

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Chris Burton

SUBJECT: SEE BELOW

DATE: June 3, 2024

Approved



Date

6/3/24

INFORMATION

SUBJECT: ANALYSIS OF SENATE BILL 6 AND ASSEMBLY BILL 2011

The legislature has adopted an unprecedented number of new housing and housing-related bills in recent years in an attempt to address California's continuing housing crisis. Lawmakers in Sacramento have identified the lack of available land for housing as a major barrier to production and further identified the reluctance of local governments to designate land for housing as a contributing factor. In 2022, Governor Newsom signed two key bills aimed at increasing the supply of land available for housing development: Senate Bill 6 (The Middle Class Housing Act of 2022) and Assembly Bill 2011 (The Affordable Housing and High Road Jobs Act of 2022).

This memorandum summarizes each bill and provides an analysis of how they will apply in San José.

Executive Summary

Senate Bill 6 (SB 6) and Assembly Bill 2011 (AB 2011) amend Government Code sections, allowing residential or mixed-use development on commercially zoned land, overriding local standards that would preclude housing. AB 2011 requires affordable units in all projects, while SB 6 allows 100% market-rate housing. AB 2011 provides streamlined ministerial review in all cases, while SB 6 does so only if a project qualifies for and elects to use Senate Bill 35 (SB 35)¹. Both address industrial land preservation, tenant/small business displacement, and labor requirements.

Both bills require that the project be on a site in a zoning district where offices, retail, or parking are allowed as primary uses on the site. Both bills exempt sites that are either occupied by or designated in the General Plan for industrial uses or adjoin such sites. AB 2011 includes some exemptions for Urban Villages and Specific Plan areas, and some exclusions for sensitive land

¹ SB 35, enacted in 2017, provides a streamlined ministerial approval process for multi-family housing developments that are compliant with zoning, include affordable housing, and otherwise meet the criteria of the bill. [https://en.wikipedia.org/wiki/California_Senate_Bill_35_\(2017\)](https://en.wikipedia.org/wiki/California_Senate_Bill_35_(2017))

similar to SB 35. Both mandate denser multi-family housing, with AB 2011 specifying a minimum density of 30-80 dwelling units to the acre (du/ac) depending on project location, while SB 6 requires a minimum density of 30 dwelling du/ac.

The City's recent cost of development study found that high construction costs contribute to making higher-density housing infeasible in all of the city, even without taking prevailing wage and/or union labor requirements into account. As such, in this current market, staff expects to see minimal use of either bill for market rate or mixed-income housing. The City may see some use of AB 2011 for streamlined approval of 100% affordable developments on sites that would not otherwise allow housing, as these projects tend to be higher density and often include public funding sources that already carry similar project labor standards. Staff will monitor the use of the bills.

Analysis

SB 6 and AB 2011 add or amend various Government Code sections related to planning.² Broadly, both SB 6 and AB 2011 allow residential or mixed-use residential/commercial development on commercially zoned land. The bills override local zoning standards, land use policies, and general plan designations that would otherwise preclude the projects allowed by the bills.

AB 2011 requires, in all cases, that projects include some dedicated affordable units, whereas SB 6 allows for 100% market-rate housing developments.³ AB 2011 provides a streamlined ministerial review process for all projects authorized under that bill, whereas SB 6 only provides a streamlined path if a project also qualifies for and elects to use SB 35. The bills include provisions related to preserving industrial land, residential tenant and small business displacement, and labor requirements. The bills became effective on July 1, 2023, and sunset on January 1, 2033. At the time of publishing of this memorandum, no applications have been received under either bill.

Project Site Criteria

Zoning

Both bills require that the project is on a site in a zoning district where offices, retail, or parking are "principally permitted uses." "Principally permitted" means a use that may occupy more than one-third of the square footage of designated use on the site and does not require a conditional use permit. In San José, this means the CO Commercial Office, CP Commercial Pedestrian, CN Commercial Neighborhood, CG Commercial General, IP Industrial Park, TEC Transit Employment Center, CIC Combined Industrial/Commercial, DC Downtown Primary

² Amends Government Code § 65400, 65585. Adds Government Code § 65912.100 – 65912.114, § 65912.120 – § 65912.124, § 65912.130 - 65912.131, § 65919.140.

³ Subject to the City's Inclusionary Housing Ordinance.

Commercial, DC-NT1 Downtown Primary Commercial – Neighborhood Transition 1, MS-G Main Street Ground Floor Commercial, MS-C Main Street Commercial, UVC Urban Village Commercial, UV Urban Village, MUC Mixed Use Commercial, MUN Mixed Use Neighborhood, UR Urban Residential, TR Transit Residential zoning districts.⁴ Some Planned Development zoning districts will also qualify.

General Criteria

Projects are prohibited on sites of 20 acres or more, with the exception of 100% affordable projects under AB 2011.

For all projects under AB 2011, and streamlined projects under SB 6, at least 75% of the perimeter of the project site must be bounded by urban uses (e.g., must be surrounded by developed property.) Most properties within the City’s boundaries in the zoning districts that qualify for the bills will meet this criterion.

Mixed-income projects under AB 2011 are restricted from smaller neighborhood streets; for definition of mixed-income projects see the *Inclusionary Housing Requirements* section of this memorandum below. This does not apply to SB 6 projects or 100% affordable projects under AB 2011. Specifically, AB 2011 mixed-income project sites must have at least 50 feet of frontage on a public street that has a width of between 70 feet and 170 feet. This includes San José’s primary commercial streets such as Lincoln Avenue, Bascom Avenue, West San Carlos Street, Stevens Creek Boulevard, The Alameda, Alum Rock Avenue, Story Road, Monterey Road, Berryessa Road, Taylor Avenue, and Capitol Expressway. A notable exception is Calle Willow between Lick Avenue and South Almaden Avenue. This segment has a right-of-way of less than 70 feet and therefore would not be eligible for mixed-income development under AB 2011.

