



Technical Assistance
for Local Planning
HOUSING

Understanding Residential Development in Commercial Zones

SB 6 and AB 2011

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Presentation Overview

- Overview of AB 2011 and SB 6
- Understanding Developer Considerations
- Policy Decisions and Action Items

AB 2011 & SB 6 Overview

- Summary Document includes:
 - Applicable zones & site requirements
 - Approval process
 - Site & project qualifying criteria
 - Development standards
 - Affordable housing requirements
 - Labor requirements
 - Other provisions

Senate Bill 6 vs. Assembly Bill 2011 (2022)

APPLICABLE ZONES

AB 2011 Mixed-income Housing Projects	AB 2011 100% Affordable Housing Projects	SB 6 Projects
<ul style="list-style-type: none">• Zone where office, retail, or parking are principally permitted useⁱ• Project site abuts a commercial corridorⁱⁱ and has frontage along the commercial corridor of minimum of 50 feet	<ul style="list-style-type: none">• Zone where office, retail, or parking are principally permitted use	<ul style="list-style-type: none">• Zone where office, retail, or parking are principally permitted use

EFFECTIVE DATE

All AB 2011 Projects	SB 6 Projects
July 1, 2023	July 1, 2023

APPROVAL PROCESS

All AB 2011 Projects	SB 6 Projects
<ul style="list-style-type: none">• Creates new ministerial process for qualifying projects<ul style="list-style-type: none">○ For projects with 150 units or lessⁱⁱⁱ, must be processed in 90 days○ For projects with more than 150 units, must be processed in 180 days• Jurisdiction must identify any inconsistencies with qualifying criteria within prescribed timelines, otherwise development is deemed to be in compliance<ul style="list-style-type: none">○ For projects with 150 units or fewer, must be informed within 60 days of application submission○ For projects more than 150 units, must be informed within 90 days of application submission• May perform design review, but limited to objective standards only and within the following timelines:<ul style="list-style-type: none">○ For projects with 150 units or fewer, within 90 days of submission○ For projects with more than 150 units, within 180 days of submission• Jurisdictions may adopt an implementing ordinance (CEQA-exempt)	<ul style="list-style-type: none">• Does not create any new approval process• If the project meets all requirements (except non-compliance with zoning prohibiting residential use), then it may invoke SB 35^{iv} and the Housing Accountability Act• Jurisdictions may adopt an implementing ordinance (CEQA-exempt)

Residential Development in Commercial Zones

AB 2011 and SB 6 allow multi-family residential development where not permitted previously:

- Applies in zones where office, retail or parking are principally permitted uses*
- Effective July 1, 2023

*AB 2011 “principally permitted use” means a use that may occupy more than one-third of the square footage of the site without conditional use permit (CUP)

*SB 6 does not define “principally permitted use”

Learning Quiz Question 1

When do these bills kick in?

- A. January 2023
- B. July 1, 2023
- C. January 1, 2024

Learning Quiz Question 1 - Answer

When do these bills kick in?

- A. January 2023
- B. July 1, 2023
- C. January 1, 2024

Answer is B

Overview of AB 2011

Mixed-Income Housing Development Projects (MIH)

100% Affordable Housing Development Projects (AH)

Two Project Types

100% Affordable Housing (AH) Development *(11 criteria)*

Mixed Income Housing (MIH) Development *(11 + 7 additional criteria)*

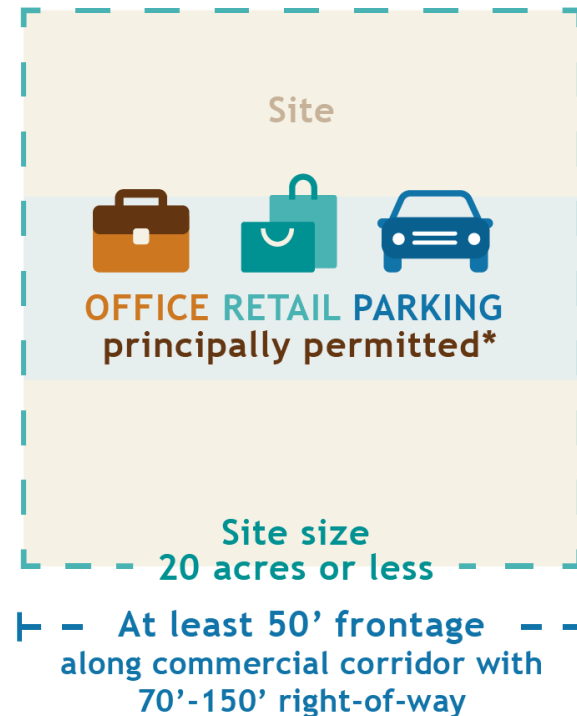
- **Key difference: MIH sites must abut a “commercial corridor”**
 - a public street that has a right-of-way between 70 and 150 feet

