent density bonus above the otherwise maximum allowable residential density in accordance with State law. For each one percent increase above the minimum ten percent land donation described in subsection (B)(2) of this section, the maximum density bonus shall be increased by one percent up to a maximum of 35 percent. This increase shall be in addition to any increase in density allowed by Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing), up to a maximum combined density bonus of 35 percent if an applicant seeks both the density bonus authorized by this Section 17.04.140 and the density bonus authorized by Section 17.04.080. When calculating the number of permitted density bonus units, any calculations resulting in fractional dwelling units shall be rounded to the next larger whole number. This density bonus applies only when land is donated for the construction of very-low income housing.

B. The City may approve the density bonus described in this section if it makes all of the following findings when approving the residential development:

1. The applicant will donate and transfer the land no later than the date of approval of the Final Map, Parcel Map, or applicable development review application for the residential development.

2. The developable acreage and regulations of the applicable zoning district of the land to be transferred will permit construction of dwelling units affordable to very-low income households in an amount not less than ten percent of the total number of residential dwelling units in the proposed development, or will permit construction of a greater percentage of dwelling units if proposed by the developer to qualify for a density bonus of more than 15 percent.

3. The transferred land is at least one acre in size or is large enough to permit development of at least 40 dwelling units, has the appropriate General Plan land use designation, has the appropriate zoning and development standards to make feasible the development of very-low income housing, and at the time of project approval is, or at the time of construction will be, served by adequate public facilities and infrastructure.

4. No later than the date of approval of the Final Map, Parcel Map, or other applicable development review application for the residential development, the transferred land will have all of the applicable development permits and approvals, other than any required building permit approval, necessary for the development of the very-low income dwelling units on the transferred land unless the City Council finds that the applicant has provided specific assurances guaranteeing the timely completion of the very-low income units, including satisfactory assurances that construction and permanent financing will be secured for the construction of the dwelling units within a reasonable time.

5. The transferred land and the very-low income units constructed on the land will be subject to a recorded Density Bonus Housing Agreement ensuring continued affordability of the dwelling units consistent with Section 17.04.240 (Affordability and Occupancy Standards), which restriction shall be filed for recordation by the City Planner with the San Benito County Recorder's Office on the property at the time of dedication.

6. The land will be transferred to the City, Hollister Redevelopment Agency, or to a housing developer approved by the City. The City reserves the right to require the applicant to identify a developer for the very-low income units and to require that the land be transferred to that developer.

7. The transferred land is within the site boundaries of the proposed residential development. The transferred land may be located within one-quarter mile of the boundary of the proposed residential development provided that the City Council finds, based on substantial evidence, that off-site donation

will provide as much or more affordable housing at the same or even lower income levels, and of the same or superior quality of design and construction, and will otherwise provide greater public benefit, than donating land on site.

(Ord. 1071, § 9, 2011)

17.04.160 State density bonus or incentive or concession for day care centers.

A residential project that contains a child care facility as defined by Government Code Section 65915(h) may be eligible for an additional density bonus or incentive pursuant to the requirement set forth in that section.

(Ord. 1071 § 9, 2011)

17.04.180 State density bonus for condominium conversions.

A. Condominium conversions may be eligible for a density bonus or incentive pursuant to the requirements set forth in Government Code Section 65915.5.

B. Also see Chapter 16.17 "Conversion of Multifamily Rental Units" of Title 16, Subdivisions, of the Hollister Municipal Code.

(Ord. 107, § 9, 2011)

17.04.200 City density bonus for affordable senior housing Type 2.

A. A residential development may be considered for a density bonus under this subsection if:

1. The applicant seeks a density bonus and the residential development consists entirely of senior housing Type 2;

2. At least 35 percent of the dwelling units are affordable housing units. For the purposes of this subsection, "affordable housing units" include dwelling units available at an affordable rent or affordable ownership cost to lower-income and very-low income households. A minimum of 60 percent of such affordable housing units shall be available at an affordable rent or affordable ownership cost to very-low income senior households, and 40 percent of such affordable housing units shall be available at an affordable rent or affordable ownership cost to lower-income senior households. However, a greater percentage of very-low income senior housing units may be provided in lieu of some or all of the lower-income senior housing units on a dwelling unit for dwelling unit basis; and

3. The density bonus shall be equal to 20 percent, in addition to the 20 percent density bonus permitted by Section 17.04.080(C), for a total maximum density bonus of 40 percent.

