Association of Bay Area Governments

Technical Assistance for Local Planning

HOUSING

DISCLAIMER: This document is intended solely as a technical overview of new housing-related legislation. It is not intended to serve as legal advice regarding any jurisdiction's specific policies or any proposed housing development project. Local staff should consult with their city attorney or county counsel before taking any action to implement these changes.

This document was prepared for the Association of Bay Area Governments (ABAG) Regional Housing Technical Assistance (RHTA) program to be shared with local planning staff. Below is a summary of significant housing legislation that was passed in the 2022 legislative session and subsequently signed into law by Governor Newsom. All bills become effective on January 1, 2023, unless otherwise noted.

How to use this document:

This document was prepared in conjunction with the 2022 New Housing Laws Webinar and is designed to be used with the 2022 New Housing Legislation Action Item and Issue Spotting Chart. Text in green denotes an "action item," yellow denotes something that "impacts your job," and blue denotes information that is "good to know." Wherever colors are used, the text is labeled for accessibility. All associated materials are available on the RHTA website.

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Residential Development in Commercial Zones

(SB 6, AB 2011)

AB 2011, the Affordable Housing and High Road Jobs Act of 2022 and **SB 6,** the Middle Class Housing Act of 2022, are intended to permit residential development on sites currently zoned and designated for commercial or retail uses. Both bills were signed into law by Governor Gavin Newsom on September 29, 2022, and will go into effect on July 1, 2023.

For more detailed information about the provisions of each bill, please review ABAG's Overview of AB 2011 and SB 6 document, which can be downloaded here: Overview of AB 2011 and SB 6 memo.

Accessory Dwelling Units

(AB 2221, SB 897)

AB 2221 and **SB 897** (Government Code §§ 65852.2, 65852.22 and 65852.23) make substantial changes in the development standards applicable to accessory dwelling units (ADUs). Some of the most significant changes will increase allowed heights from 16 feet to 18 feet for certain ADUs and up to 25 feet for attached ADUs. Front yard setbacks may not limit an attached or detached ADU to less than 800 sq. ft. in size. Agencies are allowed to reinstate owner-occupancy requirements beginning on January 1, 2025. The amendments set strict review times for all permitting agencies, including special districts, and further limit an agency's ability to require fire sprinklers. As of January 1, 2023, these provisions will supersede any conflicting provisions of local ADU ordinances.

Significant Provisions

AB 2221 and SB 897 make substantial changes in the development standards applicable to accessory dwelling units (ADUs) and subject local agencies to additional processing requirements. The most significant changes in development standards include the following:

- ADUs can be developed in detached garages.
- Two detached ADUs may be planned for a proposed multifamily building, as well as an existing building.
- The following heights must be allowed:
    - 16-foot tall detached ADU on any lot.
    - 18-foot tall detached ADU on a lot that is within one-half mile walking distance of a major transit stop or a high-quality transit corridor, as defined in Public Resources Code § 21155 (plus an additional two feet in height to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit).
    - 18-foot detached ADU on a lot with an existing or proposed multifamily, multistory dwelling.
    - 25-foot attached ADU or the height limitation that applies to the primary dwelling, whichever is lower. The local agency may limit the height to two stories.
- Front yard setback requirements may not limit an attached or detached ADU to less than 800 sq. ft. in size.

The bills clarify that junior accessory dwelling units (JADUs) units may be constructed in attached garages. If the bathroom is shared with the primary dwelling, there must be an additional, interior entry between the JADU and the main living area to provide access to the bathroom.

Agencies may reinstate owner-occupancy requirements for properties with ADUs beginning on January 1, 2025.

The bills limit certain building code requirements:

Impacts Your Job: The construction of an ADU does not constitute a Group R occupancy change under the building code (unless the building official makes a written finding based on substantial evidence in the record that the construction could have a specific, adverse impact on public health and safety, or uninhabited space in multifamily buildings is changed to habitable space).

- The construction of an ADU will not trigger a requirement to install fire sprinklers in existing primary dwellings.
- Under new section 65852.23, a permit to legalize an unpermitted ADU constructed prior to January 1, 2018, cannot be denied due to violation of building standards, state ADU law or local ordinances regulating ADUs unless (i) the building is deemed substandard or (ii) correcting violations is necessary to protect health and safety.

Impacts Your Job: Correction of a housing code violation on the primary dwelling cannot be required as a condition of ADU construction unless the correction is necessary to protect health and safety.

Processing of ADU and JADU Applications: A complete ADU or JADU application submitted to any "permitting agency," which includes utilities and special districts, must be approved or denied within 60 days of receipt, unless associated with a proposed single-family home or multifamily building where the permit has not yet been issues. No separate zoning clearance or zoning review can be required. If the permitting agency denies an application, it must provide written comments itemizing the reasons for denial and describe how to remedy the application.

Finally, the bills require concurrent review of demolition and ADU permits when a detached garage will be demolished and replaced by an ADU.

Impacts Your Job: The local agency cannot require the applicant to provide written notice or post a placard for the demolition of the garage unless the garage is in an architecturally and historically significant district.