Applicable Zones

Where zoning allows office, parking or retail as principally permitted use

- 1/3 of square footage of site without a conditional use permit (CUP)

AB 2011 Mixed Income Housing Project Criteria



AB 2011 100% Affordable Housing Project Criteria



* AB 2011 defines "principally permitted use" as a use that can occupy more than 1/3 of sf without a CUP

Site & Project Criteria (AH & MIH)

- Multi-family housing development projects only
- Within an urbanized area/urban cluster (now urban area)
- Site adjoins urban uses
- Not on or adjoined to a site with more than one-third industrial uses
- Sites in a neighborhood area plan must permit multi-family housing (subject to adoption deadlines)
- Satisfies SB 35 environmental criteria (Gov. Code Sec. 65913.4(a)(6)(B)-(K))
- Requires completed Phase I environmental assessment and any necessary mitigation

Site & Project Criteria (AH & MIH)

- Not allowed on sites governed by Mobilehome Residency Law, Recreational Vehicle Occupancy Park Law, Mobilehome Parks Act or Special Occupancy Park Act
- Housing cannot be located within:
 - 500 ft of a freeway
 - 3200 ft of oil/gas refinery
- If site is vacant, cannot:
 - Be in a very high fire severity zone
 - Have tribal resources that could be affected
- Requires prevailing wage

Learning Quiz Question 2

For AB 2011 MH what additional site condition applies?

- A. Has at least 50 feet of frontage on a commercial corridor
- B. Has never had residential uses
- C. Site currently has commercial uses
- D. Any vacant parcel

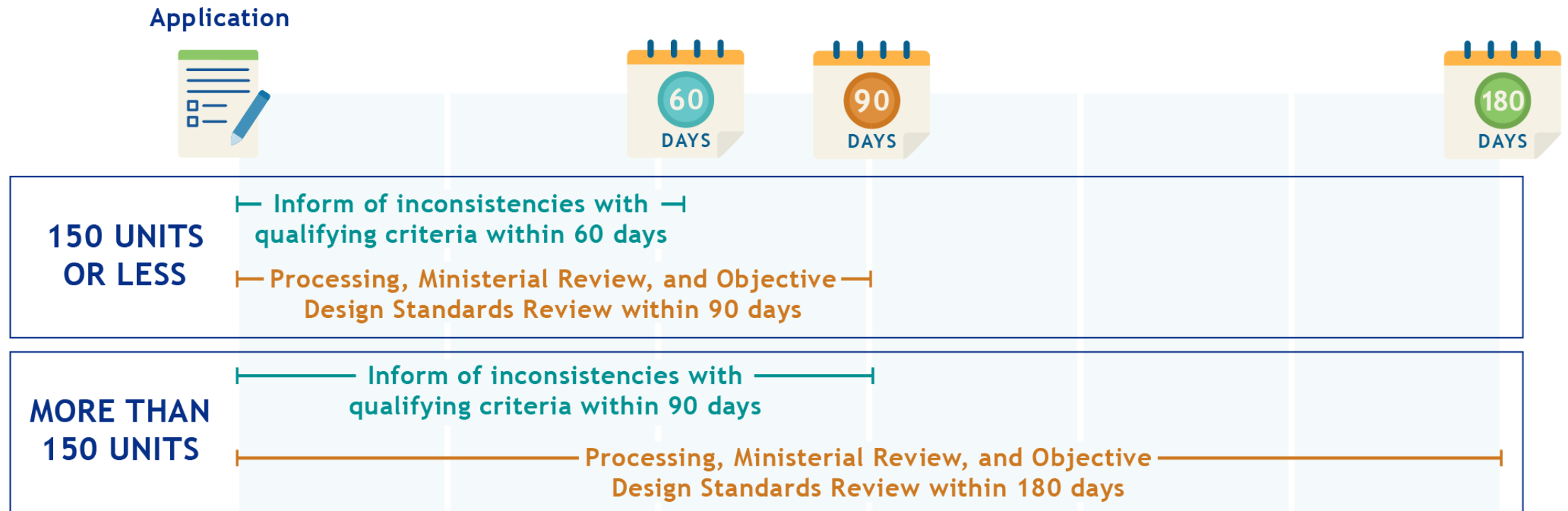
Learning Quiz Question 2 - Answer

For AB 2011 MH what additional site condition applies?

