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GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (Heading of Title 7 amended by Stats. 1974, Ch. 1536.)

DIVISION 1. PLANNING AND ZONING [65000 - 66342] (Heading of Division 1 added by Stats. 1974, Ch. 1536.)

CHAPTER 4.1. Affordable Housing and High Road Jobs Act of 2022 [65912.100 - 65912.140] (Chapter 4.1 added by Stats. 2022, Ch. 647, Sec. 3.)

ARTICLE 2. Affordable Housing Developments in Commercial Zones [65912.110 - 65912.114] (Article 2 added by Stats. 2022, Ch. 647, Sec. 3.)

65912.110. Notwithstanding any inconsistent provision of a local government's general plan, specific plan, zoning ordinance, or regulation, a development proponent may submit an application for a housing development that shall be a use by right and that shall be subject to a streamlined, ministerial review pursuant to Section 65912.114 if the proposed housing development satisfies all of the requirements in Sections 65912.111, 65912.112, and 65912.113.

(Added by Stats. 2022, Ch. 647, Sec. 3. (AB 2011) Effective January 1, 2023. Operative July 1, 2023, pursuant to Sec. 7 of Stats. 2022, Ch. 647. Repealed as of January 1, 2033, pursuant to Sec. 65912.105.)

65912.111. A development project shall not be subject to the streamlined, ministerial review process provided by Section 65912.114 unless the development is proposed to be located on a site that satisfies all of the following criteria:

(a) It is located in a zone where office, retail, or parking are a principally permitted use.

(b) It is a legal parcel or parcels that meet either of the following:

(1) It is within a city where the city boundaries include some portion of an urbanized area, as designated by the United States Census Bureau.

(2) It is in an unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urbanized area, as designated by the United States Census Bureau.

(c) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For purposes of this subdivision, parcels that are only separated by a street, pedestrian path, or bicycle path shall be considered to be adjoined.

(d) (1) It is not on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use.

(2) For purposes of this subdivision, parcels only separated by a street shall be considered to be adjoined.

(3) For purposes of this subdivision, "dedicated to industrial use" means any of the following:

(A) The square footage is currently being used as an industrial use.

(B) The most recently permitted use of the square footage is an industrial use, and the site has been occupied within the past three years.

(C) The site was designated for industrial use in the latest version of a local government's general plan adopted before January 1, 2022, and residential uses are not principally permitted on the site.

(e) It satisfies the requirements specified in paragraph (6) of subdivision (a) of Section 65913.4, exclusive of clause (iv) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 65913.4.

(f) The development is not located on a site where either of the following apply:

(1) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(2) The existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(g) For a site within a neighborhood plan area, the neighborhood plan applicable to the site permitted multifamily housing development on the site.

(h) For a vacant site, the site satisfies both of the following:

(1) It does not contain tribal cultural resources, as defined by Section 21074 of the Public Resources Code, that could be affected by the development that were found pursuant to a consultation as described by Section 21080.3.1 of the Public Resources Code and the effects of which cannot be mitigated pursuant to the process described in Section 21080.3.2 of the Public Resources Code.

(2) It is not within a very high fire hazard severity zone, as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code or as designated pursuant to subdivisions (a) and (b) of Section 51179.

(Amended by Stats. 2024, Ch. 272, Sec. 4. (AB 2243) Effective January 1, 2025. Repealed as of January 1, 2033, pursuant to Sec. 65912.105.)

65912.112. A development project shall not be subject to the streamlined, ministerial review process provided by Section 65912.114 unless the new units created by the development project meet all of the following affordability criteria:

(a) One hundred percent of the units within the development project, excluding managers' units, shall be dedicated to lower income households at an affordable cost, as defined by Section 50052.5 of the Health and Safety Code, or an affordable rent set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee.

(b) The units shall be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.

(Amended by Stats. 2024, Ch. 272, Sec. 5. (AB 2243) Effective January 1, 2025. Repealed as of January 1, 2033, pursuant to Sec. 65912.105.)

65912.113. A development project shall not be subject to the streamlined, ministerial review process provided by Section 65912.114 unless the development proposal meets all of the following objective development standards:

(a) The development shall be a multifamily housing development project.

(b) The residential density for the development will meet or exceed the applicable density deemed appropriate to accommodate housing for lower income households in that jurisdiction as specified in paragraph (3) of subdivision (c) of Section 65583.2.

(c) For any housing on the site located within 500 feet of a freeway, all of the following shall apply:

(1) The building shall have a centralized heating, ventilation, and air-conditioning system.

(2) The outdoor air intakes for the heating, ventilation, and air-conditioning system shall face away from the freeway.