Local Agency Considerations and Implementation

Action Item: Local agencies will need to update their ADU ordinances to ensure their provisions comply with the changes made by AB 2221 and SB 897. Until the changes are made, state law will supersede local ordinances.

Action Item: Cities and counties may also need to coordinate their processing with that of any utilities and special districts, if they require approval from those agencies before issuing permits, to ensure that processing can be completed within 60 days.

Zoning · Approvals · Entitlements

(AB 916, AB 2668 and AB 2097)

AB 2097 (Government Code § 65863.2), the most significant of these bills, does not allow parking to be required or enforced on any development project located within one-half mile of public transit, unless the agency can make certain findings. Housing development projects with 20 percent affordable units or with fewer than 20 housing units could not be required to provide parking (except for disabled persons and electric vehicles) even if those findings were made.

AB 916 (Government Code § 65850.02) does not allow a public hearing on a proposal to add up to two bedrooms to an existing dwelling unit. **AB 2668** (Government Code § 65913.4) makes various cleanup changes to SB 35.

Significant Provisions

AB 2097 (Prohibition on Parking Requirements Near Public Transit). AB 2097 prohibits imposing or enforcing minimum parking requirements on any "development project" if located within half of a mile of a major transit stop. "Major transit stops" include rail or bus rapid transit stations, ferry terminals served by either a bus or rail transit service, intersections of two or more bus routes with frequent service during peak commute periods, and those major transit stops included in an applicable regional transportation plan.

However, a city or county may require parking if it finds by a preponderance of the evidence, within 30 days of receipt of a complete application, that not enforcing its parking standards would have a substantially negative impact on (1) the ability to meet the community's RHNA for low and very low income households, or on special housing needs of the elderly or disabled persons, or (2) existing residential or commercial parking within a half-mile of the housing development project.

This provision may not be used to require parking for housing development projects where 20 percent of the units are affordable to lower or moderate income households, students, the elderly, or persons with disabilities, where the development contains fewer than 20 units, or where the project is otherwise entitled to reduced parking (such as through a density bonus). Parking may also be required for any hotel, motel, bed and breakfast inn, or other transient hotel, except "residential hotels," and for workers at an "event center" (undefined). Local agencies may also require accessible parking for disabled persons and parking for electric vehicles in multifamily and nonresidential developments.

Finally, the bill's prohibitions on parking minimums do not apply to commercial parking requirements if they conflict with a contract with a public agency executed before January 1, 2023, and the parking is shared with the public. If an existing contractual agreement is amended after January 1, 2023, the prohibition does not apply so long as the required parking is not increased.

When a project provides parking voluntarily, local agencies may require spaces for car share vehicles or for use by the public, or require owners to charge for parking, but cannot require that the parking be provided to residents for free.

AB 916 (Additional Bedrooms). AB 916 prohibits local agencies from requiring a public hearing for a permit to reconfigure an existing dwelling unit to add up to two bedrooms. However, it explicitly states that it does not prohibit a public hearing for a project that would increase the number of dwelling units within an existing structure.

AB 2668 (**SB 35 Cleanup).** Government Code Section 65913.4 (SB 35) requires ministerial approval of qualifying housing developments. AB 2668 makes the following cleanup changes:

- States that any housing development eligible for SB 35 ministerial approval is not subject to any nonlegislative discretionary approval (e.g., design review, site review, tree permitting, variances).
- Prohibits local agencies from determining that a development is in conflict with objective planning standards where application materials are missing, so long as the application "contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with objective planning standards."
- Provides that the required number of affordable units is calculated on base density only, excluding any bonus units.
- Provides that qualifying SB 6 projects are deemed consistent with objective zoning, objective design, and objective subdivision standards of SB 35 as long as no portion of the project is designated for hotel, motel, bed and breakfast inn or other transient lodging use.

Good to Know: Allows a local agency to clear a hazardous waste site for residential use.

Local Agency Considerations and Implementation

Action Item: Where applicable, jurisdictions will want to update their code to eliminate public hearing requirement for a permit to add up to two bedrooms to an existing dwelling unit.

Action Item: Where applicable, jurisdictions will want to update code to eliminate minimum car parking requirements for residential, commercial, or other development projects located within one-half mile of a major transit stop, subject to statutory exceptions.

Action Item: If agencies are experiencing parking shortages near major transit stations, they may want to consider completing studies of the impact of a parking prohibition.

AB 2097 does not define what is a "development project," and the effect of the ban on *enforcing* parking regulations on a "development project" is not clear.

Density Bonus

(AB 682, AB 1551, AB 2334)

AB 682, AB 1551 and **AB 2334** (Government Code § 65915) add shared housing buildings (often called co-housing) to the types of projects eligible for density bonuses if they provide lower income units or are a senior citizen housing development. They also expand the area where unlimited density can be obtained for 100 percent affordable projects to "very low vehicle travel areas" in designated counties and describe how to calculate "base density" in jurisdictions that use "form-based codes" to calculate density rather than relying on dwelling units per acre. AB 1551 revives a development bonus for commercial projects that have entered into an agreement with an affordable housing developer to provide lower income dwelling units.