B. A Conditional Use Permit shall be required for a density bonus granted pursuant to this subsection. The approval body shall find that the residential development conforms with the property development regulations of the applicable zoning district or has received a Planned Unit Development permit; is compatible with neighboring development; has adequate open space, on-site amenities, and services for the intended residents; is within reasonable walking distance of neighborhood services; and has adequate available infrastructure to accommodate the proposed density.

C. Any density bonus granted under this section that is greater than the bonus that the project is eligible for under Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing) shall be considered an incentive or concession as described in Section 17.04.280 (Development Incentives or

Concessions). Any affordable housing units that qualify a project for a density bonus under Section 17.04.080 (State Density Bonuses for Construction of Affordable and Senior Housing) may not also be used to qualify a project for a density bonus under this section.

D. At its discretion, the City Council may grant up to two incentives or concessions for senior housing Type 2 that is eligible for a density bonus under this subsection.

(Ord. 1071, § 9, 2011)

17.04.220 Summary tables.

The following tables (Table 17.04-7), (Table 17.04-8), (Table 17.04-9), and (Table 17.04-10) summarize the available density bonuses, incentives, and concessions pursuant to State and City Density Bonus Law.

Table 17.04-7 Density Bonus Summary

Target Units or Category	Minimum % Target Units[a]	Bonus Granted	Additional Bonus for Each 1% Increase in Target Units	% of Target Units Required for Maximum Bonus
Pursuant to State Density Bonus Law: A State density bonus may be selected from only one category, except that bonuses for land donation may be combined with others, up to a maximum of 35%, and an additional square foot bonus may be granted for a day care center.				
Very-low income	5%	20%	2.5%	11%
Lower-income	10%	20%	1.5%	20%
Moderate-income (ownership units only)	10%	5%	1%	40%
Senior housing Type 1 (35 dwelling units or more or senior mobile home park; no affordable units required)	100% senior	20%	—	—
Land donation for very-low income housing	10% of market-rate units	15%	1%	30%
Condominium conversion—moderate-income	33%	25%[b]	—	—
Condominium conversion—lower-income	15%	25%[b]	—	—
Day care center	—	Sq. ft. in day care center[b]	—	—
Pursuant to City Density Bonus				
Senior housing Type 2	100% senior; 35% affordable	20% additional[c]	—	100% senior; 35% affordable[c]

Notes:

(a) Only the project's base density is considered when determining the percentage of target units. See Section 17.04.100 (Calculation of density bonus).

(b) Or an incentive of equal value, at the City's option.

(c) Senior housing Type 2 projects with at least 35% low and very-low income units are eligible for an additional 20% bonus, for a total of 40%, upon granting of a Conditional Use Permit. See Section 17.04.200.

Table 17.04-8 Example of Use of Density Bonuses for a 100-Dwelling Unit Project

Number (%) of Affordable Units in the Category	Density Bonus Granted (%)	Additional Density Bonus Units Granted	Total Dwelling Units in the Development
Very-Low Income Units (for Sale or Rent)			
0—4 (less than 5%)	0% (requires minimum 5% very-low income)	0	100
5 (5%)	20%	20	120
8 (8%)	27.5% (20% + (3 x 2.5%))	28 (round up)	128
11 (11%)	35% (20% + (6 x 2.5%))	35	135
More than 11%	35% (maximum possible)	35	135
Lower Income Units (for Sale or Rent)			
0—9 (less than 10%)	0% (requires minimum 10% lower income)	0	100
10 (10%)	20%	20	120
15 (15%)	27.5% (20% + (5 x 1.5%))	28 (round up)	128
20 (20%)	35% (20% + (10 x 1.5%))	35	135
More than 20%	35% (maximum possible)	35	135
Moderate Income Units (for Sale)			
0—9 (less than 10%)	0% (requires minimum 10% lower income)	0	100
(10) 10%	5%	5	105
20 (20%)	15% (5% + (10 x 1%))	15	115
40 (40%)	35% (5% + (30 x 1%))	35	135
More than 40%	35% (maximum possible)	35	135