(3) The building shall provide air filtration media for outside and return air that provide a minimum efficiency reporting value of 16.

(4) The air filtration media shall be replaced at the manufacturer's designated interval.

(5) The building shall not have any balconies facing the freeway.

(d) None of the housing is located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.

(e) The development will meet the following objective zoning standards, objective subdivision standards, and objective design review standards:

(1) The applicable objective standards shall be those for the zone that allows residential use at a greater density between the following:

(A) The existing zoning designation for the parcel if existing zoning allows multifamily residential use.

(B) The zoning designation for the closest parcel that allows residential use at a density proposed by the project.

(2) The applicable objective standards shall be those in effect at the time that the development application is submitted to the local government pursuant to this article.

(f) For any project that is the conversion of the use of an existing nonresidential use building to residential use, the local government shall not require the provision of common open space beyond what is already existing on the project site.

(g) For purposes of this section, "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(1) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(2) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this section if the development is consistent with the standards set forth in the general plan.

(Amended by Stats. 2024, Ch. 272, Sec. 6. (AB 2243) Effective January 1, 2025. Repealed as of January 1, 2033, pursuant to Sec. 65912.105.)

65912.114. (a) (1) A local government shall determine, in writing, whether a development submitted pursuant to this article is consistent or inconsistent with the objective planning standards specified in this article within the following timeframes:

(A) Within 60 days of submittal of the development proposal to the local government if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development proposal to the local government if the development contains more than 150 housing units.

(C) Within 30 days of submittal of any development proposal that was resubmitted to address written feedback provided by the local government pursuant to paragraph (2).

(2) (A) If a local government determines that a development submitted pursuant to this article is in conflict with any of the objective planning standards specified in this article, it shall provide the development proponent, in writing, with an exhaustive list of the standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, within the timeframes specified in paragraph (1).

(B) In any subsequent review of the application determined to be in conflict with the objective planning standards specified in this article, the local government shall not request the development proponent to provide any new information that was not stated in the initial list of items that were determined to be in conflict.

(3) Once the local government determines that a development submitted pursuant to this article is consistent with the objective planning standards specified in this article, it shall approve the development within the following timeframes:

(A) Within 60 days of the date that the development is determined to be consistent with the objective planning standards specified in this article, if the development contains 150 or fewer housing units.

(B) Within 90 days of the date that the development is determined to be consistent with the objective planning standards specified in this article, if the development contains more than 150 housing units.

(4) If the local government fails to provide the required documentation pursuant to paragraph (2), the development shall be deemed to satisfy the required objective planning standards.

(b) (1) For purposes of this section, a development is consistent with the objective planning standards if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(2) For purposes of this section, a development is not in conflict with the objective planning standards solely on the basis that application materials are not included, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(c) The determination of whether a proposed project submitted pursuant to this section is or is not in conflict with the objective planning standards is not a "project" as defined in Section 21065 of the Public Resources Code.

(d) Design review of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for design review. That design review shall be objective and be strictly focused on assessing compliance with criteria required for streamlined, ministerial review of projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submittal of the development to the local government, and shall be broadly applicable to developments within the jurisdiction. That design review shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section.

(e) If a development is located within an area of the coastal zone that is not excluded under clause (i), (ii), (iii), or (v) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 65913.4, the development shall require a coastal development permit pursuant to Chapter 7 (commencing with Section 30600) of Division 20 of the Public Resources Code. A public agency with coastal development permitting authority shall approve a coastal development permit if it determines that the development is consistent with all objective standards of the local government's certified local coastal program or, for areas that are not subject to a fully certified local coastal program, the certified land use plan of that area.

(f) (1) A development proposed pursuant to this article shall be eligible for a density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios pursuant to Section 65915.

(2) The utilization by a development proponent of incentives, concessions, and waivers or reductions of development standards allowed pursuant to Section 65915 shall not cause the project to be subject to a local discretionary government review process, or be considered a "project" under Division 13 (commencing with Section 21000) of the Public Resources Code, even if that incentive, concession, or waiver or reduction of development standards is not specified in a local ordinance.

(3) For purposes of this section, receipt of any density bonus, concession, incentive, waiver or reduction of development standards, and parking ratios to which the applicant is entitled under Section 65915 shall not constitute a basis to find the project inconsistent with the local coastal program.

