ABBOTT & KINDERMANN, INC.
ATTORNEYS AT LAW

2022 LAND USE AND HOUSING LEGISLATION

The California legislature enacted numerous bills to address California's housing crises, namely the lack of supply and cost of housing for the middle class. In sum, the legislation increases the possibilities of mixed-use housing in commercial zones, (primarily retail, office, and parking zones), student housing, density bonuses, accessory dwelling units in residential zones and exempting some projects from CEQA (or limiting the review). The desire is to streamline the review of projects and to require local agencies to reject projects based on objective standards instead of subjective standards. This comes at the expense of local agencies police powers over zoning in their jurisdictions; however, the desire is to have a statewide policy of addressing the housing stock and affordable.

Below is a list of the legislation signed by the Governor:

AB 2011 (Ch. 647) and **SB 6 (Ch. 659)** – The Governor signed AB 2011 and SB 6 which authorizes housing development projects to be a use by right on specified sites zoned for retail, office, or parking. Both bills take effect on July 1, 2023. In a nutshell the two bills – AB 2011, known as the "Affordable Housing and High Road Job Act of 2022," and SB 6, known as the Middle-Class Housing Act of 2022 attempt to create more housing through an expedited process for the reuse of infill property zoned for retail, office, and parking in commercial zones. Thus, the net effect of the legislation is to erode a city or county's zoning powers in commercial districts statewide.

Major differences between SB 6 and AB 2011 include:

- **By right vs. allowable use**. AB 2011 makes residential development by-right on commercial parcels; SB 6 makes it an "allowable use," which means that local governments could still exercise a measure of discretionary approval over SB 6 projects. However, SB 6 does allow by-right development on commercial parcels if the project meets the requirements of SB 35, aside from that law's requirement that the parcel for the project zoned for residential use.
- **Development potential**. AB 2011 allows developers to build to significantly greater heights and density, with smaller setbacks, than are often allowed under local zoning. SB 6, by contrast generally defers to existing local zoning that applies to nearby parcels allowing residential use. Accordingly, AB 2011 will allow many more units to be built on the same site when compared to SB 6.
- **Applicability to parcels.** Both AB 2011 and SB 6 apply to commercial zones. However, AB 2011 limits the mixed income portion of the bill to commercial corridors, requires the projects to be infill sites, and excludes specified sensitive sites. SB 6 instead applies more uniformly to commercial parcels because it does not include those limitations. However, SB 6 projects are subject to even greater limitations than AB 2011 if the developer uses SB 35 to gain by-right approval authority because it also excludes the coastal zone.

- **Affordability requirements.** AB 2011 requires 15 percent affordable units for lower-income households in rental projects. In the alternative, AB 2011 allows additional flexibility by allowing a project to qualify with 30 percent moderate-income units if the project is an ownership project or 8 percent of the units for very low-income households and 5 percent of the units for extremely low-income households. SB 6 does not require the developer to include affordable units.
- **Labor Standards.** AB 2011 includes less stringent labor standards than most other bills the Legislature has enacted on zoning in recent years. SB 6 requires the payment of prevailing or the use of a skilled and trained workforce.
- **California Environmental Quality Act (CEQA).** AB 2011 provides a streamlined process and requires the local government to approve a qualifying project on a ministerial basis, making the project exempt from CEQA. SB 6 does not have a streamlined ministerial process and would be subject to CEQA.

AB 2011 permits developers to skip lengthy and costly local review processes, including CEQA, but developers will have to pay their workers union-level wages and in bigger projects, offer apprenticeships and health benefits, and cap at least a portion of the rents. SB 6 bypasses the first step in permitting housing on commercial real estate but still requires a CEQA analysis. SB 6 applies to a much wider swath of land and doesn't cap rents, but developers must use at least some union labor on every project. If at least two union shops don't bid on the project, union level wages kick in.

AB 2097 (Ch. 459) – Prohibits a public agency from imposing any minimum automobile parking requirement on any residential, commercial, or other development project that is located within ½ mile of public transit.

SB 886 (Ch. 663) – Until January 1, 2030, exempts CEQA from university housing projects carried out by a public university on real property owned by the public university if the project meets certain requirements, including that each building within the project is certified as Leadership in Energy and Environmental Design (LEED) platinum or better by the US Green Building Council, that the project's construction. Impacts are fully mitigated, and that the project is not located, in whole or in part, on certain types of sites, including a site that is within a special flood hazard area subject to inundation by a 1% annual chance flood or within a regulatory floodway as determined by FEMA.