Table 17.04-9 State Density Bonus Incentives and Concessions Summary

Target Units or Category	% of Target Units		
Pursuant to State Density Bonus			
Very-low income	5%	10%	15%
Lower-income	10%	20%	30%
Moderate-income (ownership units only)	10%	20%	30%
Condominium conversion—33% moderate-income	(e)		
Condominium conversion—25% lower-income	(e)		
Day care center	(e)		

Maximum Incentive(s)/Concession(s)[a][b][c][d]	1	2	3

Notes:

(a) A concession or incentive may be requested only if an application is also made for a density bonus.

(b) Concessions or incentives may be selected from only one category (very low, lower, or moderate).

(c) No concessions or incentives are available for land donation.

(d) No concessions or incentives are available for Type 1 senior housing without affordable units except the parking incentive listed in Section 17.04.280(C)(7).

(e) Condominium conversions and day care centers may have one concession or a density bonus at the City's option, but not both.

Table 17.04-10 City Density Bonus Incentives and Concessions Summary

Target Units or Category	Maximum Incentives/Concessions
Senior housing Type 2 (at least 35% affordable)	2[a]

Note:

(a) At the discretion of City Council.

(Ord. 1071, § 9, 2011)

17.04.240 Affordability and occupancy standards.

A. The City Council, by resolution, shall approve standard documents to ensure the continued affordability of target units consistent with Government Code Section 65915 and this section. The documents may include, but are not limited to, Density Bonus Housing Agreements, regulatory agreements, promissory notes, deeds of trust, resale restrictions, options to purchase, or other documents, which shall be recorded against all target units and prepared at the applicant's expense.

B. Target units offered for rent to lower-income and very-low income households shall be made available for rent at an affordable rent and shall remain restricted and affordable to the designated income group for a minimum period of 30 years, except that senior housing Type 2 target units offered for rent shall remain restricted and affordable to the designated income group for a minimum period of 55 years. A longer term of affordability may be required if the residential development receives a subsidy of any type including, but not limited to, a loan, grant, mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability.

C. Target units offered for sale to very-low, lower, or moderate-income households shall be sold at an affordable ownership cost. Senior housing Type 2 target units offered for sale shall remain restricted and affordable to the designated income group for a minimum period of 45 years. Target units offered for sale to lower-income and very-low income households shall remain restricted affordable to the designated income group for a term of at least 30 years. Target units offered for sale to moderate-income households shall remain restricted and affordable to moderate-income households for a term of at least 45 years consistent with the provisions of Health and Safety Code Section 33413(c). A longer term of affordability may be required if the residential development receives a subsidy of any type including, but not limited to, a loan, grant, mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability.

D. Any household that occupies a target unit must occupy that dwelling unit as its principal residence.

E. No household may begin occupancy of a target unit until the household has been determined by the City or its designee to be eligible to occupy that dwelling unit. The City Council, by resolution, shall establish

guidelines for determining household income, maximum occupancy standards, affordable ownership cost, affordable rent, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.

F. The City Council by resolution may establish fees for projects requesting density bonuses and incentives or concessions and for the on-going administration and monitoring of the target units and day care centers, which fees may be updated periodically, as required.

G. All promissory note repayments, shared appreciation payments, or other payments collected under this Article shall be deposited in a designated account to be used for the provision and maintenance of affordable housing.

H. Any person who is a member of the City Council or the Planning Commission, and their immediate family members, or any person having any equity interest in the residential development, including, but not limited to, a developer, partner, investor, or applicant and their immediate family members, is ineligible to rent, lease, occupy, or purchase a target unit. The City Council, by resolution, may establish guidelines for determination of "immediate family members."

(Ord. 1071, § 9, 2011)

17.04.260 Development standards.

A. Target units shall be constructed concurrently with non-restricted dwelling units or pursuant to a schedule included in the Density Bonus Housing Agreement approved pursuant to Section 17.04.340 (Density Bonus Housing Agreement).