Industrial Land Exclusion

Both bills exempt sites that are either occupied by or designated in the General Plan for industrial uses or adjoin such sites.⁵ Industrial uses are defined as utilities, manufacturing, transportation storage and maintenance facilities, and warehousing uses. San José successfully advocated for this provision that would lessen the potential impact on San José’s limited but important supply of industrial land. Specifically:

- The project site or adjoining site cannot be designated Industrial Park, Light Industrial, Heavy Industrial, Transportation and Utilities, or Combined Industrial/Commercial in the General Plan as of January 1, 2022; or
- No more than one-third of the square footage of the project site or adjoining site is currently used for industrial use; or

⁴ The CIC, IP, and TEC zoning districts will effectively not qualify because properties with these zoning districts will also have industrial general plan designations. Industrial designations disqualify the properties from both bills.

⁵“Adjoining” includes properties across a street or highway.

- If the project site or adjoining site is vacant, the most recently permitted use of more than one-third of the square footage of the site cannot be an industrial use.

Area Plan, Specific Plan, and Urban Village Plan Exclusion

In AB 2011 only, if the site is within an Area Plan, Specific Plan, or Urban Village Plan that was adopted before January 1, 2022, then the site must be designated for mixed use in the plan to qualify. This means within the Diridon Station Area Plan and in Urban Villages with a currently adopted plan, sites with the Neighborhood/Community Commercial, Urban Village Commercial, or any other fully non-residential General Plan designation are not eligible for AB 2011 development. An exception is the North 1st Street Urban Village plan which was adopted after January 1, 2022. Staff successfully advocated that San José's Urban Village planning process be honored in AB 2011, as that process would have already converted employment land to housing.

Other Exclusions

The following additional criteria apply for all projects under AB 2011 and streamlined ministerial projects under SB 6:

- The project site cannot be a mobile home park or an recreational vehicle park;
- The project cannot be prime farmland, wetlands, habitat for protected species, or conservation lands; and,
- Projects require special clearance if they are in very high fire hazard severity zones, hazardous waste sites, within an earthquake fault zone, 100-year flood zone, or regulatory floodway.

There are a number of additional criteria that apply to mixed-income development under AB 2011, and in some cases to developments under SB 6, that use streamlined ministerial review. They are outlined below.

- The project cannot result in the demolition of dedicated affordable housing, rent-controlled housing, or housing with a tenant in the past 10 years. This applies to both AB 2011 mixed income and SB 6 streamlined developments.
- The project cannot result in the demolition of a historic structure that is listed on either the federal, state, or local level. This applies to both AB 2011 mixed-income and SB 6 streamlined developments. While historic resources are not specifically protected for SB 6, projects that do not use streamlining, environmental review applies to those projects. Demolition of most categories of historic resources is considered a significant impact under the California Environmental Quality Act (CEQA), requiring City Council to adopt a statement of overriding considerations. There is no protection from demolition for historic resources for 100% affordable projects under AB 2011, although projects that receive federal funding would be subject to federal legislation regarding the protection of historic resources (Section 106 of the National Historic Preservation Act).

- Mixed-income projects cannot use AB 2011 on sites with four or fewer dwelling units. This means a single-family residence, duplex, or 3–4-unit apartment building could not be demolished for an AB 2011 mixed-income housing project.
- Mixed-income projects cannot use AB 2011 on vacant properties that are zoned for single-family or mobile home parks.

For all AB 2011 projects:

- Any residential units in a project must be at least 500 feet from a freeway.
- If the site is undeveloped, it must not contain tribal cultural resources that could be affected by the development. This is determined through a mandatory tribal consultation.
- Undeveloped sites that are in very high fire hazard severity zones do not qualify. This is not expected to apply in San José as there is no property in a qualifying zoning district that is also in a very high fire hazard severity zone.

It is worth noting that none of the above-listed criteria relating to housing preservation or the environment apply to SB 6 projects unless the project qualifies for and elects to use SB 35 streamlined review. This is because these issues are expected to be addressed through the standard discretionary development review processes and CEQA review. **Table 1** summarizes the site criteria discussed above.

Table 1: Site Criteria Summary

	AB 2011 100% Affordable	AB 2011 Mixed Income	SB 6 100% Affordable or Mixed Income*	SB 6 Market-Rate
Zoning	CO, CP, CN, CG, DC, DC-NT1, MS-G, MS-C, UVC, UV, MUC, MUN, UR, TR, IP***, TEC***, CIC***			
Project site cannot be >20 acres		X	X	X
Min. 75% of site perimeter is bound by urban uses	X	X	X	
Project must be on commercial corridor		X		
Cannot be on or adjacent to industrial land	X	X	X	X
Exclusion for commercially designated land in adopted Urban Village Plans	X	X		
Cannot be on a mobile home or recreational vehicle park	X	X	X	
Site cannot be prime farmland, wetlands, habitat for protected species, or conservation lands	X	X	X	

Special clearance required for hazard zones	X	X	X	
Undeveloped site cannot be in a very high fire hazard severity zone	X	X		
Residential units must be 500 feet from a highway	X	X		
Tribal consultation required for undeveloped sites	X	X		
Tribal consultation always required			X	
Cannot demolish affordable, rent controlled, or housing with a tenant in the past 10 years	X	X	X	
Cannot demolish historic structure		X	X	
Project cannot be on a site with four or fewer units		X		
*Applicant must invoke SB 35.				
**Urban Village Plan must be adopted before January 1, 2022.				
***Property must have a General Plan Designation other than IP, TEC, or CIC				

Ability to Exclude Sites

Both bills include provisions that allow the City to exclude specific parcels if the City takes action to reallocate the “lost” residential development capacity elsewhere. Each bill provides a somewhat different set of requirements for this.