SB 118 (Ch. 10) – Deletes the requirement that environmental effects relating to changes in enrollment levels be considered in the EIR prepared for the long-range development plan. The bill provides enrollment or changes in enrollment, by themselves, do not constitute a project for purposes of CEQA. The bill authorizes the court if the court determines that increases in campus population exceed the projections adopted in the most recent long-range development plan and analyzed in the supporting EIR, and those increases result in significant environmental impacts, to order the campus or medical center to prepare a new, supplemental, or subsequent EIR.

AB 2334 (Ch. 653) – Density Bonus Law requires a city or county to provide a developer of a housing project with a density bonus and other incentives or concessions; if the developer agrees to construct specified percentages of units for lower income, very low income, or senior housing, among other things, and meets other requirements. This bill, with respect to the affordability requirements applicable to 100% lower income developments, will require the rent for the remaining units in the development be set at an amount consistent with the maximum rent levels for lower income households, as those rents and

incomes are determined by the California Tax Credit Allocation Committee ("CTCAC"). Regarding the enforcement of equity sharing agreement for sale units, AB 2334 permits the local government to defer to the recapture provision of the public funding source.

For projects where 100% of all units are for lower income households, a local agency is required under the Density Bonus Law to increase the height of up to 3 additional stories, or 33 feet, if the project is located within ½ mile of a major transit and is prohibited from imposing any maximum controls on density on the project if the project is located with ½ mile of a major transit stop. The bill allows the above-described height increase if the project is located with a very low vehicle travel area. The provisions are limited to the Counties of Alameda, Contra Costa, Los Angeles, Marin, Napa, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, and Ventura.

AB 2668 (Ch. 658) – Calculation of Density Bonuses

Until January 1, 2026, a development proponent is authorized to apply for a multifamily housing development that is subject to a streamlined, ministerial approval process and not subject to a conditional use permit, if the development satisfies specified objective planning standards. This bill clarifies that a development subject to these provisions is subject to a streamlined, ministerial approval process, and not subject to a conditional use permit or any other non-legislative discretionary approval. The bill provides that a local government is required to approve a development if it determines that the development is consistent with objective planning standards.

The bill clarifies that the minimum percentage of total units that a development must dedicate is to be calculated before calculating any density bonus.

AB 916 (Ch. 635) – This bill prohibits a city or county legislative body from adopting or enforcing an ordinance requiring a public hearing as a condition of reconfiguring existing space to increase the bedroom count with an existing dwelling unit. The bill applies these provisions only to a permit application for n more than 2 additional bedrooms with an existing dwelling unit. increasing bedroom count in an existing dwelling unit

AB 682 (Ch. 634) – Provides that a housing development eligible for a density bonus be provided under these provisions includes a **shared housing building** that will contain 10% of the total units for lower income households; contain or 5% of the total units for very low-income households; is a senior housing development; or in which 100% of all the units are for lower income households, as described above. The bill prohibits the city or county from requiring any minimum unit size requirements or minimum bedroom requirements in conflict with the bill's provisions with respect to a shared housing building eligible for al density bonus under these provisions.

SB 897 (Ch. 664) and **AB 2221 (Ch. 650)** – Makes numerous changes to the laws governing accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). For detached ADUs on a lot with an existing or proposed single family, 16 feet height limitations allowed. For a lot with an existing or proposed multifamily dwelling, and 18 feet height limitation is allowed. Also increases the height limit for 18 feet for ADUs within a half mile walking distance of a major transit stop or a high-quality transit corridor. If attached to the primary dwelling, a height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, is allowed.

Standards imposed on ADUs must be objective and must be approved or denied withing 60 days of receiving the application. And, if a permitting agency denies an application, they must return in writing a full set of comments on how the application can be remedied. Construction of an ADU on a property does not trigger a requirement for fire sprinklers in the proposed or existing primary dwelling.

An objective standard is defined as a "standard that involves no personal or subjective judgment by a public official and is uniformly verifiable, as specified. The legislation prohibits a local agency from denying an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to the public health and safety and are not affected by the construction of the accessory dwelling unit.

SB 1439 (Ch. 848) – Campaign Contributions

The Political Reform Act of 1974 prohibits an officer of an agency from accepting, soliciting, or directing a contribution of $250 from any party, participant, or a party or participants' agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for 3 months following the date of a final decision. The Act defined a "agency" for means any state or local government agency, except certain entities, including local government agencies whose members are directly elected by the voters. Previously prohibition would apply to nonelected positions of cities and counties, but not to elected positions (Council Members and Board of Supervisors).