(g) If a development proposed pursuant to this article demolishes or changes an existing use, the amount of a fee, as defined in Section 66000, imposed on the development shall be offset to account for the demolition or change so that the amount of the fee is attributable only to the development's incremental impact on public facilities or services. For purposes of this subdivision, an offset amount that exceeds the fee amount shall not be refundable or used to offset any other fee. This subdivision does not supersede or in any way alter or lessen the effect of the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 7.5 (commencing with Section 66015), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020)). For the purpose of this subdivision, "changes an existing use" means no demolition is proposed, but a current office, commercial, or similar use changes to residential use.

(h) The local government shall ensure that the project satisfies the requirements specified in Article 2 (commencing with Section 66300.5) of Chapter 12, regardless of whether the development is within or not within an affected city or within or not within an affected county.

(i) If the development is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(j) A local government may, by ordinance adopted to implement this article, exempt a parcel from this section before a development proponent submits a development application on a parcel pursuant to this article if the local government makes written findings establishing all of the following:

(1) The local government has identified one or more parcels that meet the criteria described in subdivisions (b) through (f) of Section 65912.111.

(2) (A) If a parcel identified in paragraph (1) would not otherwise be eligible for development pursuant to this chapter, the implementing ordinance authorizes the parcel to be developed pursuant to the requirements of this chapter. A parcel reclassified for development pursuant to this subparagraph shall be suitable for residential development. For purposes of this subparagraph, a parcel suitable for residential development shall have the same meaning as "land suitable for residential development," as defined in Section 65583.2.

(B) If a parcel identified in paragraph (1) would otherwise be eligible for development pursuant to this chapter, the implementing ordinance authorizes the parcel to be developed ministerially at residential densities above the residential density required in subdivision (b) of Section 65912.113.

(3) The substitution of the parcel or parcels identified in this subdivision for parcels reclassified pursuant to paragraph (2) will result in all of the following:

(A) No net loss of the total potential residential capacity in the jurisdiction relative to the total capacity that existed in the jurisdiction through the combined effect of this chapter and local law as of the date of the adoption of the ordinance. In making the no net loss calculation specified by this subparagraph, the local government need only factor in the parcels substituted and reclassified pursuant to this subdivision.

(B) No net loss of the total potential residential capacity of housing affordable to lower income households in the jurisdiction relative to the total capacity that existed in the jurisdiction through the combined effect of this chapter and local law as of the date of the adoption of the ordinance. In making the no net loss calculation specified by this subparagraph, the local government need only factor in the parcels substituted and reclassified pursuant to this subdivision.

(C) Affirmative furthering of fair housing.

(4) A parcel or parcels reclassified for development pursuant to subparagraph (A) of paragraph (2) shall be eligible for development pursuant to this chapter notwithstanding any contrary provision of the local government's charter, general plan, or ordinances, and a parcel or parcels reclassified for development pursuant to subparagraph (B) of paragraph (2) shall be developed ministerially at the densities and heights specified in the ordinance notwithstanding any contrary provision of the local government's charter, general plan, or ordinances.

(5) The local government has completed all of the rezonings required pursuant to subdivision (c) of Section 65583 for the sixth revision of its housing element.

(6) The local government has designated on its zoning maps which parcels have been exempted from this chapter and which parcels have been reclassified for development pursuant to this chapter. This information shall be made publicly available through the local government's internet website.

(k) (1) The local government shall, as a condition of approval of the development, require the development proponent to complete a phase I environmental assessment, as defined in Section 78090 of the Health and Safety Code.

(2) If a recognized environmental condition is found, the development proponent shall undertake a preliminary endangerment assessment, as defined in Section 78095 of the Health and Safety Code, prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(A) If a release of a hazardous substance is found to exist on the site, before the local government issues a certificate of occupancy, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with current state and federal requirements.

(B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, before the local government issues a certificate of occupancy, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with current state and federal requirements.

(l) A local government's approval of a development pursuant to this section shall, notwithstanding any other law, be subject to the expiration timeframes specified in subdivision (g) of Section 65913.4.

(m) Any proposed modifications to a development project approved pursuant to this section shall be undertaken pursuant to subdivision (h) of Section 65913.4.

(n) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive streamlined, ministerial review pursuant to this section.

(o) A local government shall issue a subsequent permit required for a development approved under this section pursuant to paragraph (2) of subdivision (i) of Section 65913.4.

(p) A public improvement that is necessary to implement a development that is approved pursuant to this section shall be undertaken pursuant to paragraph (3) of subdivision (i) of Section 65913.4.

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

(r) Section 65589.5 applies to a development proceeding pursuant to this article.

(Amended by Stats. 2024, Ch. 272, Sec. 7. (AB 2243) Effective January 1, 2025. Repealed as of January 1, 2033, pursuant to Sec. 65912.105.)