Significant Provisions

AB 682 (Shared Housing). This bill adds a "shared housing building" as a type of development entitled to a density bonus. A "shared housing building" is defined as a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by tenants. The building may include other dwelling units that are not shared housing units, provided those units do not occupy more than 25percent of the floor area of the building, or may consist of 100 percent share housing units and may include ground floor commercial space.

A shared housing unit is one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, and meets certain requirements of the California Residential Code. A city or county may adopt other requirements so long as they do not conflict with the statute, especially the provisions regarding minimum unit size and minimum bedroom size.

AB 2334 (Density Bonus Changes).

Good to Know: This bill allows projects that are 100 percent affordable to be entitled to unlimited density if located in a "very low vehicle traffic area" in a "designated county."

A "very low vehicle travel area" is an area designated by the US Census Bureau, where the existing residential development generates vehicle miles per capita that is less than 85percent of either regional miles traveled per capita, or city vehicle miles traveled per capita. Designated counties are 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.

In addition, "maximum allowable residential density," or "base density," is redefined as the “maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan.” If the density allowed in the zoning ordinance is “inconsistent” with the density allowed in the general or specific plan, “the greater shall prevail.” If the applicable zoning ordinance, specific plan, or general plan does not provide a dwelling unit per acre standard for density, such as with a “form-based code,” then the base density is calculated by estimating the number of units that can be accommodated on the site based on the objective development standards applicable to the project, such as floor area ratio, building height and stories, setbacks, etc. The city or county may require a developer to submit a report demonstrating the base density, and the units in the bonus project must have the same average unit size as those in the base density study.

A few other changes worth noting include clarifying that the rent for 80 percent of the units in a 100 percent affordable projects must be set consistent with low income rents and incomes determined by the California Tax Credit Allocation Committee; adding minimum lot area per unit requirements to the definition of “development standard;” and making clarifying revisions to parking requirements.

AB 1551 (Commercial Density Bonus). This bill revives the commercial density bonus provisions in Government Code § 65915.7 that sunsetted in 2022. It provides an opportunity for a development bonus for commercial developments that have entered into an agreement to partner with a housing developer. The agreement between the developers and the development bonus must be approved by the city or county. If the affordable units are not constructed in accordance with the timelines in the agreement, the city or county may withhold certificates of occupancy for the commercial development.

This section remains in effect until January 1, 2028, and as of that date is repealed.

Local Agency Considerations and Implementation

The most significant changes here may relate to the revised definition of “maximum allowable residential density.” The amendments bring substantial clarity to calculating base density when a jurisdiction has a form-based code that does not limit maximum density.

Action Item: These communities will need to revise their density application materials (and their density bonus implementing ordinance, if desired) to require a base density report as described in the statute, if not already required.

When a community does use units per acre to measure allowed density, the changes unfortunately do not clarify when the zoning, specific plan, and general plan are “inconsistent.”

Some communities use lot area per unit as a density standard. The amendments, however, define this as a “development standard” that can be waived.

Action Item: Communities that use this measure to control density should consider modifying this to a unit per acre standard.

Action Item: The density bonus statute changes so often that jurisdictions may wish to consider a provision in their local ordinances providing that any amended provisions are automatically incorporated into their local ordinances.

Housing Element · No Net Loss · Open Space Element

(AB 2339, SB 1425)

AB 2339 (Government Code §§ 65583 and 65863) substantially changes the housing element requirements for sites designated for use as emergency shelters. However, it applies only to housing elements where the initial draft is submitted to HCD more than 90 days after January 1, 2023, or where the first draft is not submitted to HCD by the applicable due date (January 31, 2023, in the ABAG region). The bill also clarifies that "no net loss" provisions apply to sites shown in the housing element to satisfy so-called "carryover" obligations, where sites were not zoned as promised in the previous housing element cycle.

SB 1425 requires cities and counties to update their open space element of their general plan.

Significant Provisions

AB 2339 revises housing element law regarding sites for emergency shelters. It provides that any site identified for emergency shelters in the housing element must be a site zoned for residential use or a site zoned for nonresidential use that allows residential development. If the latter, the city or county will need to either demonstrate that the site is located near amenities and services that serve people experiencing homelessness, provide free transportation to those services, or offer services onsite. Thus, local governments cannot situate emergency shelters in industrial zones and other zones that do not allow residential development. Housing elements must also demonstrate that there are adequate sites in the district to accommodate the community's homeless population.

This amendment regarding emergency shelters takes effect on January 1, 2023. Under section 65583(e), the amendment will apply to any housing element where either the draft of the housing element is submitted to HCD more than 90 days after January 1, 2023, or where the first draft is not submitted to HCD before the applicable due date (January 31, 2023, in the ABAG region),

Impacts Your Job: AB 2339 also clarifies that "no net loss" provisions apply to sites shown in the housing element to satisfy so-called "carryover" obligations, where sites were not zoned as promised in the previous housing element cycle.