Under AB 2011, the City can exempt a property by reallocating the theoretical density of an AB 2011 project to a different property that would not otherwise be eligible for AB 2011. Another option is the City may proportionally increase the density of a property that would be eligible for AB 2011. This density “shift” must result in no net loss of residential development, no net loss of potential density for affordable housing, and must further fair housing.

Under SB 6 the City may exempt a property if:

- a) The City concurrently relocates the density to another site so there is no net loss of density; or
- b) If the City shows that the lost density from a theoretical SB 6 project can be accommodated on a site or sites that meet the criteria for being suitable for lower income households as defined by the Housing Element law, but the site may not be listed on the Housing Element’s site inventory; and,
- c) The City provides for a “by right” approval process for housing projects on the sites where density has been reallocated from an exempted site.

Staff will explore exempting select properties to remain as employment uses as part of an Urban Village planning process.

Staff developed in an interactive map showing potentially eligible sites: <https://bit.ly/3tgP0WP>. Please note that this map is intended only to be a tool to aid with analysis. It is not an official determination of site eligibility, as some of the qualifying criteria require site-specific research that cannot be performed on a Citywide level.

Most eligible sites will qualify for both bills. SB 6 has more eligible sites than AB 2011, but not by a significant amount. The bills primarily cover land within Neighborhood Business Districts, Urban Villages, and other Planned Growth Areas identified in the General Plan, as these areas are largely designed on existing commercial corridors or nodes. Further, there are residential zoning districts that qualify for the bills because they also allow stand-alone commercial uses (e.g., Transit Residential, Urban Residential, and Mixed Use Neighborhood). However, these zoning districts tend to apply to sites that are already developed with housing which is less likely to be redeveloped into another housing project, especially since AB 2011 prohibits demolition of a dwelling unit occupied by a tenant in the past 10 years.

The bills may have the impact of accelerating growth within the City's Urban Villages by effectively converting property to housing prior to the adoption of the Urban Village plan. However, SB 6's labor requirement and/or AB 2011's on-site affordable housing and labor requirement may still be barriers to housing development. Further analysis is provided later in this memorandum.

Development Types

Both bills allow for 100% residential developments or mixed-use developments.⁶ Under AB 2011 the City may continue to enforce existing provisions that require ground floor commercial space be provided in a development for mixed-income projects. For example, ground floor commercial space requirements in MS-G and MS-C zoning districts in Alum Rock still apply. No such provision exists in SB 6.

Both bills generally require denser, multifamily housing. AB 2011 requires a minimum density of between 30 and 80 (du/ac) depending on project location. AB 2011 projects also must contain five or more units. SB 6 only requires a minimum density of 30 du/ac.

Under AB 2011 mixed-income projects must meet a minimum of 80 du/ac if within a half mile of a "major transit stop".⁷ This covers large portions of the city, including areas such as

⁶ For mixed-use projects, at least 50 percent of the square footage of the development must be dedicated to residential use in the case of SB 6 and at least two thirds of the square footage must be dedicated to residential use in the case of AB 2011

⁷ A Major Transit Stop is defined under Public Resource Code §21155 as an existing rail or rapid bus station, a major transit stop identified in a regional transportation plan, or the intersection of two or more bus routes with a frequency of service of 15 minutes or less during morning and afternoon peak commute hours.

downtown and the downtown vicinity, properties in the vicinity of West San Carlos Street, Stevens Creek Boulevard, Alum Rock Avenue, Capitol Expressway, and others. The online map includes a layer depicting the areas where the 80 du/ac applies.

Should the existing zoning of property require a greater minimum density than specified in each bill, that density requirement prevails. Neither bill prescribes a maximum density, however, zoning and general density maximums apply as long as they allow the minimum density prescribed in the bill. In all cases, projects that include affordable housing units are eligible to use the Density Bonus law to increase density.

Developments at or around the minimum 30 du/ac density prescribed by both bills would typically consist of a two to four-story apartment or condominium building. Staff does not expect the development of single-family or townhome units under the bills as those are below 30 du/ac unless they are combined with a higher-density residential building in the same project to create a higher average density. Projects at the higher density range of 80 du/ac typically consist of four to five-story developments with a multi-level parking garage.

Inclusionary Housing Requirements

Projects authorized under AB 2011 must include at least some component of affordable housing in all cases. At a minimum, rental developments must include either 8% very low-income (VLI) and 5% extremely low-income (ELI) units, or 15% lower-income (LI) units. For-sale housing must include 30% moderate-income units or 15% LI units.⁸ The units must be restricted for 55 years for rental projects and 45 years for for-sale projects. The affordable units in mixed-income projects under AB 2011 must be equitably distributed, have the same bedroom/bathroom count ratios, and have the same quality appliances, fixtures, and finishes as market-rate units.

Projects authorized under SB 6 may or may not provide affordable housing. SB 6 allows 100% market-rate housing developments, although the City may still enforce local inclusionary housing requirements. This means developments that do not include on-site affordable housing would be required to pay an in-lieu fee or fulfill their obligation through other means such as a land donation. Developers typically select the in-lieu fee option.

Development Review Process and Environmental Review

Projects authorized under AB 2011 are reviewed through a streamlined ministerial review process in all cases. This means that they are also exempt from review under CEQA. Despite not being subject to CEQA, AB 2011 includes some environmental provisions, such as a requirement to assess for potential soil contamination and a restriction on new residential units being within 500 feet of a freeway. Projects are also excluded from certain environmentally sensitive land as discussed above.

⁸ ELI: 15-30% of area median income (AMI); VLI: 30-50% of AMI; LI: 50-80%; Moderate Income: 80-120% AMI.