B. Single-family detached target units shall be dispersed throughout the residential development. Townhouse, row house, and multifamily target units shall be located so as not to create a geographic concentration of target units within the residential development.

C. Target units shall have the same proportion of dwelling unit types as the market-rate dwelling units in the residential development.

D. The quality of exterior design and overall quality of construction of the target units shall meet all site, design, and construction standards included in Chapter 17.04 (Residential Zoning Districts), Sections 17.08.030 (Mixed Use Development Standards), 17.08.040 (Mixed Use Supplemental Standards), 17.08.060 (West Gateway Supplemental Standards), and 17.14.020 (Residential Performance Overlay Zoning District) of the Hollister Municipal Code including, but not limited to, compliance with all design guidelines included in applicable specific plans or otherwise adopted by the City Council.

E. Target units made available for purchase shall include space and connections for a clothes washer and dryer within the dwelling unit. Target units made available for rent shall include either connections for a clothes washer and dryer within the target unit or sufficient on-site self-serve laundry facilities to meet the needs of all tenants without laundry connections in their dwelling units.

(Ord. 1071, § 9, 2011)

17.04.280 Development incentives or concessions.

A. One to three incentives or concessions may be requested for eligible residential developments pursuant to Section 17.04.120 (Incentives or Concessions in Accordance with State Law).

B. For purposes of this Article, a concession or incentive includes any of the following:

1. A reduction of development standards or architectural design requirements which exceed the minimum applicable building standards approved by the State Building Standards Commission

pursuant to Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, which result in identifiable, financially sufficient, and actual cost reductions, based upon appropriate financial analysis and documentation if required by the City;

2. Allowing mixed use development in conjunction with the proposed residential development, if nonresidential land uses will reduce the cost of the residential project and the nonresidential land uses are compatible with the residential project and existing or planned surrounding development; and

3. Other regulatory incentives which result in identifiable, financially sufficient, and actual cost reductions, based upon appropriate financial analysis and documentation if required by the City.

C. *Concessions Not Requiring Financial Pro Forma from Applicant.* The following concessions and incentives are determined by the City to result in identifiable, financially sufficient, and actual cost reductions to residential development, and no financial pro forma needs to be submitted by the applicant:

1. Up to 15 percent deviation from the minimum yard requirement, with each deviation counting as one concession;

2. Up to 15 percent reduction in the usable open space requirement or maximum lot coverage requirement;

3. Up to 15 percent reduction in lot dimensions;

4. Up to 15 percent increase in maximum building height;

5. Up to 15 percent reduction in minimum distance between buildings;

6. Up to 15 percent reduction in landscaping area requirements;

7. An off-street vehicular parking standard, inclusive of handicapped and guest parking, that does not exceed the following:

   a. Zero to one bedroom: one on-site parking space,

   b. Two to three bedrooms: two on-site parking spaces,17.04.280

   c. Four and more bedrooms: two and one-half parking spaces,

   d. If the total number of parking spaces required for the residential development is other than a whole number, the number shall be rounded up to the next whole number,

   e. The residential development may provide the required parking through on-site tandem parking or uncovered parking, but not through on-street parking;

8. Waiver of any fees imposed pursuant to Section 17.04.240 (Affordability and Occupancy Standards) or Section 17.04.300 (Application Requirements);

9. Approval of mixed use buildings or developments in conjunction with the residential development, if nonresidential land uses will reduce the cost of the residential development, and if the City finds that the proposed nonresidential uses are compatible with the residential development and with existing or planned development in the area where the proposed residential development will be located;

10. Deferral until occupancy of development impact fees (including, but not limited to, park fees, fire fees, sanitary sewer trunk line fees, storm drain trunk line fees, street tree fees, library fees, or traffic impact fees); and

11. Density bonus for senior housing Type 2 pursuant to Section 17.04.200 (City Density Bonus for Affordable Senior Housing Type 2) that is in excess of the density bonus that the project is entitled to under Section 17.04.080 (State Density Bonuses for Affordable and Senior Housing).