- A. Has at least 50 feet of frontage on a commercial corridor
- B. Has never had residential uses
- C. Site currently has commercial uses
- D. Any vacant parcel

Answer is A

Ministerial Review Process (All Projects)



If applicants are not notified of inconsistencies within applicable timeline, then project is deemed compliant with qualifying criteria



Learning Quiz Question 3

Two-step project review process for AB 2011:

- (1) Review for qualifying criteria, and
- (2) Complete the ministerial process

How long do you have to process these two steps?

- A. The legislature did not put in a deadline for processing applications
- B. Depending on the size of the development, 60 or 90 days for the first step and 90 or 180 days for the second step
- C. Depending on the size of the development, 75 or 95 days for the first step and 125 or 190 days for the second step

Learning Quiz Question 3 - Answer

Two-step project review process for AB 2011:

- (1) Review for qualifying criteria, and
- (2) Complete the ministerial process

How long do you have to process these two steps?

- A. The legislature did not put in a deadline for processing applications
- B. Depending on the size of the development, 60 or 90 days for the first step and 90 or 180 days for the second step
- C. Depending on the size of the development, 75 or 95 days for the first step and 125 or 190 days for the second step

Answer is B

Affordable Housing Project Requirements 1

- 100% of units at low-income
- Default density or greater (20 or 30 du/acre)
- Apply site's existing multi-family zoning or zoning for closest site allowing the default density
- Check Summary Document for details

AB 2011 100% Affordable Housing Project Criteria



* AB 2011 defines “principally permitted use” as a use that can occupy more than 1/3 of sf without a CUP

Affordable Housing Project Requirements 2

Detailed Summary

- 100% of units at low-income households at affordable housing cost or at California Tax Credit Allocation Committee (CTCAC) rent
- Project density greater than or equal to default density to accommodate affordable housing (20 du/acre or 30 du/acre in ABAG region)
- Use objective standards from the zone has higher density:
 - (1) existing zoning designation if residential multifamily permitted **OR**
 - (2) zoning designation for closest site allowing the default density for low-income households

Mixed-Income Housing Project Requirements

- 11 general criteria plus 7 additional including:
 - 20 acres or smaller
 - No demolition of affordable housing, rent-controlled housing or housing occupied by tenants in last 10 years
 - No demolished residential use within last 10 years
 - Not on a site with 1-4 existing dwelling units
 - No demolition of a historic structure
 - Not zoned for single-family
 - Must provide required notice to commercial tenants and relocation assistance

AB 2011 Mixed Income Housing Project Criteria



└ — At least 50' frontage — ┐
along commercial corridor with
70'-150' right-of-way

* AB 2011 defines “principally permitted use” as a use that can occupy more than 1/3 of sf without a CUP

Mixed-Income Housing Affordability


- Rental Projects
 - 8% very low-income and 5% extremely low income or 15% low income
 - 55-year deed restriction
 - “Affordable rent” per Health & Safety Code Sec. 50053
- Owner-Occupied Projects
 - 30% moderate or 15% low income
 - 45-year deed restriction
 - “Affordable housing cost” per Health & Safety Code Sec. 50052.5
- Local inclusionary rules prevail if greater affordability

Mixed-Income Housing Development Standards


- Defines standards for density, height and setbacks
- Cannot require parking except bicycle, electric vehicle and disabled spots
- Incorporates objective zoning, subdivision and design review standards for either:
 - Closest zone allowing required multi-family residential density **OR**
 - If required density does not exist, zone allowing greatest multi-family residential density in the jurisdiction

Mixed-Income Housing Density

DENSITY SHALL MEET
OR EXCEED THE FOLLOWING:

