

Homes in Commercial Zones Model Legislation

Section 1. Title

This Act shall be known and may be cited as the “Homes in Commercial Zones Act.”

Section 2. Purpose and Legislative Intent

The purpose of this Act is to increase the availability of residential and mixed-use developments on sites zoned for commercial, office, retail, or parking uses. This Act allows residential projects as a permitted use without requiring a zone change. The Act also establishes a streamlined ministerial review process to expedite approvals and preempts conflicting local ordinances. By providing consistent statewide standards, this Act is intended to increase housing supply, improve housing affordability, and support residential and mixed-use development in commercially active areas.

Section 3. Definitions

For the purposes of this Act:

- (a) “Census Urban Area” means an urban area identified by the United States Census Bureau in the most recent decennial census.
- (b) “Commercial Zone” refers to areas designated under the local zoning code primarily for commercial, office, retail, or parking uses. This excludes zones primarily designated for industrial purposes, including heavy industrial, manufacturing, warehousing, logistics, or similar industrial uses, except where residential uses are expressly permitted under the applicable municipal zoning regulations. For the purposes of this Act, “parking uses” refer exclusively to sites zoned solely for parking purposes, with no allowance for other types of development or uses.
- (c) “Eligible Project” means a residential or mixed-use development that meets the criteria outlined in this Act for streamlined approval.
- (d) “Floor Area Ratio” or “FAR” means the ratio of the total gross floor area of all buildings on a lot to the total area of that lot.
- (e) “Generally Applicable” means a requirement that is imposed uniformly as part of a Local Authority’s generally applicable residential regulations, and that meets at least one of the following:

- (1) it is generally applicable to all residential development in the same zone;
or
 - (2) it is generally applicable to all ministerial residential permits in the jurisdiction; or it is applied uniformly to all new residential construction of a similar building type.
- (f) “Local Authority” means a city, county, city and county, or other local jurisdiction with authority to approve land use, zoning, subdivision, site plan, design review, building permit, or other development approvals for an Eligible Project.
 - (g) “Ministerial Review” means a non-discretionary approval process based on Objective Standards, without public hearings, subjective local review, or protest periods.
 - (h) “Mixed-Use Development” means a project that includes both residential and non-residential components, with the residential portion making up at least 50% of the total floor area.
 - (i) “Objective Standard” means a zoning, subdivision, design, or development standard that is clear and measurable and does not require personal or subjective judgment by a public official or Local Authority.
 - (j) “Serviced Lot” means a legal parcel that is connected to municipal water and sewer systems or has access to functionally equivalent water and sewer infrastructure sufficient to serve the proposed development.

Section 4. Eligibility for Residential Use in Commercial Zones

- (a) In any Census Urban Area, residential and mixed-use developments shall be permitted by right on legal parcels that meet all of the following criteria:
 - (1) Are located in Commercial Zones or are designated for commercial, office, retail, or parking uses; and
 - (2) Are Serviced Lots connected to municipal water and sewer systems, or have access to equivalent water and sewer infrastructure to ensure adequate service availability.
- (b) Projects on eligible sites are not required to undergo zoning changes, special exceptions, variances, conditional use reviews, or comprehensive plan amendments.

Section 5. Development Standards

- (a) A Local Authority shall permit an Eligible Project at a residential density of not less than the greater of:
 - (1) the highest base residential density permitted by right in any residential or mixed-use zone within the jurisdiction; or
 - (2) seventy-five (75) dwelling units per acre.

Each component of a density calculation, including base density and bonus density, that results in a fractional dwelling unit shall be separately rounded up to the next whole number.

- (b) Height restrictions shall not be imposed on Eligible Projects that are lower than:
 - (1) The maximum height allowed within a one-mile radius of the development site; or
 - (2) A minimum height of three stories or 45 feet, whichever is greater.
- (c) An Eligible Project shall be permitted a Floor Area Ratio of not less than the greater of:
 - (1) 150 percent of the highest Floor Area Ratio permitted by right for residential or mixed-use development within the jurisdiction; or
 - (2) a Floor Area Ratio of 2.0

Section 6. Preemption of Local Zoning Restrictions

- (a) Notwithstanding any local ordinance, rule, regulation, or policy to the contrary, the provisions of this Act shall preempt all conflicting local laws, which shall be deemed null and void to the extent of such conflict.
 - (1) Notwithstanding any other law, a Local Authority shall not impose an Objective Standard that would physically or financially preclude an Eligible Project at the density, Floor Area Ratio, height, or mixed-use intensity authorized by this Act.
- (b) A Local Authority may apply Objective Standards to an Eligible Project only to the extent those standards are Generally Applicable and do not conflict with this Act.