SB 6 developments do not receive streamlined ministerial approval unless they qualify for and elect to use SB 35. This means SB 6 projects that do not include at least 50% LI units or otherwise do not qualify for SB 35 are required to obtain a development permit with a standard public review process and CEQA review.

The City must approve the projects meeting minimum affordability levels specified in the bills if they meet the objective standards in the bill and any local objective development standards that are not inconsistent.

Both bills provide mandatory project review timelines for the ministerial approval process. For projects of 150 units or less, the City must inform the applicant of any inconsistencies with the bill criteria and City standards within 60 days and must complete the project review within 90 days. For projects with more than 150 units, the City must notify of any inconsistencies within 90 days and complete the project review within 180 days. These timelines do not apply to SB 6 projects that do not qualify for and/or are not invoking SB 35 streamlining. These projects follow standard development review timelines which vary based on factors such as the CEQA review process required for the development. **Table 2** summarizes the development types and review process described above.

Table 2: Development Types and Review Process Summary

	AB 2011 100% Affordable	AB 2011 Mixed Income	SB 6 100% Affordable or Mixed Income*	SB 6 Market-Rate
Development Review Process	Streamlined Ministerial Review			Standard Development Review Process
CEQA Applies?	No	No	No	Yes
May Require Ground-Floor Commercial?	No	Yes	No	No
Minimum Density	30 du/ac or greater if zoning or General Plan requires a higher minimum density	30-80 du/ac or greater if zoning or General Plan requires a higher minimum density	30 du/ac or greater if zoning or General Plan requires a higher minimum density	
Affordability Requirements	100% of units (excluding manager's unit) LI or consistent with California Tax Credit Allocation	Rental: 8% LI and 5% VLI or 15% LI For Sale:	50% LI	Per Inclusionary Housing Ordinance (may pay in lieu fee or choose other off- site options)

	Committee limits	30% Moderate Income or 15% LI		
Project Review Timelines	<ul style="list-style-type: none"> ○ 90 days for projects with 150 units or less ○ 180 days for projects with more than 150 units 		Standard Development and CEQA Review Process	
*Applicant must invoke SB 35				

Development Standards

SB 6 Development Standards

As previously mentioned, to qualify for SB 6, a project must be a minimum of 30 du/ac, or greater if the existing zoning or general plan designation of the site requires a greater minimum density. Other than that, SB 6 only specifies that projects must comply with local zoning ordinances, design requirements, and all other local code requirements and procedures applicable to the processing and permitting of a housing development in a zone that allows for housing of at least 30 du/ac. If the existing zoning of a property allows housing of at least 30 du/ac, then the standard of the site’s zoning applies. If the zoning of the site does not allow housing at a minimum of at least 30 du/ac, then the City must apply the standards of the zoning district that allows this density that is closest to the project site.

In San José, most of the zoning districts that qualify for SB 6 already have some allowances for at least mixed-use residential development at or above 30 du/ac. This means that only SB 6 projects in the MUN Mixed Use Neighborhood, CO Commercial Office, or UVC Urban Village Commercial zoning districts would need to use the development standards of the nearest zoning district that allows residential use. All other SB 6 projects would be subject to the existing zoning development standards of the site. SB 6 projects that include some affordable housing may also use the Density Bonus law to waive or modify development standards.

SB 6 also specifies that projects must comply with all other objective local requirements, except those that prohibit residential use or allow residential use only at a lower density. Impact fees and inclusionary housing requirements still apply.

AB 2011 Development Standards

The 100% affordable developments under AB 2011 must be at least 30 du/ac and meet objective zoning, subdivision, and design review standards for whichever allows the greater density between the zoning of the project site or the zoning designation for the closest property that allows residential use at a minimum of 30 du/ac. This provision is the same as SB 6, discussed above. These affordable housing developments may also receive waivers from development standards under the Density Bonus law. Staff has found it common for affordable housing developments to apply for and receive Density Bonus waivers from development standards, such

as height, building step-backs, set-backs, or private open space. Staff expects to see a similar use of waivers for AB 2011 projects.

Mixed-income projects under AB 2011 are also required to meet the development standards of the site’s zoning or the closest zoning district that allows 30 du/ac, but in addition, are provided several specific development standards that override local zoning where inconsistent. These standards are detailed in **Table 3** below.

Table 3: AB 2011 Mixed-Income Project Development Standards

Minimum Density	<p>The greater of the following:</p> <ul style="list-style-type: none"> • The density required by the site’s zoning or general plan designation; or, • For sites of less than one acre, 30 du/ac; • For sites of one acre or greater located on commercial corridors of less than 100 feet in width, 40 du/ac; • For sites of one acre or greater located on a commercial corridor of 100 feet or greater width, 60 du/ac; • For sites within one-half mile of major transit stops, 80 du/ac.
Height Limit	<p>The greater of the following:</p> <ul style="list-style-type: none"> • The height limit of the site’s zoning district; or, • For sites on a street of less than 100 feet in width, 35 feet; • For sites on a street of 100 feet in width or more, 45 feet. <p>Existing height limits provided in the zoning ordinance for qualifying zoning districts are more permissive, therefore will apply, except the MUN and CO zoning districts.</p>
Parking	<p>No parking may be required except for requirements related to bicycle parking, electric vehicle parking spaces, or parking spaces accessible to persons with disabilities.</p> <p>This aligns with San José’s recent removal of mandatory minimum parking requirements for new development.</p>
Setbacks to Streets	<p>Setback to the “commercial corridor”⁹:</p> <ul style="list-style-type: none"> • No setback may be required from the commercial corridor to the building; • All parking must be set back at least 25 feet; • On the ground floor, the building must abut within 10 ft of the property line for at least 80% of frontage. <p>Setback to a side street¹⁰:</p>

⁹ A commercial corridor is defined as a public street with a width of 70 feet to 170 feet.