SB 1439 changes the definition of "Agency" to delete the exemption for elected positions of local government. Therefore, a City Council Member or Board of Supervisors will be prohibited from receiving a campaign contribution more than $250 on any pending matter before the Council or Board for a license, permit or planning entitlement (zoning, condition use permit, Subdivision Map Act, Final Map, Parcel Map etc.) If the Council Member or Board of Supervisors does receive a campaign contribution more than $250, the official is required to recuse himself or herself from making or participating in making, or in any way attempting to influence the processing. The official must disclose in the record that the official received such a contribution. The prohibition not only applies to contribution accepted by local officials, but also to contribution solicited or directed by the local official, even if not received directly by that official.

SB 1439 also:

- Extends the time period from 3 months to 12 months after the date of the final decision.
- SB 1439 is effective on January 1, 2023. However, with the 12-month prohibition after the date of the final decision, it will impact contributions made in 2022.
- If a contribution is received during the 12 months after the date a final decision is rendered in a proceeding in violation of SB 1439, the officer may return the contribution within 14 days of accepting, soliciting, or directing the contribution. The officer need only return the portion of the contribution in excess of $250.
- In most circumstances, contributions made by two or more persons must be aggregated.

AB 2668 (Ch. 658) – Planning and Zoning

SB 35 (Ch. 366, Statutes of 2017) created a streamlined approval process for infill projects with two or more residential units in locality that have failed to produce sufficient housing to meet their regional housing needs allocation. To access the streamlined process, a developer must demonstrate that the

development meets a number of planning standards including that the development includes a percentage of affordable housing units, meets specified labor standards, is not on an environmentally sensitive site, and would not result in the demolition of housing that has been rented out in the last ten years. Cities and Counties that find a proposal conflicts with one of SB 35 planning standards must provide written documentation within a specific period of time. If the locality does not meet those deadlines, the development is deemed to satisfy the requirements for streamlined approval and must be approved by right.

This bill clarifies that:

- A local government cannot determine that a development, or its subsequent modification, is in conflict with the local government's objective planning standards based on the absence of application materials, if the application contained substantial evidence that would allow a reasonable person to conclude that a development is consistent with the objective planning standards.

AB 2234 (Ch. 651) – Planning and Zoning: Housing: Post-entitlement Phase Permits

The Permit Streamlining Act (PSA) established timelines for agencies to determine whether a permit for an entitlement is complete and timelines for approving or denying a development proposal that is deemed complete. Once a development proposal is approved by the local agency, the developer is still required to submit a range of nondiscretionary permits to the local agency for approval to actually complete the work to construct the building. These permits include building permits and other permits for: demolition, grading, excavation; electrical, plumbing, or mechanical work; encroachment in the public right-of-way; roofing; water and sewer connections or septic systems; fire sprinklers; and home occupations.

The timelines established in the PSA do not apply to these nondiscretionary permits. AB 2234 will modernize the building permit process by:

- Setting firm timetables for local governments to approve, deny, or request changes to building permit applications.
- Requiring local governments to post ideal application checklists and sample applications online, to ensure developers are submitting completed applications in a form that the local government can process.
- Requiring larger local governments to accept building permit applications online.

A local agency located in a county with a population of 1,100,00 or greater or a local agency with a population of 75,000 or greater in any count, must comply no later than January 1, 2024. All other local agencies must comply no later than January 1, 2028. The legislation does exclude counties with populations of fewer than 250,000 as of January 1, 2019, and all cities within those counties. Generally, the legislation requires review to be completed within 30 business days for housing development projects with 25 or fewer units and 60 business days for larger projects.

SB 1214 (Ch. 226) – Planning and Zoning: Local Planning

This bill requires a planning agency to ensure architectural drawings that contain protected information are made available to the public in a manner that does not facilitate their copying.

AB 2625 (Ch. 212) – Subdivision Map Act: Exemption: Electrical Energy Storage System

Exempts from the Subdivision Map Act the leasing of, or the granting of an easement to, a parcel of land in conjunction with the financing, erection and sale or lease of an electrical energy storage system if the project is subject to discretionary action by the advisory agency or legislative body. These include wind powered electrical generation; solar electrical generation and biogas projects that uses, as party of its operation, agricultural waste or byproducts from the land where the project is located and reduces overall emissions of greenhouse gases from agricultural operations on the land if the project is subject to review under other local agencies ordinances regulating design and improvement or if the project is subject to discretionary action by the advisory agency or legislative body.

AB 1743 (Ch. 641) – General Plan: Annual Report

Existing law requires a city or county to adopt a general plan including, among other things, a housing element. The law requires that the planning agency provide by April 1 of each year an annual report to, among other entities, the Department of Housing and Community Development. The current law requires that the annual report include, among other information, the number of housing development applications received, and the number of units approved and disapproved in the prior year. This bill will additionally require the planning agency to include in the annual report whether each housing development application is subject to a ministerial or discretionary approval process.