**Model Ordinance for By-Right Approvals**

Establishes process for reviewing uses entitled to review as a “use by right” as defined in Government Code Section 65583.2.

**June 2024**

**Overview**

State laws require that certain uses be approved as a “use by right” as defined in Government Code Section 65583.2. This model ordinance provides a template that local jurisdictions can use to provide for by-right approvals as required by state law.

**Purpose**

The purpose of this material is to provide guidance, which agencies and other entities may use at their discretion. This guidance does not alter lead agency discretion in decision-making, independent judgment and analysis, and preparing environmental documents for project or governmental action subject to CEQA requirements. This material is for general information only and should not be construed as legal advice or legal opinion.

**ORDINANCE NO. \_\_\_\_\_\_\_\_**

**AN ORDINANCE OF THE [CITY/COUNTY] OF \_\_\_PROVIDING FOR BY-RIGHT APPROVALS AS REQUIRED BY STATE LAW.**

**WHEREAS,** provisions of the California Government Code require that certain uses be approved as a “use by right” as defined in Government Code Section 65583.2(i); and

**WHEREAS,** the Housing Element of the [City of XX/County of XX] provides that the [City/County] will adopt an amendment to its zoning ordinance providing for by-right approvals as required by state law; and

**WHEREAS,** *[if applicable]* a Public Notice of Availability of Proposed General Plan/Local Coastal Program Amendments was issued, which opened a six-week public review period that ran from \_\_\_\_\_\_\_\_, 202\_ to \_\_\_\_\_\_\_\_\_, 202\_; and

**WHEREAS**, the Planning Commission of the [City/County] has reviewed the proposed amendments to the zoning ordinance at a duly and properly noticed public hearing on \_\_\_\_\_\_, and considered all evidence, including but not limited to public testimony and the evaluations and recommendations of staff, and has found that the proposed amendments are consistent with goals and policies of the [City’s/County’s] General Plan, and recommends adoption of the proposed amendments by the [City Council ("City Council")/County Board of Supervisors (“Board”)]; and

**WHEREAS,** the City Council conducted a duly and properly noticed public hearing on \_\_\_\_\_\_\_ to consider the proposed amendments to the zoning ordinance and considered all evidence, including but not limited to public testimony and the evaluations and recommendations of staff; and finds and determines that the proposed amendments to the Zoning Code are adopted pursuant to the [City’s/County’s] police power authority to protect the public health, safety, and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE [CITY COUNCIL OF THE CITY OF XX/BOARD OF SUPERVISORS OF THE COUNTY OF XX] AS FOLLOWS:**

# Incorporation of Recitals. The City Council/Board of Supervisors finds that the above Recitals are true and correct and are incorporated herein by reference.

# Amendments to Chapter XX of [City/County] Code. Section XX of Chapter XX of the [City/County] Zoning Code is [added/amended] to read as shown in Exhibit “A” attached hereto and incorporated herein by reference.

# California Environmental Quality Act (CEQA) Considerations. The [City Council/Board] finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (the common sense exemption) because it can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment, in that the ordinance merely implements the provisions of state law and includes no provisions that may result in a direct or indirect impact on the physical environment.

# *(IF APPLICABLE)* Coastal Plan. The Community Development Director, or designee, is hereby authorized to submit this Ordinance as a Local Coastal Program Amendment to the California Coastal Commission for their review and adoption.

# Severability. If any section, subsection, paragraph, sentence, clause or phrase of the Ordinance, or its application to any person or circumstance, is for any reason held to be invalid and unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The [City Council/Board] declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

# Effective Date. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption. (*If Coastal Commission approval is required, use following alternate language*: This Ordinance shall take effect upon approval of the California Coastal Commission.)

# Publication. The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five (5) days prior to the consideration of its adoption and again within fifteen (15) days after adoption indicating votes cast.

**INTRODUCED AND FIRST READ** at a regular meeting of the [City Council of the City of XX/Board of Supervisors of the County of XX] held on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 202\_; and thereafter **PASSED AND ADOPTED** at a regular meeting of the [City Council of the City of XX/Board of Supervisors of the County of XX], California, on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 202\_, by the following vote:

AYES: [Councilmembers/Supervisors] –

NOES: [Councilmembers/Supervisors] –

ABSENT: [Councilmembers/Supervisors] –

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 **[Mayor/Chair]**

**ATTEST:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
**[NAME]**

**[CITY/COUNTY CLERK]**

**APPROVED AS TO FORM:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
**[NAME]**

**[CITY ATTORNEY/COUNTY COUNSEL]**

**EXHIBIT “A”**

**Chapter XX.XX: By-right Approval**

**Sections**

**XX.XX.010 Purpose.**

**XX.XX.020 Definitions.**

**XX.XX.030 Eligibility for By-right Approval.**

**XX.XX.040 Permit Requirements.**

**XX.XX.050 Review of Application.**

**XX.XX.060 Required Findings.**

**XX.XX.070 Interpretation.**

**XX.XX.010. Purpose.**

This Chapter specifies the process for reviewing uses entitled to review as a “use by right” as defined in Government Code Section 65583.2. In enacting this Chapter, it is the intent of the [City/County] to implement State law as well as the goals, objectives, and policies of the [City’s/County’s] Housing Element of the General Plan.