¹⁰ A “side street” is defined as a public street with a width of 25 feet to 70 feet.

	<ul style="list-style-type: none"> • Building must abut within 10 ft of the property line for at least 60% of frontage. <p>These setback standards are similar to the CP, MS-G, and MS-C zoning districts.</p>
Interior Setbacks	<p>No setbacks may be required for an interior property line to a property fronting the same commercial corridor as the project site unless that property contains a residential use that was constructed prior to the enactment of AB 2011.</p> <p>All other interior property lines that abut a residential use:</p> <ul style="list-style-type: none"> • Ground floor shall be set back 10 feet; • Starting with the second floor, each floor shall be stepped back in an amount equal to seven foot multiplied by the floor number. <p>All other interior property lines that abut non-residential use, the development shall be set back 15 feet.</p>

Project Labor Requirements

Both bills include project construction labor requirements, but there are some important distinctions between them. The differing labor standards were the result of a compromise between trade unions and the legislature. Similar bills using different labor standards are seen as a test of the efficacy of both.¹¹

The labor standards in SB 6 are largely the same as those in SB 35, where projects are required to pay prevailing wage and use a “skilled and trained workforce.”¹² This generally means a union labor is required. Unlike SB 35, SB 6 provides an exception to the “skilled and trained workforce” requirement if fewer than two prequalified contractors that are committed to using a "skilled and trained workforce" bid on the contract. This new standard is intended to allow non-union workers to be used where “skilled and trained” labor is unavailable.

Like SB 6, all AB 2011 projects are required to pay prevailing wage. However, the bill deviates from prior streamlined housing bills in that it does not require a “skilled and trained workforce.” Instead, it requires the developer of larger projects (50 units or more) to pay benefits to all workers, and contractors must either participate in a state-approved apprenticeship program or request the dispatch of apprentices from a program. A project can still move forward if no apprentice workers are available. The intention is that projects will still provide some of the advantages of union labor (prevailing wage, benefits, and workforce training), without being

¹¹ <https://calmatters.org/housing/2022/08/california-housing-crisis-labor-deal/>

¹² “Skilled and Trained Workforce” is defined in [Public Contract Code §2601](#)

constrained by the requirement to use union contractors on the project. AB 2011 labor standards are expected to be less costly than the requirement to use a “skilled and trained workforce.”

Both bills require that the developer must certify to the City that the labor requirements will be met in the project construction and the developer must provide the City with monthly compliance reports.

Small Business Displacement Provisions

The legislature included matching provisions for business notification and relocation assistance in the bills because of their potential to cause businesses to be displaced when commercial properties are redeveloped for housing. These two bills are the first of the recent housing bills to include such provisions.

Both bills require that the project applicant must provide written notice to all commercial tenants when they submit an application for development under either bill. Staff has found that early notification is critical for a business to have the time to successfully plan its relocation. This requirement is therefore anticipated to be beneficial.

The project applicant must also pay relocation assistance to qualifying small businesses upon expiration of their leases. The business must meet the following criteria:

- It must be an independently owned and operated business with its main office located in Santa Clara County;
- It must have 20 or fewer employees and annual average gross receipts of under \$1 million, calculated from the three years prior to the expiration of the lease;
- It must have a lease that expires within three years after the submittal of the development application and is not renewed by the property owner; and,
- It must still be in operation on the site at the time of expiration of the lease.

Tenants who never signed a lease or who signed a lease after the submittal of the SB 6 or AB 2011 application do not qualify for assistance.

Assistance must be paid based on the duration the business has been at the site, ranging from the dollar equivalent of six months’ rent for businesses operating at the site between one and five years to 18 months’ rent for businesses that have been at a site for at least 20 years. The tenant must spend the relocation assistance specifically to relocate the business or for the costs of a new business. Should the business elect to not use the funds for this purpose (e.g., it elects to close the business down) then it is eligible for three months’ rent. It is not clear if the payment is based on the total paid to the property owner, which is often a lump sum that includes items such as insurance, or if it is calculated by the portion of the payment that covers the rent alone. Because “rent” is often paid as a lump sum including other costs, it may not be readily apparent to a business how much relocation assistance a business will receive.

While the inclusion of specific provisions to address small business displacement is commendable and appreciated, these provisions have some limitations. First, the relocation assistance applies to a smaller category of businesses than is typically seen in small business programs. California's COVID-19 relief programs and the City's small business programs define small businesses as having no more than 35 employees and three million dollars in gross receipts, where the bills use 20 employees and a one-million-dollar threshold. Businesses that involve shift work easily reach the 35-employee threshold, especially restaurants. While the City's small business programs include non-profits, it is unclear whether they are considered a business for purposes of these relocation provisions.

Another limitation is that property owners often let commercial leases expire prior to submitting a development application. Tenants in these cases would not be eligible for assistance, as the bills require that the business have a lease that expires within three years *after* the submittal of the development application. There may be cases where businesses are in operation on a site at the time the development application is filed that would not qualify for assistance because they no longer have a lease as they are operating on a month-to-month basis.

Furthermore, the requirement that tenants must be operating at the site at the time their lease expires to qualify for relocation assistance may pose a challenge. Businesses may need to relocate quickly upon expiration of the lease if the property owner gives a notice to vacate. For office-based businesses, this may not pose a tremendous challenge, but for businesses that require specific layouts and equipment, such as restaurants, it is especially difficult. The businesses cannot get a head start by using relocation assistance to secure a lease and start tenant improvements at their new location while they are in operation waiting out the end of their lease at the current site. Businesses may need to seek a bridge loan if they do not want a gap in operation and are unable to fund the relocation without assistance.