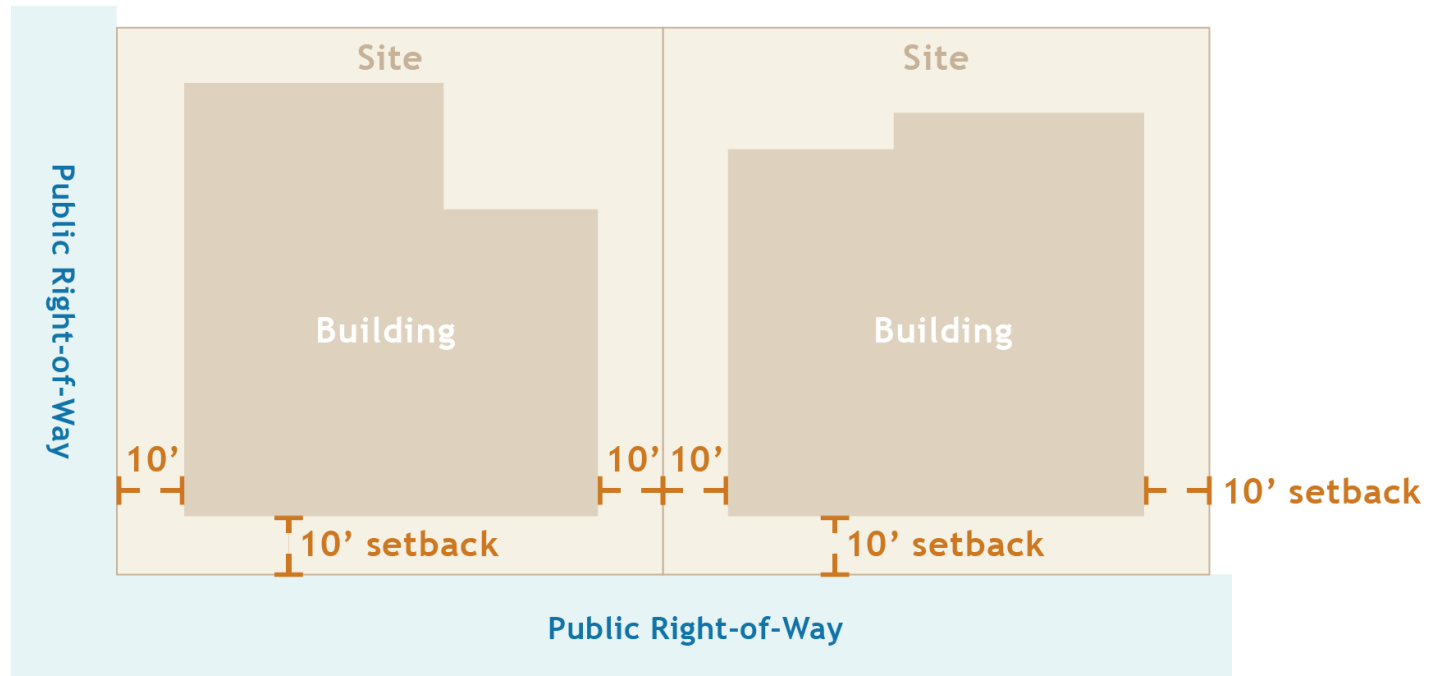
	<div>Site</div> <div>Site size less than 1 acre</div>	<div>Commercial Corridor ROW <100'</div> <div>Site</div> <div>Site size 1 acre or more</div>	<div>Commercial Corridor ROW >100'</div> <div>Site</div> <div>Site size 1 acre or more</div>	<div>w/in 1/2 mile of major transit stop</div> <div>Site</div> <div></div>
Density Metropolitan Jurisdictions	30 du/acre	40 du/acre	60 du/acre	80 du/acre
Density Non-Metropolitan Jurisdictions	20 du/acre	30 du/acre	50 du/acre	70 du/acre

Mixed-Income Housing Height Limits

			Commercial Corridor ROW <100'	Commercial Corridor ROW >100'	 pop > 100k & w/in 1/2 mi. of major transit stop
	Site	Site	Site	Site	Site
HEIGHT LIMIT SHALL BE THE GREATER OF THE FOLLOWING:	Currently permitted height	35'	45'	65'	

Mixed-Income Housing Setbacks

- **Parking:** 25 feet from the commercial corridor
- **Front, ground floor and side:** depend on abutting uses



Check [Summary Document](#) for detailed information

Learning Quiz Question 4

What densities are allowed for metropolitan jurisdictions under the MH rules?

- A. 20-40 units per acre, depending on the site
- B. 30-80 units per acre, depending on the site
- C. 40-100 units per acre, depending on the site

Learning Quiz Question 4 - Answer

What densities are allowed for metropolitan jurisdictions under the MH rules?

- A. 20-40 units per acre, depending on the site
- B. 30-80 units per acre, depending on the site
- C. 40-100 units per acre, depending on the site

Answer is B

AB 2011 Other Considerations

- Opportunity to exempt parcels if other parcels are upzoned
- Eligible for density bonus, incentives, concessions, waivers or parking ratios
- Must comply with SB 330 (Gov. Code § 663300(d)) replacement housing requirements even if not in affected city/county
- Must include AB 2011 projects in Annual Progress Report

Q & A

AB 2011 Learning Activity

Example 1: Site Eligibility

- **Location:** Metropolitan jurisdiction
- **Site:**
 - 3 acres
 - 75 foot wide street
 - 95 feet of street frontage
- **Current Zoning:** 50% Retail by right
- Meets other site & project criteria
- Is it eligible for AH or MIH?