Action Item: SB 1425 requires every city and county to review and update its local open space element of its general plan by January 1, 2026.

The updated open space plan must include plans and an action program that address specified issues, including, among others, climate resilience and cobenefits of open space (correlated with the safety element) and rewilding opportunities (correlated with the land use element).

Local Agency Considerations and Implementation

Action Item: Communities in the ABAG region will not be subject to the new requirements for emergency shelters unless they submit the first draft of their housing element to HCD for review after January 31, 2023. Any communities subject to this statute may be required to zone additional sites for emergency shelters

Annual Progress Reports and Enforcement

(AB 1743, AB 2094, AB 2653 and AB 2011)

AB 1743, AB 2094, AB 2653 and AB 2011 (Government Code § 65400) all make changes to the reporting requirements for housing element annual progress reports (APRs). AB 1743 (Government Code § 65585) also clarifies HCD's and the

Attorney General's authority to take enforcement action against jurisdictions that do not comply with annual progress report requirements.

Significant Provisions

Together these bills require the following additional information added to the annual progress reports:

- Whether a housing development application is subject to a ministerial or discretionary approval process.
- The jurisdiction's progress in meeting the housing needs of extremely low-income households, as determined pursuant to Government Code Section 65583(a)(1).
- The following information regarding AB 2011 projects: (1) the location of the project; (2) the status of the project, including whether it has been entitled, whether a building permit has been issued, and whether it has been completed; (3) the number of units in the project; (4) the number of units in the project that are rental housing; (5) the number of units in the project that are for-sale housing; and (6) the household income category of the units.
- The total number of new housing units and the total number of housing units demolished.
- Data from all, not just a sample, of projects approved to receive a density bonus.

Impacts Your Job: Moreover, AB 2653 authorizes HCD to request corrections to the housing element portion of an annual report within ninety days of receipt and requires the local agency to make the corrections within thirty days thereafter. HCD may reject the report if the corrections are not made within that time.

Good to Know: Lastly, HCD is authorized to notify the city, county or the Attorney General when the city's or county's planning agency fails to comply with the provisions of Government Code Section 65400 related to housing element annual progress reports.

Local Agency Considerations and Implementation

Impacts Your Job: HCD publishes new forms and instructions each year that explain the current requirements for the annual progress report. Agencies must submit them to HCD by April 1 of each year, covering housing development in the previous year.

Building Permits · Postentitlement Permits for Housing Developments Projects

(AB 2234, SB 1214)

AB 2234 (Government Code §§ 65913.3 and 65913.3.5) requires processing for building and other “post-entitlement” permits for housing development projects that is similar to processing required for discretionary approvals. In particular, cities and counties must post lists of required information, review applications for completeness within 15 business days, and complete an initial review within either 30 business days (for project of 25 units or less) or 60 working days (for larger projects). It also requires posting of various information on the internet, including completed building permit applications for five types of residential projects.

SB 1214 does not allow posting of copyrighted plans on the internet without the permission of the design professional or copyright owner, except during presentations of plans at public meetings.

Significant Provisions

AB 2234 (Government Code § 65913.3) regulates the local review process of "postentitlement phase permits" for housing development projects, which are the nondiscretionary permits needed to commence construction of a project where at least two-thirds of the square footage is residential. This includes (but is not limited to) building permits, demolition permits, permits for minor or standard off-site improvements, and permits for minor or standard excavation or grading. Notably, postentitlement phase permits exclude permits required and issued by the California Coastal Commission, special districts, a utility not owned and operated by the local agency, or any other entity that is not a city, county, or city and county.

Upon receiving an application for a postentitlement phase permit, the local agency has 15 business days to determine if the application is complete and provide written notice of this determination. If the local agency does not provide a notice of complete or incomplete application within 15 business days, the application will be deemed complete.

Impacts Your Job: In the notice of incomplete application, the local agency must include a list of incomplete items and a description of how to make the application complete.

The list of items requested is limited to items that were posted on the local agency's website as necessary for a postentitlement phase permit. The applicant may resubmit the application, and the local agency again has 15 business days to determine if the application is complete and provide a written notice of determination.

Impacts Your Job: Once the application is determined to be complete, the local agency has 30 business days (for projects 25 units or fewer) or 60 business days (for projects with more than 25 units) to review the application and either (i) return in writing a full set of comments to the applicant with a comprehensive request for revisions or (ii) approve the application and return the approved application to the applicant.

If an applicant resubmits the application, these review timelines reset. The local agency may have additional time to review the application if it can make written findings based on substantial evidence that the proposed postentitlement phase permit may have a specific, adverse impact on objective, identified, and written public health and safety and thus additional time is needed to process the application.