The Department of Planning, Building, and Code Enforcement will work with the Office of Economic Development and Cultural Affairs to identify ways the City can assist to ensure qualifying businesses receive assistance. At a minimum, conformance with the small business relocation assistance requirements will be a condition of any development permit issued under either of the bills. Staff will endeavor to make the requirement that the development applicant provide notice to all tenants upon submittal of the development application as useful as possible by means, such as providing a template to use that includes multi-lingual information regarding the ability to receive relocation assistance and where to seek further information. The City's small business staff in the Office of Economic Development and Cultural Affairs can serve as a resource for providing information on these requirements and can advise where businesses may be able to seek further assistance with bridge loans and advise them to seek legal assistance where appropriate.

Although there are limitations in these provisions, it is a positive step that the legislature has attempted to address the issue of small business displacement. This is an area where staff regularly advocates to the legislature on housing and other land use bills, including advocacy on these bills specifically. As part of the Five Wounds Urban Village Plan update process, staff is

exploring ways to adopt more robust small business displacement measures that could potentially be expanded citywide.

Anticipated Use of Bills

SB 6

SB 6 opens up the most commercial land to residential development with the fewest restrictions. However, the prevailing wage and “skilled and trained workforce” requirements may prove a constraint to the use of this bill. The City’s recent cost of development study found that high construction costs contribute to making higher-density housing infeasible in all of the city, even without taking prevailing wage and union labor into account.¹³ Market participants in the City’s 2022 affordable housing development cost survey estimated that the prevailing wage requirement increases construction costs by between 10 and 20 percent.¹⁴ Staff has heard higher figures from other developers. Further, the bill does not offer the time and cost savings of a streamlined ministerial approval process unless the development provides substantial amounts of affordable housing.

SB 6 does not require the use of a “skilled and trained workforce” if the developer does not receive at least two bids from qualified contractors through a specified bidding process. This is the first housing bill to include such an exception. It is yet to be seen if this would make a difference in project feasibility because the bidding process would not happen until after the developer makes substantial investments in securing property and obtaining entitlements. Developers must anticipate construction costs in their initial assessment to determine if a development would be feasible to pursue. Therefore, the uncertainty on construction labor costs until very late in the process could add to development risk and uncertainty, thereby discouraging the use of SB 6, even with this potential exception to using the skilled and trained workforce.

It is possible, but unlikely, that the City will see the use of SB 6 for conversions of existing commercial buildings to housing because this project type can have lower construction costs and, depending on the scope of work, may not trigger a discretionary development permit. Staff anticipates the work needed to convert a suburban office building would not be cost-effective, whereas denser office buildings closer to the downtown core would be more likely to convert, although this is already allowed within much of downtown. SB 6 will have the effect of removing the downtown employment overlay that exists in the vicinity of the planned BART station downtown.

¹³ <https://www.sjeconomy.com/how-we-help/programs-and-services/city-of-san-jose-housing-development-initiatives/cost-of-residential-development-report>

¹⁴ <https://www.sjeconomy.com/home/showpublisheddocument/90321/638006725085830000>

Overall, in this current market staff expects to see minimal use of SB 6 due largely to the infeasibility of higher-density residential developments and the added costs of the labor requirements.

AB 2011 Mixed-Income Projects

Like SB 6, some of AB 2011's specific criteria may pose a challenge to use the bill for mixed-income projects. For example, the added cost of the prevailing wage requirements may be a constraint as discussed previously.

AB 2011's minimum density requirements may also be a limiting factor. San José's recent cost of development study showed that in most markets in San José projects denser than single-family homes or townhomes are not financially feasible. AB 2011's minimum densities of 30 to 80 du/ac do not allow for townhomes or single-family homes unless combined with a higher density product type to create a higher average density. This type of blend will be difficult to achieve on all but larger sites. For example, the Winchester Ranch development includes a range of densities where nearly half of the units are provided in a seven-story podium building and less than 15% of the units are lower-density townhomes, yet the average project density is 60 du/ac. The minimum density will particularly be a challenge for sites within a half mile of high-quality transit where the minimum required density is 80 du/ac.

It is possible that the on-site affordability requirement will also be a constraint, but this is highly dependent on the project location and project density/housing type, as those are the key factors to project costs and feasibility. AB 2011 requires that the affordable units are equitably distributed, have the same bedroom/bathroom count ratios, and have the same quality appliances, fixtures, and finishes as market-rate units. The City's experience has been that when given a choice, developers mostly elect to fulfill their obligation under the City's Inclusionary Housing Ordinance through the in-lieu fee.

Less frequently, developers provide on-site units through the cluster option. The cluster option allows a market-rate housing developer to partner with an affordable housing developer to construct the affordable units in a separate building from the market-rate units. This separate ownership configuration is necessary to qualify for tax credits and some other types of affordable housing funding. AB 2011's rules would preclude such a configuration.

The City's 2021 study of Opportunity Housing found that in certain markets in West San José, a three-story six to eight-unit project would be feasible on a property as small as 7,500 square feet. This type of development would meet the 30 du/ac minimum prescribed in AB 2011. However, the City's study did not assume inclusion of on-site affordable units so this requirement may prove a barrier for these smaller projects. Smaller projects (under 50 units) are still subject to the prevailing wage requirement, which may also be a challenge to project feasibility as it was not included in the Opportunity Housing study assumptions.

Developers may explore developing housing on surplus land in existing office or retail developments, such as an underutilized parking lot. It may be attractive to commercial property owners to sell a portion of their land to raise capital and lower ongoing costs for themselves, and developers benefit in that an underutilized part of a commercial property would cost less than acquiring an entire site. Land costs are a significant component of the cost of development, so lower land costs of acquiring a portion of a site may result in financially feasible projects under AB 2011 and potentially SB 6 as well. However, sites would need to be in a desirable location and suitable for a residential development. Such opportunities will be limited.