D. *Concessions Requiring Financial Pro Forma from Applicant.* When requested by the applicant, the following concessions and incentives shall require the applicant to demonstrate to the City Council that the requested concessions or incentives result in identifiable, financially sufficient, and actual cost reductions to the project:

1. A reduction of development regulations standards or a modification of Zoning Code requirements that exceed or those listed in subsection C;
2. Reduced parking space dimensions, driveway width, parking aisle width, garage and carport dimension, location of parking spaces within required yards, or reduced bicycle parking requirements;
3. Reductions in architectural design standards; and
4. All other regulatory incentives or concessions.

E. An applicant may seek a waiver of any development standards that will physically preclude the construction of a residential development with the requested density bonus, incentives, and concessions permitted by this Article. The applicant shall bear the burden of demonstrating that the development standards that are requested to be waived will have the effect of physically precluding the construction of the residential development with the density bonus and incentives.

F. Nothing in this Article requires the City to grant direct financial incentives for the residential development, including but not limited to the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements. The City, at its sole discretion, may choose to provide such direct financial incentives.

(Ord. 1071, § 9, 2011)

17.04.300 Application requirements.

Applications for a density bonus shall include:

A. A Density Bonus Housing Plan, showing any density bonus, incentive, concession, waiver, modification, or revised parking standard requested pursuant to this Article, shall be submitted as part of the first approval of any residential development. The Density Bonus Housing Plan shall specify, at the same level of detail as the application for the residential development: the number, dwelling unit type, level of affordability, tenure, number of bedrooms and baths, approximate location, size, and design, construction and completion schedule of all target units, number and location of all density bonus units, phasing of target units in relation to nonrestricted units, and marketing plan. The Density Bonus Housing Plan shall also specify the methods to be used to verify tenant and buyer incomes and to maintain the affordability of the target units. The Density Bonus Housing Plan shall specify a financing mechanism for the on-going administration and monitoring of the target units.

B. A description of any requested incentives, concessions, waivers, or modifications of development standards, or modified parking standards.

C. For all incentives and concessions except those listed in Section 17.04.280(C), the applicant shall provide a pro forma to the City demonstrating that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions. The cost of reviewing any required pro forma data submitted in support of a request for a concession or incentive including, but not limited to, the cost to the City of hiring a consultant to review the pro form, shall be borne by the applicant. The pro-forma shall be reviewed by a third party as selected by the City and paid for by the applicant unless the City Planner waives the requirement for such a review.

D. For waivers or modifications of development standards, the application shall demonstrate that the development standards will have the effect of physically precluding the construction of a housing development at the densities or with the incentives or concessions permitted by this Article.

E. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in Section 17.04.140 (State Density Bonus with Land Donation) can be made.

F. If a density bonus or concession is requested for a day care center, the application shall show the location and square footage of the day care center and provide evidence that the findings included in Section 17.04.160 (State Density Bonus or Incentive or Concession for Day Care Centers) can be made.

G. If a mixed-use building or development is proposed, the application shall provide evidence that the finding included in Section 17.04.280(B)(2) can be made.

(Ord. 1071, § 9, 2011)

17.04.320 Review of application.

A. An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this Article shall be considered by and acted upon by the approval body with authority to approve the residential development. The Density Bonus Plan may be approved, approved with conditions, or denied pursuant to the findings required by this Article. Any decision regarding a density bonus, incentive, concession, waiver, modification, or revised parking standard may be appealed to the Planning Commission and from the Planning Commission to the City Council in accordance with the requirements of Section 17.24.140 (Appeals). In accordance with State law, neither the granting of an incentive, concession, waiver, or modification nor the granting of a density bonus shall be interpreted, in and of itself, to require a General Plan Amendment, Zoning Code Amendment or Rezone, Variance, or other Discretionary Review Application approval.

B. Before approving an application for a density bonus, incentive, concession, waiver, or modification, the approval body shall make the following findings:

1. The application is eligible for a density bonus and any concessions, incentives, waivers, modifications, or reduced parking standards requested; conforms to all standards for affordability included in this Article; and includes a financing mechanism for all implementation and monitoring costs.

2. Any requested incentive or concession will result in identifiable, financially sufficient, and actual cost reductions based upon appropriate financial analysis and documentation as described in Section 17.04.300 (Application Requirements).