- (c) For purposes of this Section, a standard physically or financially precludes development if it, alone or in combination with other standards, makes impracticable the permitting, siting, construction, or financing of an Eligible Project authorized by this Act.
 - (1) Nothing in this Section prohibits a Local Authority from applying Generally Applicable building, fire, health, safety, utility-connection, floodplain, or historic-preservation standards, provided those standards do not physically or financially preclude development authorized by this Act.

Section 7. Streamlined Approval Process

- (a) A Local Authority shall review an application for an Eligible Project through Ministerial Review. No public hearing, protest period, special exception, variance, conditional use review, comprehensive plan amendment, or other discretionary land use approval shall be required.
- (b) A Local Authority shall determine whether an application is complete within fifteen (15) days after submission.
- (c) If the application is incomplete, the Local Authority shall provide the applicant with one written notice that:
 - (1) identifies every missing item;
 - (2) identifies the Objective Standard, adopted code provision, or published application requirement that requires each item; and
 - (3) describes the information necessary to complete the application.
- (d) A Local Authority shall not subsequently require an item that could have been identified in the initial notice unless the item becomes necessary because of a material change made by the applicant or a change in applicable law.
- (e) If the Local Authority does not provide the required incompleteness notice within fifteen (15) days after submission, the application shall be deemed complete.
- (f) After an application is deemed complete, the Local Authority shall approve or deny the application within:
 - (1) fifteen (15) days for an Eligible Project containing fewer than one hundred fifty (150) dwelling units; or

- (2) thirty (30) days for an Eligible Project containing one hundred fifty (150) or more dwelling units.
- (g) If the Local Authority does not approve or deny the application within the applicable period, the land use entitlement authorized by this Act shall be deemed approved.
- (h) If a Local Authority denies an application or approves it subject to conditions, it shall provide a written determination that:
- (1) identifies each eligibility criterion, Objective Standard, or adopted code provision the application does not satisfy;
 - (2) states the factual basis for that determination; and
 - (3) identifies each change necessary to bring the application into compliance.
- (i) A Local Authority shall maintain a publicly accessible Ministerial Review process that identifies all required submission materials, applicable Objective Standards, and review deadlines. A Local Authority shall not require submission materials that were not publicly identified before the application was submitted.

Section 8. Environmental Exemptions and Compliance

- (a) A parcel located within one thousand six hundred (1,600) feet of the property boundary of a stationary source required to obtain a Title V operating permit under the federal Clean Air Act is not eligible under this Act.
- (b) Nothing in this Act prohibits the application of an Objective Standard establishing a setback from an active railroad right-of-way, controlled-access highway, or major utility easement where the setback is required by generally applicable state or federal safety law. Any such setback shall be limited to the minimum distance necessary to satisfy that law and shall not be applied more restrictively to an Eligible Project than to comparable development.

Section 9. Reporting and Accountability

- (a) Each Local Authority shall submit an annual report to the state housing agency detailing:
- (1) any ordinance adopted or amended to implement this Act;

- (2) the number of applications received under this Act;
- (3) the number of entitlements approved and denied under this Act;
- (4) the number of building permits issued and denied under this Act; and
- (5) the number of certificates of occupancy issued under this Act.

Section 10. Judicial Enforcement

- (a) An applicant or property owner aggrieved by a violation of this Act, including an unlawful denial, condition, or delay, may bring an action in a court of competent jurisdiction to enforce this Act.
- (b) If the applicant or property owner prevails, the court shall order the Local Authority to comply with this Act and shall award reasonable attorney's fees and costs. If the violation consists of a Local Authority's failure to act within a deadline established by Section 7, the application shall be deemed approved in accordance with that Section.

Section 11. Enforcement and Penalties

- (a) No additional state-level commission approval or local implementing ordinance shall be required to implement the provisions of this Act or to process Eligible Projects under its terms. A Local Authority's failure to adopt an implementing ordinance shall not relieve that Local Authority of its obligation to comply with this Act.
- (b) The [State housing authority or agency] shall monitor compliance with this Act.
- (c) If the [State housing authority or agency] determines that a Local Authority is not in compliance with this Act, it may refer the matter to the Attorney General, who shall be empowered to take necessary actions to ensure adherence to the provisions of this Act.
- (d) This Act shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, the maximum amount of housing.

Section 12. Severability

- (a) If any provision of this Act is found invalid, the remaining sections shall continue in full force and effect.

Section 13. Effective Date

- (a) This Act shall take effect on [Date], and shall apply to all local zoning ordinances and to applications submitted on or after that date.