AB 2011 100% Affordable Development

Staff expects to see some use of AB 2011 to streamline 100% affordable projects, particularly on sites where the zoning and general plan designation would not otherwise allow residential uses. The 100% affordable developments are often already required to pay prevailing wage because of public funding sources they receive, so this is likely to be less of a constraint for these developments than for market-rate developers. SB 35 also contains the prevailing wage requirement for 100% affordable developments which has not been a barrier to using this bill in San José.

Where 100% affordable housing development is already allowed by either the site's General Plan or Zoning designation or through one of the General Plan's affordable housing policies (discussed below), a development would already be able to receive streamlined ministerial approval under SB 35. Where sites qualify for both SB 35 and AB 2011, developers may elect to use SB 35 instead of AB 2011 for streamlining because the criteria for both bills are largely the same, but SB 35 does not require payment of benefits to construction workers or participation in an apprenticeship program like AB 2011 does. AB 2011 provides some streamlining over SB 35 in that projects are not subject to the mandatory pre-application tribal consultation required by SB 35 unless the site is undeveloped. It is unknown if this will be a factor for developers when selecting a streamlining bill. AB 2011 allows the demolition of historic structures where SB 35 does not, so the City may see the use of AB 2011 on sites that would otherwise qualify for SB 35 but the project requires demolition of a historic resource.

Impacts to Existing City Policies for Housing on Employment Land

Existing Land Use Policies for 100% Affordable Housing

The Envision San José 2040 General Plan contains two policies where a 100% affordable mixed-use or residential development may be approved on commercially designated property.

Within Urban Villages that do not have an adopted plan, 100% affordable residential or mixed-use developments are allowed on the property regardless of General Plan land use designation per Implementation Policy IP-5.12:

Residential projects that are 100% affordable deed restricted by a public entity for a period not less than 55 years to low-income residents (earning 80 % or less of the Area Median Income) can proceed within an Urban Village without an approved Urban Village Plan. Such affordable housing projects are excepted from and shall not be approved in the Capital Caltrain Station Area Urban Village pursuant to this Policy IP-5.12.

Because this policy covers all property within Urban Villages without an adopted plan regardless of land use designation, the bills do not open up any additional land within these areas for 100% affordable housing. They do, however, open up sites in Urban Villages without a City Council-approved plan for mixed-income residential development.

For areas outside of Urban Villages and other Growth Areas General Plan Housing Policy H-2.9 applies:

To increase the supply of affordable housing, 100% deed-restricted affordable housing developments that are deed-restricted by a public agency for a period not less than 55 years to low-income residents (earning 80% or less of the Area Median Income) would be allowed on sites outside of the existing Growth Areas on properties with a Mixed Use Commercial or Neighborhood/Community Commercial land use designation if the development meets the following criteria:

- 1. The site is 1.5 gross acres or less.*
- 2. The site is vacant (no buildings or structures) or underutilized. "Underutilized" means the site is one of the following:*
 - a. Standalone surface parking lot; or*
 - b. Has a structure with a Floor Area Ratio (FAR) of 0.2 or less; or*
 - c. If FAR is greater than 0.2, the structure or structures shall be vacant (no tenants) for five (5) years or more.*
- 3. The site shares a property line with a parcel that has a residential General Plan Land Use/Transportation Diagram designation.*
- 4. The site shall be at least 1,000 feet from any property with a Heavy Industrial or Light Industrial General Plan land use designation, and at least 500 feet from any property with a Combined Industrial Commercial or Industrial Park general plan land use designation.*
- 5. The site is located within a one-half (0.5) mile of an existing transit line with a minimum of 30-minute peak headway.*
- 6. The development shall adaptively reuse any existing structures on the site that are on or are eligible for inclusion on the City of San José's Historic Resources Inventory.*
- 7. If the site has existing occupied rental dwelling units that are proposed to be removed, the project shall provide relocation assistance to those tenants, consistent with State and federal relocation laws and the City's Ellis Act Ordinance, as may be amended from time to time.*

Staff's analysis in 2021 found approximately 240 properties that would be eligible for 100% affordable residential development under this policy. These properties will also qualify for 100%

residential development under AB 2011 and SB 6. The bills effectively negate this policy, as they allow housing on most commercially designated properties in the city that are not near industrial uses. AB 2011 provides a streamlined ministerial approval path; however, affordable housing developments may already use SB 35 for streamlining under the Policy IP-5.12 and H-2.9 in many cases. Affordable developments on qualifying sites may still use these policies instead of AB 2011 or SB 6 to avoid the labor requirements of each bill.

The main impact that SB 6 and AB 2011 may have on these policies is to remove the advantage that they afford to affordable housing developers in finding sites and acquiring land. Property that cannot be developed with residential uses is generally less valuable than property that can, and currently, affordable housing developers do not have to compete with market-rate developers for this less expensive non-residential land. The bills open up this land that was previously only allowed under City policies to have residential development if it is 100% affordable to market rate or mixed-income housing. This may have the effect of raising the land value if the bills are successful, as affordable housing developers may have to compete with market-rate developers who, in certain economic conditions, may be able to pay higher prices to acquire the land.

As discussed previously, SB 6's labor standards and AB 2011's labor standards, on-site affordable housing requirement, and relatively high minimum density requirement will likely prove to be challenges for market-rate developers in many markets in San José. Affordable housing is less likely to be challenged by these factors in that it already tends to be developed at higher densities and is often required to pay prevailing wages due to public funding sources. Because of the expected challenges for market-rate developers under AB 2011 and SB 6, it is not clear that those bills would be effective enough to diminish the advantage to affordable developers that these policies provide.