**XX.XX.020. Definitions**

1. “By-right" shall mean that the local government's review of the project may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” under the California Environmental Quality Act as defined in Government Code Section 65583.2. [**Alternative definition** “By-right” has the same meaning as defined in Government Code Section 65583.2.]
2. “Permanent supportive housing” means housing as defined in Government Code Section 65650(a) serving the target population as defined in Government Code Section 65650(c) that meets all of the requirements of Government Code Sections 65650 et seq. or successor provision [and contains no more than 50 units (if located in a city with a population of less than 200,000 or the unincorporated area of a county with a population of less than 200,000, and the number of homeless persons is less than 1,500.)]
3. “Low barrier navigation center” means a facility as defined in Government Code Section 65660(a) that meets all of the requirements of Government Code Sections 65660 et seq.

**XX.XX.030. Eligibility for By-right Approval.**

*[****Note:*** *The following list includes a broad list of project types that require a by-right approval process in State law, but the list may be customized to meet the needs of your jurisdiction.]*

The following uses are eligible for by-right approval:

1. Projects that satisfy the criteria outlined in subparagraphs (1) and (2) below:
   1. Are located on sites listed as lower-income sites in the adopted housing element site inventory pursuant to Government Code Section 65583.2 subdivision (c) that are shown to have been either:
      1. vacant and listed in two prior housing element site inventories, or
      2. non-vacant and listed in a previous housing element site inventory; and, *[****Note:*** *There are a few different ways to reference housing element “reuse” sites****.*** *Sometimes “reused” sites have some special overlay or other designation. That designation could be referenced here. Alternatively, a list of eligible sites with addresses and APNs or a map could be provided to depict which sites are eligible. If these sites are clearly listed in the housing element, a jurisdiction could include a reference to the sites identified in the adopted housing element.]*
   2. Twenty (20) percent of the total number of housing units in the project are proposed to be available to lower-income households at affordable rent or affordable housing cost, as applicable.
2. Permanent supportive housing as defined in Government Code Section 65660 that meets all of the requirements of Government Code Sections 65660 et seq.
3. Low barrier navigation centers as defined in Government Code Section 65660 that meets all of the requirements of Government Code Sections 65660 et seq.
4. 100 percent affordable projects located on land that was owned by an independent institution of higher education or religious institution as described in Government Code Section 65913.16.
5. Other projects eligible under state law for by-right approval. [**Note:** Emergency shelters must be permitted in at least one zoning district by-right. Most jurisdictions have adopted emergency shelter ordinances with objective standards that comply with state law. Local agencies could choose to cross reference from their emergency shelter ordinance or use table to this section that describes the application review process.]

**XX.XX.040. Permit Requirements.**

An applicant for a project eligible for by-right zoning approval shall submit a ministerial plan permit for approval of the design. No discretionary permit or approval is required. [Except that, if the project is in the coastal zone, an application for a coastal development permit shall be submitted as required by Section \_\_\_\_\_\_\_\_.]

**XX.XX.050. Review of Application.**

1. For ministerial plan permit applications listed in this section, [the director], or designee, without notice or hearing, shall consider the application ministerially without discretionary review. When the application is in compliance with the relevant standards, the permit shall be issued. The decision may be appealed to planning commission only by the applicant or the owner of the subject property.
2. The application for the ministerial plan permit shall be reviewed for conformance with objective standards established by the General Plan, applicable Specific Plans, Zoning Code, design standards, and other adopted standards.
3. As provided by Government Code Section 65583.2(i), an eligible project is exempt from the California Environmental Quality Act.
4. Permanent supportive housing shall be reviewed consistent with the provisions of Government Code Sections 65650 *et seq*.

Low barrier navigation centers shall be reviewed consistent with the provisions of Government Code Sections 65650 et seq.

**XX.XX.060. Required Findings**

1. In granting a ministerial plan permit, [the director], or designee, shall issue a letter of approval and shall make the following findings:
   1. That the project is eligible for by-right approval under state law.
   2. That the project complies with all applicable objective zoning and other adopted standards, including but not limited to design review standards.
   3. That the project is granted subject to such applicable conditions as required to meet the standards of the use and zone in which it is located and to comply with applicable design standards.

**XX.XX.070. Interpretation.**

If any portion of this chapter conflicts with any applicable state law, state law shall supersede this chapter. Any ambiguities in this chapter shall be interpreted to be consistent with state law. Statutory references in this ordinance include successor provisions.