AB 2011 Mixed Income Housing Project Criteria



AB 2011 100% Affordable Housing Project Criteria



* AB 2011 defines “principally permitted use” as a use that can occupy more than 1/3 of sf without a CUP

MIH	AH
Yes	Yes

Example 1: Development Standards

- **Location:** Metropolitan jurisdiction
- **Site:**
 - 3 acres
 - 75 ft wide street
 - 95 ft of street frontage
- **Current Zoning:**
 - 50% Retail by right
 - 30 DUA with a CUP
 - 30 ft height limit
- Meets other site & project criteria
- **Project:** 50 DUA and 70 ft tall
- Does it meet the AB 2011 AH/MIH density and height standards?

Example 1: AH Density & Height

- **Location:** Metropolitan jurisdiction
- **Site:**
 - 3 acres
 - 75 ft wide street
 - 95 ft of street frontage
- **Current Zoning:**
 - 50% Retail by right
 - 30 DUA with a CUP
 - 30 ft height limit
- Meets other site & project criteria
- Does it meet the AH standards?
 - Requires at least default density
 - If site allows default density then height limit is taken from existing zoning

Project	Proposed Density 50 DUA	Proposed Height 70 feet tall
AH	Yes Exceeds default density	No Height limit is 30 ft

Example 1: MIH Density

- **Location:** Metropolitan jurisdiction
- **Site:** 3 acres
- Does it meet density standards?

Project	Proposed Density 50 DUA
MIH	Yes Min density is 40 DUA

DENSITY SHALL MEET OR EXCEED THE FOLLOWING:

	<div>Site</div> <div>Site size less than 1 acre</div>	<div>Commercial Corridor ROW <100'</div> <div>Site</div> <div>Site size 1 acre or more</div>	<div>Commercial Corridor ROW >100'</div> <div>Site</div> <div>Site size 1 acre or more</div>	<div>w/in 1/2 mile of major transit stop</div> <div>Site</div>
<div>Density Metropolitan Jurisdictions</div>	30 du/acre	40 du/acre	60 du/acre	80 du/acre
<div>Density Non-Metropolitan Jurisdictions</div>	20 du/acre	30 du/acre	50 du/acre	70 du/acre

Example 1: MIH Height

- Site: 75 ft wide street
- Does it meet density standards?

Project	Proposed Height 70 ft tall
MIH	No Height limit is 35 feet

		Commercial Corridor ROW <100'	Commercial Corridor ROW >100'	pop > 100k & w/in 1/2 mi. of major transit stop
		Site	Site	Site
HEIGHT LIMIT SHALL BE THE GREATER OF THE FOLLOWING:	Currently permitted height	35'	45'	65'

Example 1: Standards Review

- **Location:** Metropolitan jurisdiction
- **Site:**
 - 3 acres
 - 75 ft wide street
 - 95 ft of street frontage
- **Current Zoning:**
 - 50% Retail by right
 - 30 DUA with a CUP
 - 30 ft height limit
- Meets other site & project criteria

- Does it meet the AB 2011 AH/MIH density and height standards?

Project	Proposed Density 50 DUA	Proposed Height 70 feet tall
AH	Yes Exceeds default Density	No Height limit is 30 ft
MIH	Yes Min density is 40 DUA	No Height limit is 35 ft

Example 2: Site Eligibility

- **Location:** Metropolitan jurisdiction
- **Site:**
 - 10 acres
 - 125 ft wide street
 - 200 ft of street frontage
 - ¼ mile from BART
- **Current Zoning:**
 - 75% Office by right
 - 30 DUA with a CUP
 - 60 ft height limit
- Meets other site & project criteria
- Is it eligible for AH or MIH?

AB 2011 Mixed Income Housing Project Criteria



AB 2011 100% Affordable Housing Project Criteria



* AB 2011 defines “principally permitted use” as a use that can occupy more than 1/3 of sf without a CUP

MIH	AH
Yes	Yes

Example 2: AH Density & Height Answer

- **Location:** Metropolitan jurisdiction
- **Site:**
 - 10 acres
 - 125 ft wide street
 - 200 ft of street frontage
 - ¼ mile from BART
- **Current Zoning:**
 - 75% Office by right
 - 30 DUA with a CUP
 - 60 ft height limit
- Meets other site & project criteria

- Does it meet the AB 2011 AH standards?
 - Project exceeds default density
 - Site allows default density and has 60 ft height limit


Project	Proposed Density 45 DUA	Proposed Height 55 ft tall
AH	Yes Exceeds default density	Yes Height limit is 60 ft

Example 2: MIH Density Answer

- **Location:** Metropolitan jurisdiction
- **Population:** 115K
- **Site:** ¼ mile from BART
- Does it meet density standards?