Signature Project Policy

Land within Urban Villages is almost exclusively designated for employment prior to the adoption of an Urban Village Plan. Much of this land will be eligible for development under SB 6 and AB 2011. The General Plan includes the Signature Project policy to allow market-rate mixed-use development to proceed on some properties within an Urban Village prior to the adoption of the plan. These projects must include substantial development of employment uses. Further, the policy specifies that the Signature Project is to act as a catalyst for future development within the Urban Village. Specific criteria for Signature Projects include the following.

- Provide the average planned jobs/acre planned for the developable portions of the entire Village Planning area. In addition, projects including residential units shall be at densities of 30 dwelling units per acre or greater for projects in Neighborhood Villages, 55 dwelling units per acre or greater for projects in Local Transit and Commercial Corridor and Center Villages, and 75 dwelling units per acre or greater for projects in Regional Transit Villages.

- Locate at a strategic location within the urban village area to serve as an example for future development. Strategic locations shall be defined as a corner within the village, or an interior parcel of at least 1.5 acres with at least 150 feet of street frontage.
- Include publicly accessible open space areas (such as a public park or a privately maintained plaza).
- Create a tailored community engagement strategy to optimize broad and diverse stakeholder engagement in the community where the project is located to better collect feedback on the design and quality of the project.

So far there have been nine signature projects approved: 1) Sparta Student Housing (complete), 2) Dick's Center (under construction), 3) the Orchard (housing complete, commercial partially complete), with recent approvals for 4) Paseo de Saratoga Mixed Use Village, 5) Cambrian Park Plaza, 6) Blossom Hill Mixed Use Project, 7) Avalon Bay West, 8) Stevens Creek Promenade and, 9) Volar.

The ability to develop under SB 6 and AB 2011 effectively removes some key Signature Project criteria for residential or mixed-use development. Namely, developments would not need to include any employment uses, would not be restricted to corners or larger interior parcels, and the AB 2011 streamlining removes the opportunity for mandatory community engagement.

Staff anticipates the “skilled and trained workforce” requirement in SB 6 will discourage the use of the bill by developers. Given this, there may still be developers pursuing residential development proposals under the Signature Project Policy.

The AB 2011 labor requirement is untested and may not be as much of a constraint as the full “skilled and trained workforce” requirement. However, even the requirement to pay a living wage has been reported as a development constraint in most markets in San José. As such, it is not likely that AB 2011 will replace the use of the Signature Project policy either.

Neighborhood Business Districts

The General Plan designates 10 Neighborhood Business Districts (NBDs): 1) Willow Glen, 2) Winchester, 3) West San Carlos, 4) East Santa Clara, 5) The Alameda, 6) Willow Street (Calle Willow), 7) Alum Rock, 8) Japantown, 9) North 13th Street/Luna Park, and 10) Story Road. The NBDs are generally composed of smaller-scale buildings containing neighborhood-serving businesses. All but Story Road and Winchester were largely developed prior to the mid-20th century, meaning that they are characterized by smaller and narrower lots with eclectic development patterns.

Most properties within the 10 NBDs will qualify for residential development under one or both of the bills. SB 6 covers the most property within the NBDs, with AB 2011 100% affordable development next. Fewer properties qualify for AB 2011 mixed-income development due to some of the more robust requirements under that part of the bill, particularly the requirement for the property to have at least 50 feet of frontage on a public street of at least 70 feet wide. No part

of the Willow Street (Calle Willow) NBD qualifies for mixed-income development under AB 2011 because that portion of Willow Street is narrower than 70 feet.

Neither of the two aforementioned policies that allow affordable housing on commercially designated land apply within NBDs, therefore the bills have the effect of opening up this land to 100% affordable development. The labor requirements and minimum density are not expected to be a constraint for 100% affordable development under AB 2011, as affordable housing funding sources often carry similar requirements. The small lots, however, in many of the NBDs may be a challenge.

The effect of the bills on NBDs on market rate or mixed-income development is expected to be similar to the rest of the City in that the labor requirements will likely be a constraint. Achieving the minimum required density for AB 2011 mixed-income development may also be a challenge. Before the adoption of these bills, the City Council directed staff to prepare policy amendments to allow housing to be developed in NBDs. Although the bills largely achieve that same purpose, given the constraints that will likely make market-rate development challenging, staff still recommends that the City develop its own standards for residential development in NBDs.

Evaluation and Follow-up

Staff will monitor the use of the bills. The Department of Planning, Building, and Code Enforcement received two Preliminary Review applications seeking input on whether AB 2011 or SB 6 could be used on specific properties; one was concluded to qualify and the other was concluded not to qualify due to proximity to industrial uses. Despite being in effect for approximately six months, as of the writing of this memorandum, the City has not received any formal development applications for development using either bill.

The City is required to report both AB 2011 and SB 6 projects in the annual Housing Element progress report. The California Department of Housing and Community Development is required to undertake two studies of the effectiveness of AB 2011. One study must be completed on or before January 1, 2027, and one must be completed on or before January 1, 2031.

The Zoning Ordinance will be updated to reference the new AB 2011 ministerial approval path in the ministerial approval chapter. This will be completed through an upcoming routine maintenance update. Staff will update application forms and the Department of Planning, Building, and Code Enforcement's website to address the new AB 2011 ministerial approvals.

Conclusion

These bills open up land for housing development that was previously designated only for employment uses, and in many cases will streamline such development. However, some of the standards included in each bill, such as the requirement for on-site affordable housing, minimum density standards, and project labor requirements will likely curb the use of these bills in the current market in San José. Staff will monitor and report on the usage of the bills.

HONORABLE MAYOR AND CITY COUNCIL

June 3, 2024

Subject: Analysis of Senate Bill 6 and Assembly Bill 2011

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/s/

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