3. If the density bonus is based all or in part on donation of land, the approval body has made the findings included in Section 17.04.140 (State Density Bonus with Land Donation).

4. If the density bonus, incentive, or concession is based all or in part on the inclusion of a day care center, the approval body has made the finding included in Section 17.04.160 (State Density Bonus or Incentive or Concession for Day Care Centers).

5. If the incentive or concession includes mixed use buildings or developments, the approval body has made the finding included in Section 17.04.280(B)(2) (Development Incentives or Concessions).

6. If a waiver or modification of development standards is requested, the developer has shown that the development standards to be waived will have the effect of physically precluding the construction of the residential development at the densities or with the incentives or concession permitted by this Article.

C. If the required findings can be made, and a request for an incentive or concession is otherwise consistent with this Article, the approval body may deny an incentive or concession only if it makes a written finding, based upon substantial evidence, of either of the following:

1. The incentive or concession is not required to provide for affordable rents or affordable ownership costs; or

2. The incentive or concession would have a specific adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower-, very-low and moderate-income households. For the purpose of this subsection, "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 that the application was deemed complete; or

3. The incentive or concession would be contrary to State or Federal law.

D. If the required findings can be made, and a request for a waiver or modification is otherwise consistent with this Article, the approval body may deny the requested waiver or modification only if it makes a written finding, based upon substantial evidence, of either of the following:

1. The waiver or modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower-, very-low, and moderate-income households. For the purpose of this subsection, "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 that the application was deemed complete; or

2. The waiver or modification would have an adverse impact on any real property that is listed in the California Register of Historic Resources; or

3. The waiver or modification would be contrary to State or Federal law.

E. If a density bonus or concession is based on the provision of day care centers, and if the required findings can be made, the approval body may deny the bonus or concession only if it finds, based on substantial evidence, that the City already has adequate day care centers.

F. A request for a minor modification of an approved Density Bonus Housing Plan may be granted by the City Manager or designee if the modification is substantially in compliance with the original Density Bonus Housing Plan and conditions of approval. Other modifications to the Density Bonus Housing Plan shall be processed in the same manner as the original plan.

(Ord. 1071, § 9, 2011)

17.04.340 Density Bonus Housing Agreement.

A. Following the first approval of a residential development, the City shall prepare a Density Bonus Housing Agreement providing for implementation of the Density Bonus Housing Plan and conditions of approval and consistent with the provisions of this Article and any density bonus program guidelines adopted by City Council resolution.

B. Prior to the approval of any Final or Parcel Map or issuance of any building permit for a residential development subject to this Article, the Density Bonus Housing Agreement shall be executed by the City and

the applicant, and the Density Bonus Housing Agreement shall be recorded against the entire residential development property to ensure that the Agreement will be enforceable upon any successor in interest. The Density Bonus Housing Agreement shall run with the land, and bind future owners and successors in interest as required to ensure compliance with the provisions of this Article.

(Ord. 1071, § 9, 2011)

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] *(Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66301] *(Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 4.3. Density Bonuses and Other Incentives [65915 - 65918] *(Chapter 4.3 added by Stats. 1979, Ch. 1207.)*

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Except as otherwise provided in subdivision (s), failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), if an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for rental or sale to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for rental or sale to very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units of a housing development are sold to persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (e) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of all units in the development, including total units and density bonus units, but exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the units in the development, including total units and density bonus units, may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) (A) An applicant shall agree to ensure, and the city, county, or city and county shall ensure, that a for-sale unit that qualified the applicant for the award of the density bonus meets either of the following conditions:

(i) The unit is initially occupied by a person or family of very low, low, or moderate income, as required, and it is offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code and is subject to an equity sharing agreement.

(ii) The unit is purchased by a qualified nonprofit housing corporation pursuant to a recorded contract that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code and that includes all of the following:

(I) A repurchase option that requires a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser.

(II) An equity sharing agreement.

(III) Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner-occupied housing units and will be sold or resold only to persons or families of very low, low, or moderate income, as defined in Section 50052.5 of the Health and Safety Code.

(B) For purposes of this paragraph, a "qualified nonprofit housing corporation" is a nonprofit housing corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code.