The applicant may appeal in writing the local agency’s determination that the application is incomplete, non-compliant, or denied. The local agency must respond to the written appeal within 60 business days (for projects with 25 units or fewer) or 90 business days (for projects with more than 25 units). Failure to meet the timelines in this section is considered a "disapprov[al of] the housing development project" under the Housing Accountability Act (Government Code § 65589.5) (HAA).Disapproving a housing development project under the HAA without making the required findings may constitute a violation of the HAA and may result in legal consequences for the jurisdiction.

AB 2234 also requires local agencies to prepare and post the following information on their websites: (i) list(s) detailing the information that the applicant will have to provide for a postentitlement phase permit; (ii) an example of a complete, approved application; and (iii) examples of complete sets of postentitlement phase permits for at least five types of housing development projects in the jurisdiction. It appears that while the list of required information must be compiled by the January 1, 2023 effective date of the bill, the information is not required to be posted on the agency’s website until January 1, 2024.

Action Item: In addition to providing information on the website, local agencies must set up their website so applicants can apply for, complete, and retrieve postentitlement phase permits.

Communities in a county with a population of 1,100,000 or greater, or any community with a population of 75,000 or more, must comply by January 1, 2024, unless the community makes certain findings; other communities must comply by January 1, 2028. However, the provision does not apply to counties with a population of less than 250,000 as of January 1, 2019, or to cities within those counties. Communities without such an electronic system must accept postentitlement permit applications by email.

SB 1214 requires a local planning agency to ensure architectural drawings that contain copyrighted information are not made available to the public in a manner that facilitates their copying. Official copies of architectural drawings containing protected information may only be open for inspection and public review on the premises of the planning agency, shall not be copied by a member of the public without the permission of the design professional or copyright owner, and shall not be provided on the internet. A local planning agency may make copies of architectural drawings for internal official review, distribute copies to members of the legislative body and the planning agency, and may display a copy on the internet and a copy physically on the premises during a public hearing where a development application that incorporates those architectural drawings is being considered.

Local Agency Considerations and Implementation

Action Item: Local agencies should consider adopting implementing ordinances defining the threshold for "minor" and "standard" off-site improvements, excavation, and grading, which are subject to the post-entitlement timelines, and major, non-standard off-site improvements, excavation, and grading, which are not subject to these post-entitlement timelines.

Action Item: Each local agency will need to establish procedures to ensure that permits can be processed within the time designated, and that a detailed list of requirements for each post-entitlement permit is available.

Impacts Your Job: SB 1214's provisions appear to no longer allow plans to be posted on an agency's website unless the design professional or copyright holder grants permission.

Similarly, Health and Safety Code § 19851 requires certain written permissions be obtained prior to the copying of any building plans maintained by city or county building departments. Although AB 2234 requires complete sets of postentitlement phase permits to be posted for at least five types of housing development projects, this will not be possible unless the copyright holders and others grant permission.

Fair Housing

SB 649 (Government Code §§ 7061 - 7061.2) recites the basis for a state policy regarding local tenant preferences and adds provisions to the Government Code setting out the state policy. The purpose is to establish a local tenant preference that will allow affordable housing developments to access federal Low Income Housing Tax Credits ("LIHTC") and federally Tax-Exempt Multifamily Housing Bonds ("Bonds") as provided in Internal Revenue Code § 142. The policy is intended to address displacement pressures that may increase housing prices and to help lower income households avoid displacement from their neighborhoods. The local tenant preference must affirmatively further fair housing and must comply with other state and federal fair housing laws.

Significant Provisions

The statute creates a state policy in support of local tenant preferences to allow affordable multifamily housing developments to be determined as being available for general public use under Internal Revenue Code § 42(g)(9), which

establishes the federal LIHTC program and thus allowing projects with such preferences to qualify for tax credits and Bonds.

Impacts Your Job: Under the statute, local governments can adopt a local tenant preference.

However, that local tenant preference is subject to: (1) the duty of public agencies to affirmatively further fair housing (Government Code § 8899.50); (2) the California Fair Employment and Housing Act (Government Code §12900 et seq.); (3) the Unruh Civil Rights Act (Civil Code § 51 et seq.); (4) the federal Fair Housing Act (42 U.S.C. § 3601 et seq.); and (5) any implementing regulations.

Impacts Your Job: A local government adopting a local tenant preference policy must: (1) within 90 days after the ordinance becomes operational, create a webpage on its website containing the ordinance and supporting materials; and (2) provide to HCD, on an annual basis, a current link to the webpage in its annual housing element report.

Good to Know: HCD is required to post on its internet website a list of the jurisdictions that have local tenant preference policies based upon the information provided by local governments in their annual housing element reports.

The statute will remain in effect only until January 1, 2033.

Local Agency Considerations and Implementation

While the statute specifically references § 42(g)(9) of the IRC, it does not exempt local tenant preferences from being subject to state fair housing laws.

Impacts Your Job: In fact, SB 649 provides that a local tenant preference is subject to both state and federal fair housing laws. Therefore, the supporting materials for an adopted local tenant preference should include data which demonstrates how the policy will affirmatively further fair housing within the constraints of the law.

