



**STAFF REPORT TO THE MARIN COUNTY
PLANNING COMMISSION**
2024 DEVELOPMENT CODE AMENDMENTS

Recommendation: Consider proposed amendments to the
Development Code and the Form Based
Code
Hearing Date: February 5, 2024

Agenda Item: No. 4

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Signature:

PROJECT SUMMARY

Planning staff is proposing a set of amendments to the Marin County Development Code to (1) implement the recent amendments to the Countywide Plan; (2) ensure consistency with recent State housing-related legislation; (3) cure internal inconsistencies within the Development Code; and (4) amend the Form Based Code to modify standards, rules, and procedures for the development of certain types of housing projects. The Development Code (Title 22) establishes zoning and subdivision regulations in the unincorporated areas of Marin County. No amendments are proposed to the Coastal Zoning Code (Title 20).

BACKGROUND

In drafting the amendments, staff follows the “CASE” principle of code - Clear, Affordable, Simple, and Enforceable. On December 8, 2023, Planning staff published a preliminary draft of the Development Code and FBC amendments for the public to review, called the “Public Review Draft.” Staff received comments on the Public Review Draft, which are provided as Attachment No. 4 to this report. The “Planning Commission Review Draft” provided in Attachment No. 1 contains no substantive changes from those amendments in the Public Review Draft.

The Planning Commission Review Draft consists of portions of Development Code Articles I, II, III, IV, VI, and VIII, with amendments shown in track changes format. While this draft shows all the substantive amendments, there are instances where there are cross-indexing, typographical, and formatting errors that will be corrected in the final draft. The amendments to the FBC are shown by providing both the existing pages and the pages with proposed amendments for comparison.

DISCUSSION

Every city and county in California has an existing zoning ordinance. The effect of that zoning ordinance on real property can be changed by adoption of an amending ordinance. There are two basic types of substantive amendments to zoning ordinances: (1) reclassification of the zoning applicable to a specific property, designating a change from one district to another commonly referred to as “rezoning,” and (2) changes in the permitted uses or development regulations on a property within a zone or countywide, commonly called “text amendments.” The first type of amendment involves a change to the zoning map without any change in the text of a zoning ordinance. The second type of amendment usually involves amending the text of the zoning ordinance, but not the map. The Development Code combines both the zoning code and the subdivision code. The proposed amendments are text amendments, and the major focus of the proposed amendments is to implement the policies of the 2023 Housing Element and update the regulations to codify recent changes to State housing laws.

Countywide Plan Consistency (Housing)

On January 24, 2023, the Board of Supervisors adopted the 2023-2031 Marin County Housing Element, Safety Element, and Environmental Impact Report, along with related Countywide Plan and Development Code amendments. The Housing Element includes 33 programs and policies intended to affirmatively further fair housing and address housing needs for all residents of the unincorporated areas of the County. While not all programs are directly related to the proposed Development Code amendments, the primary programs contributing to the proposed changes are outlined as follows:

- **Housing Goal 1, Policy 1.4: Development Code Certainty.** Promote development certainty and minimize discretionary review for affordable and special needs housing through amendments to the Development Code.
- **Program 2: By Right Approval.** Establish a ministerial review process for affordable housing projects.
- **Program 3: Replacement Housing.** Development on all nonvacant sites designated in the Housing Element, at all income levels, that contain existing residential units, or units that were rented in the past five years, is subject to the replacement housing requirements specified in Government Code sections 65583.2 and 65915.
- **Program 6: Efficient Use of Multi-Unit Land.** Establish minimum densities to ensure efficient use of the County’s multi-unit land and prohibit the construction of new detached single-unit homes on multi-unit zoned property.
- **Program 8: Development Code Amendments.** The County will amend the Development Code to address the following to facilitate development of a variety of housing types:
 - **Residential Use in Mixed-Use Development:** Amend the Development Code to allow at least 50 percent of the floor area as residential use.
 - **Height Limit:** Amend the Development Code to increase the height limit to 45 feet.

- **Density Bonus:** Amend the Development Code to address all recent changes to the State Density Bonus law.
- **Program 32: Comprehensive Review of Zoning and Planning Policies.** The County will conduct a comprehensive review of zoning and planning policies and make appropriate revisions.

The Development Code must be consistent with the Countywide Plan. According to the consistency test set forth by the Governor’s Office of Planning and Research, a zoning ordinance is consistent with a general plan where it furthers the objectives and policies of the general plan and does not obstruct their attainment. Most of the proposed Development Code amendments are intended to align with the Countywide plan and implement the polices and goals established therein.