(C) The local government shall enforce an equity sharing agreement required pursuant to clause (i) or (ii) of subparagraph (A), unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(i) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation.

(ii) Except as provided in clause (v), the local government shall recapture any initial subsidy, as defined in clause (iii), and its proportionate share of appreciation, as defined in clause (iv), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(iii) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household,

plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(iv) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(v) If the unit is purchased or developed by a qualified nonprofit housing corporation pursuant to clause (ii) of subparagraph (A) the local government may enter into a contract with the qualified nonprofit housing corporation under which the qualified nonprofit housing corporation would recapture any initial subsidy and its proportionate share of appreciation if the qualified nonprofit housing corporation is required to use 100 percent of the proceeds to promote homeownership for lower income households as defined by Health and Safety Code Section 50079.5 within the jurisdiction of the local government.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole

number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a development in which the units are for sale.

(B) Two incentives or concessions for projects that include at least 17 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a development in which the units are for sale.

(C) Three incentives or concessions for projects that include at least 24 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a development in which the units are for sale.

(D) Four incentives or concessions for a project meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(E) One incentive or concession for projects that include at least 20 percent of the total units for lower income students in a student housing development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subdivision shall not be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subdivision shall not be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall only be eligible for a waiver or reduction of development standards as provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f), unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32

19	33.5
20	35
21	38.75
22	42.5
23	46.25
24	50

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	38.75
13	42.5
14	46.25
15	50

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35
41	38.75
42	42.5
43	46.25
44	50

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by

subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) "Childcare facility," as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) 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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) 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 if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Located within one-half mile of a major transit stop" means that any point on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of any point on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.

(3) "Lower income student" means a student who has a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student to occupy a unit for lower income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver from the college or university, the California Student Aid Commission, or the federal government.

(4) "Major transit stop" has the same meaning as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(5) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed

under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(6) "Total units" or "total dwelling units" means a calculation of the number of units that:

(A) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(B) Includes a unit designated to satisfy an inclusionary zoning requirement of a city, county, or city and county.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of parking for persons with a disability and guests, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: one and one-half onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) (A) Notwithstanding paragraph (1), if a development includes at least 20 percent low-income units for housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b) or at least 11 percent very low income units for housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per unit. Notwithstanding paragraph (1), if a development includes at least 40 percent moderate-income units for housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and the residents of the development have unobstructed access to the major transit stop from the development then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of parking for persons with a disability and guests, that exceeds 0.5 spaces per bedroom.

(B) For purposes of this subdivision, "unobstructed access to the major transit stop" means a resident is able to access the major transit stop without encountering natural or constructed impediments. For purposes of this subparagraph, "natural or constructed impediments" includes, but is not limited to, freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose vehicular parking standards if the development meets either of the following criteria:

(A) The development is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development.

(B) The development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code and the development has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide

onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

(s) Notwithstanding any other law, if a city, including a charter city, county, or city and county has adopted an ordinance or a housing program, or both an ordinance and a housing program, that incentivizes the development of affordable housing that allows for density bonuses that exceed the density bonuses required by the version of this section effective through December 31, 2020, that city, county, or city and county is not required to amend or otherwise update its ordinance or corresponding affordable housing incentive program to comply with the amendments made to this section by the act adding this subdivision, and is exempt from complying with the incentive and concession calculation amendments made to this section by the act adding this subdivision as set forth in subdivision (d), particularly subparagraphs (B) and (C) of paragraph (2) of that subdivision, and the amendments made to the density tables under subdivision (f).

(t) (1) The Legislature finds and declares that the intent behind the Density Bonus Law is to allow public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable units. It further reaffirms that the intent is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy.

(2) It is therefore the intent of the Legislature to make modifications to the Density Bonus Law by the act adding this subdivision to further incentivize the construction of very low, low-, and moderate-income housing units. It is further the intent of the Legislature in making these modifications to the Density Bonus Law to ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of adequate levels of affordable housing. The Legislature further intends that these modifications will ensure that the Density Bonus Law creates incentives for the construction of more housing across all areas of the state.

(Amended by Stats. 2021, Ch. 365, Sec. 1.5. (SB 728) Effective January 1, 2022.)