Project	Proposed Density 45 DUA
MIH	No Min density is 80 DUA

DENSITY SHALL MEET OR EXCEED THE FOLLOWING:

	<div>Site</div> <div>Site size less than 1 acre</div>	<div>Commercial Corridor ROW <100'</div> <div>Site</div> <div>Site size 1 acre or more</div>	<div>Commercial Corridor ROW >100'</div> <div>Site</div> <div>Site size 1 acre or more</div>	<div>w/in 1/2 mile of major transit stop</div> <div>Site</div> <div>  </div>
<div>Density Metropolitan Jurisdictions</div>	30 du/acre	40 du/acre	60 du/acre	80 du/acre
<div>Density Non-Metropolitan Jurisdictions</div>	20 du/acre	30 du/acre	50 du/acre	70 du/acre

Example 2: MIH Height Answer

- Location: Metropolitan jurisdiction
- Population: 115K
- Site: ¼ mile from BART

Project	Proposed Height 55 ft tall
MIH	Yes Height limit is 65 feet

		Commercial Corridor ROW <100'	Commercial Corridor ROW >100'	pop > 100k & w/in 1/2 mi. of major transit stop
	Site	Site	Site	Site
HEIGHT LIMIT SHALL BE THE GREATER OF THE FOLLOWING:	Currently permitted height	35'	45'	65'

Example 2: Standards Review

- **Location:** Metropolitan jurisdiction
- **Site:**
 - 3 acres
 - 75 ft wide street
 - 95 ft of street frontage
- **Current Zoning:**
 - 50% Retail by right
 - 30 DUA with a CUP
 - 30 ft height limit
- Meets other site & project criteria

- Does it meet the AB 2011 AH/MIH density and height standards?

Project	Proposed Density 50 DUA	Proposed Height 70 feet tall
AH	Yes Exceeds default Density	No Height limit is 30 ft
MIH	Yes Min density is 40 DUA	No Height limit is 35 ft

Review Timeline Scenario

Scenario:

- Developer submits as AB 2011 MH Project with 90 units
- City takes 50 days to inform the developer of inconsistencies with project criteria
- City deems it not eligible for two reasons:
 - Requires demolition of an existing historic structure
 - Site is 250 feet from a freeway

Questions:

Did the City meet the timeline?

Is the City right that the project does not meet the qualifying criteria?

Review Timeline Solution



If applicants are not notified within these timelines, project is deemed compliant.



Review Timeline Answer

Scenario:

- A 90 unit AB 2011 MH project
- City takes 50 days to inform the developer of inconsistencies with site & project criteria:
 - Requires demolition of an existing historic structure
 - Site is 250 feet from a freeway

Questions:

Did the City meet the timeline?