The language of the statute suggests that the purpose of the local tenant preference is to protect local tenants of residential rental housing. However, local jurisdictions should confirm with their legal counsel as to whether a local tenant preference is consistent with the policy of the U.S. Department of Housing and Urban Development ("HUD"),-the federal agency primarily responsible for enforcing federal fair housing laws and the Department of Fair Employment and Housing (DFEH). A local tenant preference policy that does not include people who work in the area subject to the preference may be subject to challenge by HUD, DFEH or individuals who do not benefit from the preference.

Educational Facility Housing

(AB 1719, AB 2295, and SB 886)

This section separately reviews three bills affecting education facilities: the **Community College Faculty and Employee Housing Act of 2022 (AB 1719)** (Health and Safety Code §§ 53580 - 53584); **AB 2295** (Government Code § 65914.7); and **SB 886** (Public Resources Code § 21080.58).

Significant Provisions

AB 1719 authorizes Community College Districts (CCD) to develop, assist or participate in "affordable rental housing" developments in which most of the units restrict rents to 30 percent of 110 percent of Area Median Income. A CCD may "facilitate the acquisition, construction, rehabilitation, and preservation of affordable rental housing" and may restrict occupancy to CCD faculty and staff. The statue provides that the program will be restricted to CCD employees, unless the CCD allows other public employees or other members of the public to reside in the housing. "Local public employees"

includes employees of general law and charter cities and counties, special districts, or any combination of such entities. Even then, the CCD retains the right to provide a priority for CCD employees. There is no statutorily established maximum income for the residents of the units in CCD housing. Lastly, housing on CCD land with a CCD employee restriction or priority is considered "available for general public" use under Internal Revenue Code § 42, which establishes the federal Low Income Housing Tax Credit (LIHTC) Program.

AB 2295 provides that certain housing development projects will be an allowable use on any real property owned by a "local educational agency" if they meet ten criteria, including affordability requirements. A "local educational agency" is a school district or county office of education. The use of local educational agency land for a housing development is exempt from the Surplus Lands Act and Education Code provisions regarding disposition of land. In addition to the criteria required by AB 2295, the housing development must satisfy other local objective zoning standards, objective subdivision standard, and objective design review standards that do not preclude the residential density and height permitted by AB 2295. The housing development must comply with all infrastructure-related requirements, including impact fees existing or pending at the time the application is submitted.

The units must be rented in the following priority order: (1) to the local educational agency employees; (2) to employees of adjacent local educational agencies; (3) to public employees who work for a local agency within the jurisdiction of the local educational agency; and (4) to members of the general public.

The statute becomes effective on January 1, 2024, and applies to land owned by a local educational agency as of January 1, 2023.

Impacts Your Job: SB 886 creates an exemption from the review required by the California Environmental Quality Act ("CEQA") for faculty and student housing projects undertaken by the University of California, California State University and California Community Colleges.

"Faculty and staff housing and student housing projects" mean housing facilities owned by the educational institution and occupied by faculty and staff or by students of one or more campuses. Up to 33 percent of the space may be used for dining, academic, and usual support services. Among other requirements, the housing must be built to LEED Platinum standards, use a skilled and trained workforce, and mitigate certain specified environmental issues. Other environmental conditions will disqualify the housing from the CEQA exemption provided by the statute.

The educational institution must hold at least one public hearing and respond to public comments before determining that a housing project is exempt from CEQA and file a Notice of Exemption with the Office of Planning and Research. A Certificate of Occupancy cannot be issued until the lead agency receives the LEED Platinum certification and determines that construction impacts have been fully mitigated. The lead agency must file the Certificate of Occupancy with Office of Planning and Research (OPR) and record it with the County Recorder. Any action challenging the Certificate of Occupancy must be brought within 35 days of the filing of the Certificate of Occupancy and certification by the lead agency.

The CEQA Exemption terminates on January 1, 2030, and as of that date is repealed.

Local Agency Considerations and Implementation (AB 1719)

It is unclear whether the preferences provided for under AB 1719 and AB 2295 violate state fair housing law prohibitions on "source of income" discrimination. Neither statute explicitly provides that restricting or prioritizing housing in the manner provided would not violate state fair housing laws.

Impacts Your Job: Jurisdictions will have to determine whether a particular parcel of land and the proposed housing development meet the myriad of qualifying criteria under AB 2295. In addition, local agencies will have to determine which development standards and fees will apply to the housing development.

The University of California, California State University, and the Community Colleges all act as the lead agency and the application for CEQA purposes.

Good to Know: To the extent that a local government or other public body is involved in some aspect of the housing development, CEQA would still apply to those actions.

Mobilehome Rent Control

(SB 940)

SB 940 (Civil Code §§ 798.7; 798.45) amends the Mobilehome Residency Law ("MRL") to place a limit on the MRL's exemption for "new construction" from locally-adopted rent control laws. SB 940 limits this exemption to a period of 15 years.

Significant Provisions

Under current law, all “new construction” is exempt from local laws establishing a maximum permissible rent. Civil Code § 798.7 defines “new construction” as any mobilehome park space initially held out for rent after January 1, 1990.