State Housing Laws

In recent years, California’s housing crisis has been the primary focus of land use legislation, with over 100 substantial housing-related land use bills enacted since 2016. The 2023 legislative session continued this trend, with Governor Gavin Newsom signing a package of 56 housing-related bills on October 11, 2023, most of which address land use issues and took effect on January 1, 2024, with a few laws taking effect on July 1, 2024. While the majority of these new laws do not apply to Marin County, some of the new laws that apply to the County and affect the Development Code are listed below:

- **Senate Bill (SB) 4 (Wiener):** SB 4 Allows 100 percent affordable housing developments to be built on land owned by religious institutions and independent institutions of higher education (i.e., nonprofit private colleges or universities that grant undergraduate degrees, graduate degrees, or both). It also exempts those projects from the California Environmental Quality Act and requires construction workers to be paid the prevailing wage.
 - Recommended Action: Require SB 4 projects to comply with the Form Base Code by amending Sec. 22.14.100(B).
- **SB 423 (Wiener):** In 2017, lawmakers passed SB 35 as one of more than a dozen landmark housing bills. The law, which was set to sunset in 2026, requires cities and counties to approve certain housing projects that meet minimum affordable housing requirements if the jurisdiction has not met its state-mandated housing targets. SB 423 extends the provisions of SB 35 through 2036.
 - Recommended Action: Amend the Development Code to reflect revised inclusionary and exclusionary eligibility criteria currently in effect. Note that SB 35 does not currently apply to the County, which will be clarified in the amendments.
- **Assembly Bill (AB) 821 (Grayson):** AB 821 provides that if a local agency receives a development application for a project that is consistent with the general plan but not the zoning, the agency must either: 1) amend the zoning ordinance within 180 days from the receipt of the development application or 2) process the application based on the general plan standards and ignore inconsistent zoning standards.
 - Recommended Action: Revise Section 22.32.150 to align with the State’s definition of a mixed-use project to consist of two-thirds residential use.

- **AB 2011 (Wicks):** AB 2011 creates a ministerial, CEQA-exempt approval process for multifamily housing developments that meet specified objective standards and include specified below-market rate units on commercially zoned property. The streamlined review process is similar in some respects to SB 35 of 2017 and requires a prevailing wage. This bill was passed in the 2022-23 legislation session and took effect on July 1, 2023. It sunsets in 2033 unless extended.
 - Recommended Action: Amend the Development Code to codify the standards of this legislation.

- **AB 1287 (Alvarez):** AB 1287 substantially expands the Density Bonus Law to allow density bonus projects to further increase density. AB 1287 also increases the number of concessions available for projects. For example, if a project first allocates 15 percent of the maximum allowable residential density for very-low income households, that project will be eligible for a 50 percent increase in density. If the same project also set aside ten percent of the base project, it would be eligible for an additional 38.75 percent. As a result, the developer would be awarded a total bonus of up to 58.75 percent over the maximum allowable residential density. Under AB 1287, the amount of concessions that may be awarded is increased to four concessions for projects that include at least 16 percent of the units for very-low income households, and five concessions for projects that set aside 100% of the units for lower-income households. Finally, AB 1287 memorializes recent judicial opinions that severely limit the amount of information that local governments may require to determine whether concessions or waivers of development standards are necessary (See *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549; *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755.)
 - Recommended Action: Revise Chapter 22.24 of the Development Code to implement AB 1287 and other density bonus-related laws such as SB 713, which amends the definition of the base project under the State Density Bonus Law.

In the 2020-2021 legislative cycle, state lawmakers passed other laws aiming to enhance housing affordability and availability, covering issues such as studying different housing systems, land usage, parking reforms, tax exemptions for affordable housing, and CEQA exemptions for multi-family infill projects. Although these laws do not directly affect the Development Code, they're relevant to the County's application review process. These laws include the following:

- **AB 434 (Grayson):** Significantly expands the Department of Housing and Community Development (HCD)'s enforcement authority to enforce housing statutes including: ADU regulations, SB 35 regulations, the State Density Bonus law, SB 6 (2022), SB 9 (2022), AB 1218 (2023), SB 4 (2023), and SB 684 (2023), amongst others. Additionally, AB 1485 (Haney) expands the authorities of both HCD and the office of the Attorney General to have the unconditional right to represent the state in any legal action addressing a violation of specified housing laws by local governments.

- **AB 1218 (Lowenthal):** AB 1218 expands the replacement (or no net-loss) provisions of the Housing Crisis Act of 2019 (SB 330). Under AB 1218, development projects that demolish vacant or occupied protected units or that are located on sites where protected units were demolished in the last five years will be required to replace all units that currently exist or were demolished after January 2020.