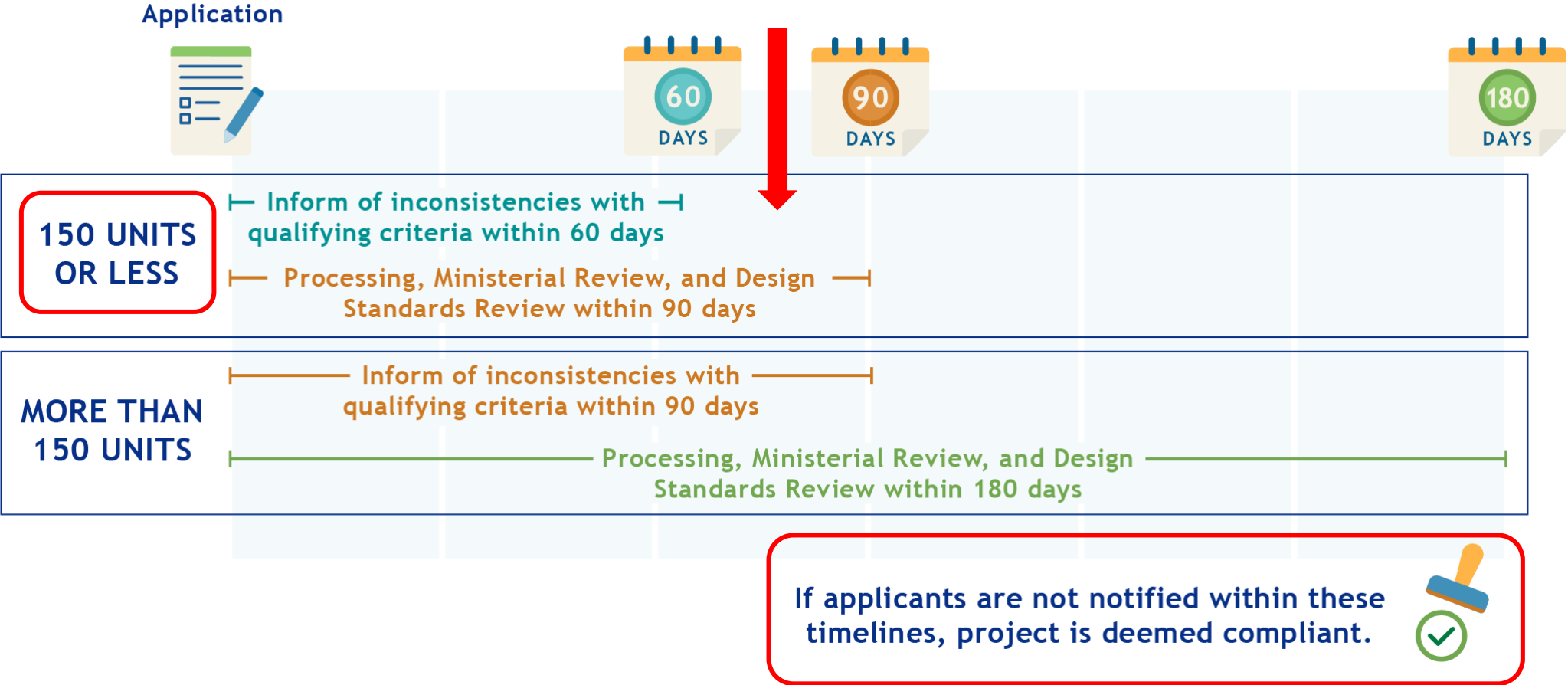
YES

Is the City right that the project does not meet the qualifying criteria?

YES

Review Timeline Follow-up

What if the city takes 75 days to inform the developer?



Overview of SB 6

SB 6 Big Picture

- Much less prescriptive than AB 2011
- Stricter labor standards than AB 2011
- No specified approval process (unless invoking SB 35)
 - No prescribed review timelines
 - No ministerial process
 - CEQA applies
- Developers will likely use SB 6 if the project doesn't qualify for AB 2011

Site & Project Requirements

- Site:
 - Office, retail or parking principally permitted use
 - 20 acres or less
 - Within an urbanized area/urban cluster (urban areas)
 - Not on or adjoined to site with more than one-third industrial uses
- Project:
 - (1) 100-percent residential **OR**
 - (2) mixed-use project with at least 50% of square feet residential
 - **AND** consistent with Plan Bay Area 2050

SB 6 Project Criteria



* SB 6 does not define “principally permitted use”

Project Requirements

- Affordable housing is NOT required, except to:
 - Satisfy local inclusionary requirement
 - Qualify for SB 35
- Prevailing wage and “skilled and trained workforce”
 - Unless specific bidding process utilized
- Provide relocation assistance to qualified commercial tenants

Development Standards

- At least default density (20 or 30 du/acre)
- Incorporates objective zoning, parking, design, etc. for either:
 1. Closest parcel that allows default density **OR**
 2. Existing zoning for parcel if it allows density greater than default density
- Must comply with all other objective standards for parcel

Exempting Parcels from SB 6

- May exempt sites IF findings with substantial evidence of:
 - (1) Concurrently relocated lost density to other sites **OR**
 - (2) Accommodation of lost density on sites by allowing greater residential density than required by SB 6
- Replacement sites must:
 - (1) Be suitable for residential development **AND**
 - (2) Allow by-right development

Q & A

Understanding Developer Considerations

Project Criteria Review

SB 6 Project Criteria



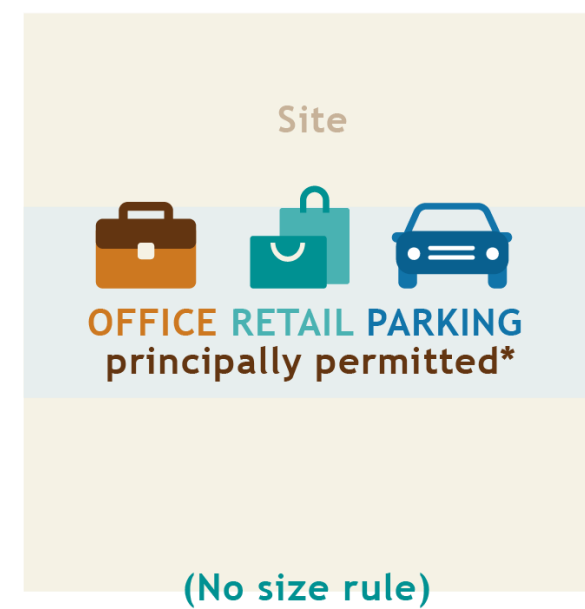
* SB 6 does not define "principally permitted use"

AB 2011 Mixed Income Housing Project Criteria



└ — At least 50' frontage — ┐
along commercial corridor with
70'-150' right-of-way

AB 2011 100% Affordable Housing Project Criteria



* AB 2011 defines "principally permitted use" as a use that can occupy more than 1/3 of sf without a CUP