SB 940 creates a distinction between mobilehome parks and mobilehome park spaces. With respect to individual spaces, January 1, 1990, is still the date used to define “new construction.” With respect to parks, however, the pertinent date is January 1, 2023. SB 940 defines “new mobilehome park construction” to mean all spaces in a newly constructed mobilehome park for which the permit to operate is first issued on or after January 1, 2023.

Under SB 940, both “new construction” and “new mobilehome park construction” are exempt from local rent control restrictions for a period of 15 years. For mobilehome park spaces, the exemption period begins when the space is initially held out for rent, and for mobilehome parks, the exemption period begins when 50 percent of the spaces in the park are initially held out for rent. A space is “initially held out for rent” when the permit or certificate of occupancy for the space is issued.

In sum, SB 940 makes two important changes to the Mobilehome Residency Law. First, it allows local governments to apply rent control restrictions to mobilehome parks once the 15-year exemption period expires. Second, it includes “new mobilehome park construction” in the exemption, for projects constructed on or after January 1, 2023.

Local Agency Considerations and Implementation

Good to Know: Local agencies with mobilehome rent control ordinances may wish to consider whether these amendments require or make possible changes in their local rent control laws.

Summary of Other 2022 Housing-Related Legislation

The bills summarized in this section are other housing-related legislation that either (1) are of interest only to a small subset of ABAG's member jurisdictions, or (2) do not relate directly to land use, planning or local housing development policy, but touch on issues that may arise tangential to such work (e.g., landlord-tenant, financing property taxation).

Landlord-Tenant

AB 252 imposes a cap on rent increases for floating home marinas in Alameda, Contra Costa and Marin counties. Rent may only be increased once during any given 12-month period and is limited to the lesser of three percent plus change in the cost of living, or five percent. This cap applies to all rent increases occurring on or after January 1, 2022.

SB 1396 requires the California Department of Financial Protection and Innovation to select an independent evaluator, through a prescribed competition process, to create a report regarding compliance with and the impact of Civil Code Section 1954.06. Section 1954.06 is existing law that requires a landlord of an assisted housing development to offer tenants the option of having their rental payments reports to at least one consumer reporting agency.

Mobilehomes

AB 2031 amends the Mobilehome Residency Law to add utility billing and charges and common area facilities to the list of topics about which mobile home park management is required to meet and consult with owners of mobile homes upon their written request. The amendments would authorize participation in a meeting to occur in person or by virtual means, depending on the homeowner's preference, and would require management to permit a homeowner, or a group of homeowners, to be represented at the meeting. Lastly, management would be required to permit attendance of language interpreters at any such meeting.

SB 869 requires the Department of Housing and Community Development (HCD) to adopt regulations requiring at least one manager per mobilehome park or recreational vehicle park to receive training as specified in the statute. Upon completion of the training, the manager will receive a certificate of completion that expires every two years to demonstrate compliance; failure to comply with the training requirement may result in a civil penalty for the park.

SB 1307 requires HCD to post on its website an explanation of the process by which a city or county may assume responsibility for enforcing the Mobilehome Parks Act and/or the Special Occupancy Parks Act, and to send an annual electronic notice to every city and county that explains the process. This bill also extends the time period from thirty to sixty days for the elimination of a condition constituting a health and safety violation in a special occupancy park.

Property Taxation

AB 1206 requires that, for the purposes of the welfare exemption, a unit continue to be treated as occupied by a lower income household if the owner is a community land trust whose land is leased to low-income households pursuant to a contract with specified requirements. The unit would continue to be treated as occupied by a lower income household if the occupants were lower income on lien date in the fiscal year in which their occupancy commenced, the unit continues to be rent restricted, and the occupant's income has increased to no more than 140 percent of the area median income.

AB 1933 provides that a property is within the welfare exemption from property taxation where it is owned and operated by a nonprofit corporation organized and operated for the specific and primary purpose of building and rehabilitating residential units and the property has units that meets the specified criteria. This exemption may be claimed by an officer of the nonprofit who signs under penalty of perjury an affidavit affirming that the property will be used for the construction or rehabilitation of qualifying single or multifamily residential units in the future.

AB 2651 extends until January 1, 2027, the operation of provisions in the Revenue and Taxation Code that provide a property is within the welfare exemption if the property is owned by a community land trust and certain specified conditions are met, including that the property is being or will be developed or rehabilitated for housing.

Housing Financing

AB 1654 mandates a set-aside for farmworker housing of the lesser of $25,000,000, or five percent of the additional amount allocated in any year in which the additional allocation of $500,000,000 in low-income housing tax credits is made. Additionally, the bill requires HCD to commission a study of farmworker housing conditions, needs and solutions, and to develop a comprehensive strategy for meeting farmworkers' housing needs based on that study.

AB 1695 requires that any notice of funding availability (NOFA) issued by HCD for an affordable multifamily housing loan program shall state the adaptive reuse of a property for affordable housing purposes is an eligible activity. "Adapt reuse" shall mean retrofitting and repurposing of an existing building to create new residential units.