- Recommended Action: No code amendment action is required; however, submittal requirements should be amended to include information regarding site existing conditions, including residences' information.
- **AB 1449 (Alvarez):** Provides a statutory exemption for an infill, 100 percent affordable housing developments under specific criteria.
 - Recommended Action: Utilize this new exemption where appropriate.
- **AB 1490 (Lee):** Authorizes adaptive reuse or retrofitting and repurposing of an existing building to create new residential units – an "allowable use" for qualifying 100 percent affordable housing projects, even if such a use conflicts with local plans, zoning ordinances or regulations (sites zoned for industrial use are exempt).
 - Recommended Action: No action required. This allows hotels and motels to be converted to residences without a discretionary review process, unless located in the coastal zones.
- **SB 6 (Beall):** Allows residential development on property zoned for retail and office space without needing a rezoning and allows project applicants to invoke the Housing Accountability Act to limit local discretion to deny or condition approval. Requires prevailing wage. This bill was passed in the 2022-23 legislation session and took effect on July 1, 2023. It sunsets in 2033 unless extended.
 - Recommended Action: Take no action as the bill is not anticipated to be invoked in the County, as AB 2011 provides far superior alternatives to developers.
- **SB 684 (Caballero):** Authorizes the subdivision of smaller multifamily-zoned parcels, streamlining the process and imposing a 60-day decision-making mandate.
 - Recommended Action: No action required as the law does not apply to the County. Provided for information purposes only.

Housing Overlay District (HOD) projects update

To date, the County has only received one development application under the HOD and FBC. The application was submitted pursuant to SB 330. The applicant involves a Housing Compliance Review (HCR) and a Vesting Tentative Map (VTM) approval for a housing development project at a lot located at 1501 Lucas Valley Road, San Rafael. The proposed project would entail the construction of 35 new single-family detached dwellings and nine Junior Accessory Dwelling Units (JADUs), which would be offered as deed-restricted inclusionary units. The application was deemed incomplete on December 15, 2023. Pursuant to SB 330, the applicants have 90 days to submit the information requested. See Gov. Code, § 65941.1(d)(2).

Senate Bill 9 Alternatives

Staff recommends the Planning Commission reconsider two components of the County's SB 9 regulations. The SB 9 regulations were signed into law on September 16, 2021, and took effect on January 1, 2022. Since the County codified the regulations, the Planning Division has not received a single SB 9 development application and has received only five Urban Lot Split applications, three of which were approved. Planning staff has consulted with numerous property owners about the possibility of an Urban Lot Split and one of the most common constraints is the prohibition on splitting the lots unless that have frontage on a publicly maintained right-of-way.

The following alternatives are presented for your consideration and planning staff would perform additional work to flesh these out at the direction of your commission.

Alternative 1: Increase the maximum size of a SB 9 house to 1,800 square feet.

A proposed residential development permitted pursuant to Section 22.32.184(I) is currently limited to 1,200 square feet. Your commission could consider whether a maximum of 1,800 square feet is appropriate. Given that a detached Accessory Dwelling Unit (ADUs) can be built up to 1,200 square feet in area, increasing the maximum threshold to 1,800 square feet would likely spur development of more SB 9 units without substantially increasing potential effects on the surrounding area. Further, unlike ADUs, SB 9 offers the opportunity to increase the supply of starter, modestly priced homes by encouraging the building of smaller houses on small lots. This would help achieve the County's equity goals by increasing the diversity of housing stock.

Alternative 2: Allow Urban Lot Splits on Private Streets

For urban lot splits, the County's SB 9 regulations under section 22.80.064(F)(2) requires that both lots adjoin a public right-of-way, except that if a lot is already developed with a residence, then it can adjoin a private street. Staff recommends the Planning Commission consider removing the requirement that urban lot splits can only be allowed on lots adjoining a publicly maintained right-of-way.

EQUITY IMPACT

The Development Code amendments implement the State housing laws and the Housing Element Update of 2023, both of which are intended to facilitate the development of housing at all income levels. Additionally, the overall purpose of the Development Code amendment is to provide clear and accessible development standards and regulations, which is the first critical step in development world. The Development Code will further the County's goal of providing adequate housing supply to meet the County's needs and the County's share of regional housing needs and to affirmatively further fair housing.

RECOMMENDATION

In conclusion, after your Commission has completed the workshop on February 5, 2023, and provided comments, Planning staff will make revisions to the amendments to reflect your Commission's comments. A Planning Commission hearing is scheduled on February 22, 2023, for your Commission to review the revised amendments, and consider a Resolution recommending approval of the amendments to the Board of Supervisors.

Review the proposed Development Code Amendments, receive public testimony, deliberate on the amendments and provide direction to staff.

Attachments:

1. Exhibit A-Planning Commission Draft 2024 Development Code Amendments
2. Exhibit B- Planning Commission Draft FBC_Proposed_Amendments_2024
3. Guide to the 2023 Development Code Amendments
4. AB 2011 Site Inventory List and Map
5. Letters from the public