AB 2011 vs. SB 6

	AB 2011	SB 6
Location	+ Permits residential development in commercial zone	+ Permits residential development in commercial zone
Project Type	- Multifamily residential projects only	+ May be a mixed-use project so long as 50% residential
Affordable Housing	- Must provide some affordable housing	+ No requirement to provide affordable housing*
CEQA	+ Exempt from CEQA	- Not exempt from CEQA*
Labor Requirements	+ Prevailing wage required	- Prevailing wage and “skilled and trained workforce” required
Approval Process	+ Streamlined, ministerial process	- No streamlined, ministerial process*

*Unless applicant is eligible for and invokes SB 35

AB 2011 vs. SB 35

	AB 2011	SB 35
Location	+ Permits residential development in commercial zone	- Must be zoned or planned for residential or mixed-use development
Project Type	- Multifamily residential projects only	+ May be a mixed-use project so long as 2/3 residential
Affordable Housing	- Must provide some affordable housing	- Must provide at least 10, 20 or 50% affordable housing
CEQA	+ Exempt from CEQA	+ Exempt from CEQA
Labor Requirements	- Prevailing wage required	- Prevailing wage required
Approval Process	+ Streamlined, ministerial process	+ Streamlined, ministerial process
Other	+ No required tribal consultation	- Required tribal consultation process

SB 6 Expansion of SB 35

	SB 35	SB 6
Location	<ul style="list-style-type: none"> Urbanized infill site Residential or mixed-use zone Must comply with Gov. Code Sec. 65914.3(a)(6)(A)-(K) 	<ul style="list-style-type: none"> Site where office, retail or parking are principally permitted use
Project Type	<ul style="list-style-type: none"> 100-percent residential; or Mixed-used projects with at least 2/3rd residential 	<ul style="list-style-type: none"> 100-percent residential; or Mixed use project with at least 50% residential
Labor Requirements	<ul style="list-style-type: none"> Prevailing wage required 	<ul style="list-style-type: none"> Prevailing wage and “skilled and trained workforce” required
Affordable Housing	<ul style="list-style-type: none"> Must provide at least 10, 20 or 50% affordable housing 	<ul style="list-style-type: none"> Must provide at least 10, 20 or 50% affordable housing
Approval Process	<ul style="list-style-type: none"> Same as AB 2011 except tribal consultation required 	<ul style="list-style-type: none"> Same as AB 2011 except tribal consultation required

Learning Quiz Question 5

Where do AB 2011 and SB 6 permit residential development?

- A. Any parcel that abuts a commercial corridor
- B. Where office, retail or parking is permitted by right as principal use
- C. Where industrial is permitted by right as principal use
- D. Any vacant parcel
- E. All of the above

Learning Quiz Question 5 - Answer

Where do AB 2011 and SB 6 permit residential development?

- A. Any parcel that abuts a commercial corridor
- B. Where office, retail or parking is permitted by right as principal use
- C. Where industrial is permitted by right as principal use
- D. Any vacant parcel
- E. All of the above

Answer is B

Policy Decisions and Action Items

Implementing Ordinance(s)

- Both bills allow but do not require jurisdictions to adopt implementing ordinances
- A jurisdiction could adopt:
 - Separate ordinances for each law
 - One ordinance that covers options for residential development in “zones where commercial, retail, or parking are principally permitted uses”

Recommended Clarifications/Actions

- Define “project site”
- Clarify how “closest parcel” will be determined
- Prepare maps of eligible parcels:
 1. Where additional density and height may apply
 2. By project type that applies (AB 2011 AH/MIH and SB 6)

Policy Decisions

- Decide if parcels will be exempted and how density will be reallocated
- Determine how to enforce relocation assistance requirements for qualified commercial tenants and displaced residents
- Decide if and how jurisdiction will monitor labor requirements including reviewing reports from developers

Learning Quiz Question 6

Actions to prepare for implementation:

- A. Brief council and commissions
- B. Be ready for applications
- C. Pass an implementing ordinance
- D. Retire
- E. Designate some sites as exempt for SB 6
- F. Set up a program for business relocation assistance
- G. No need to do anything, I'm feeling groovy

Learning Quiz Question 6 - Answer

Actions to prepare for implementation:

- A. Brief council and commissions
- B. Be ready for applications
- C. Pass an implementing ordinance
- D. Retire
- E. Designate some sites as exempt for SB 6
- F. Set up a program for business relocation assistance
- G. No need to do anything, I'm feeling groovy

Answers are A, B, C, E & F

Q & A



Thank you

For more information, contact the Regional Housing Technical Assistance Program, HousingTA@bayareametro.gov