AB 1978 authorizes HCD to do any of the following in administering federally funded grant programs: (1) publish a NOFA and application deadlines ahead of, and contingent upon, the availability of funding; (2) issue funding to an award recipient upfront, rather than as a reimbursement, if the awardee meets federal financial administration standards and provides ongoing support and monitoring of the funding; and (3) provide technical assistance to applicants to correct technical errors or provide missing information, if post-submittal modifications are otherwise permitted.

SB 948 prohibits HCD from requiring a project-specific transition reserve for any unit subject to a qualified project rental or operating subsidy. The bill also creates the Pooled Transition Reserve Fund and would continuously appropriate funds to HCD for the purpose of establishing and maintaining a pooled transition reserve.

Homelessness

AB 1991 provides that a shelter program participant occupying a hotel or motel, or other shelter program, is not considered a "person for hire" for unlawful detainer purposes where the shelter program adheres to the core components of Housing First and adopts and discloses rules governing how and for what reasons a shelter program participant's enrollment may be terminated. This bill also prohibits a hotel or motel from adopting termination policies, restricting access rights, or imposing charges or fees specifically for shelter program participants that do not apply to other occupants, and prohibits a hotel or motel from requiring shelter program participants to check out an reregister, move out or rooms or between rooms, or from the hotel or motel while actively enrolled in the shelter for the purposes of preventing them from establishing tenancy rights.

AB 2483 requires HCD to award incentives to Multifamily Housing Program project applicants that agree to set aside at least twenty percent of the project's units, or not more than 50 percent of the project units if the project includes more than one hundred, for persons who are either experiencing homelessness or eligible to receive specified services. Additionally, AB 2483 authorizes the state to contract with agencies or individuals to assist persons with disabilities in securing their own homes and to provide them with supports needed to live in their own homes and expands "community living support services" to include assistance with independent activities of daily living or personal care where needed.

SB 1421 adds a current or formerly homeless person with a development disability to the advisory council to the California Interagency Council on Homelessness ("Council").

SB 914 (HELP Act) requires cities, counties and continuums of care receiving state funding to include families, people fleeing or attempting to flee domestic violence, and unaccompanied women in the vulnerable populations for whom specific system supports are developed to maintain homeless services and housing delivery. Additionally, the Council is required to set and measure progress toward goals to prevent and end homelessness among domestic violent survivors and their children and unaccompanied women. Lastly, SB 914 prohibits victim service providers from entering client-level data into specified homeless data systems and instead permits state funding to be utilized to develop and maintain comparable databases for these providers.

Miscellaneous

AB 1837 extends until January 1, 2031, the provisions of and makes certain amendments to SB 1079 (2020), or the “Housing for Homeowners, Not Corporations” Act. Namely, the bill revises the requirements for an eligible nonprofit corporation or limited liability company to meet the definition of an eligible bidder, expands the affidavit and declaration requirements for eligible bidders if they are the winning bidders, and would add a natural person occupying the property under a rental or lease agreement with a mortgagor's or trustor's predecessor in interest to the definition of an eligible tenant buyer.

AB 2006 mandates that HCD, the California Housing Finance Agency (CalHFA), and the California Tax Credit Allocation Committee (CTCAC) to enter into a memorandum of understanding (MOU) to streamline the compliance monitoring of affordable multifamily rental housing developments subject to regulatory agreement with one or more of these entities. AB 2006 requires the MOU to ensure that only one entity conducts physical inspections for a particular project, eliminate the submission of duplicate information, and provide for an aligned process to obtain specified approvals.

SB 392 amends the Davis-Stirling Common Interest Development Act to make the following changes regarding delivery of documents by an association to members of a common interest development:

- The association must deliver any documents that the act requires to be delivered by "individual delivery" or "individual notice" in accordance with the member's preferred delivery method, as specified by the member. If the member has not specified a preference, then the association must deliver the documents by first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier.
- The member must provide the member's preferred delivery method and an alternate or secondary delivery method. The association must include option of receiving notice by mail, by valid email address, or both. The member would not be required to provide an email address. The association may also include the posting of the notice on the association's website as one of the authorized delivery methods if it is so designated in its annual policy statement.
- The association is prohibited sharing a member's personal information to a third party without the member's consent, unless required to do so by law.

SB 1252 is an omnibus bill containing a number of different housing-related provisions, including:

- Requiring an association, under the Davis-Stirling Common Interest Development Act, to record the collected notice delivery preferences of its members at least thirty (30) days before distributing the annual budget report and the annual policy statement.
- Expands the definition of "affordable housing project" in the HAA to include housing developments where the units are subject to a recorded affordability restriction of 45 years of owner-occupied housing, and housing developments where the first purchaser of each unit participates in an equity sharing agreement.
- Specifies that the loan terms for loans made pursuant to the Joe Serna, Jr. Farmworker Housing Grant Program are required to be consistent with specified existing housing programs, including the Multifamily Housing Program and the CalHome Program.