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SB 10 Provides a New Tool for Residential Upzoning

On September 16, 2021, the Governor signed Senate Bill No. 10, which allows a city or county to more easily upzone multi-family parcels to permit up to ten residential units. Notably, a local ordinance or general plan amendment that allows for this higher density will be exempt from review under the California Environmental Quality Act.

SB 10, which takes effect January 1, 2022, adds Government Code section 65913.5. In contrast to SB 9, which requires a local government to approve certain projects, under SB 10 cities and countries may elect to increase densities but are not required to do so.

To take advantage of this new law, a local government must clearly demarcate the areas that are zoned pursuant to the law. Zoned areas must be located within a statutorily defined transit-rich area or an urban infill site, which under the law must meet three criteria. The infill site must (1) allow for residential or residential-mixed use developments, (2) fall within the boundaries of a city or an urbanized area or urbanized cluster (as defined by the U. S. Census Bureau), and (3) be 75 percent surrounded by urban uses. As with many other recent laws, sites located in designated very high-risk fire hazard areas are disqualified unless fire mitigation measures have been adopted.

The law is limited with respect to zoning previously established or approved by local initiatives. An ordinance or general plan amendment increasing density under SB 10 cannot override a local initiative that designated publicly owned land as open space or for park or recreational purposes. Changes that supersede other zoning restrictions established by local initiative require a 2/3 vote of the local legislative body. Once the density of the site is increased under SB 10, the city or county cannot subsequently reduce the density. Under a companion bill, SB 478, lots zoned to accommodate 3 to 10 units must allow a floor area ratio of 1.00 to 1.25, depending on the number of units allowed.

Local governments should keep in mind that SB 10 does not create a CEQA exemption for developments on the re-zoned parcels. Any development of more than 10 units (excluding two ADUs and two JADUs) on those parcels may not be approved ministerially or by right and may not be exempt from CEQA. Instead, developments of more than 10 units on those parcels must be approved through a discretionary process and be subject to CEQA. Additionally, any future rezoning proposal to increase the density of the site must be subject to CEQA.

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