

CITY COUNCIL AGENDA ITEM NO. G.1
03/26/2024

SUBJECT: Assembly Bill (AB) 2011 application and Design Review informational item for the O'Hara Apartments project, located at the northwest corner of Lone Tree Way and O'Hara Avenue, and request for direction on future processing of AB 2011 projects.

DEPARTMENT: Community Development Department

STAFF: Alexis Morris, Director of Community Development
Miguel Contreras, Associate Planner

TITLE/SUMMARY

Assembly Bill (AB) 2011 application and Design Review informational item for the O'Hara Apartments project, located at the northwest corner of Lone Tree Way and O'Hara Avenue, and request for direction on future processing of AB 2011 projects.

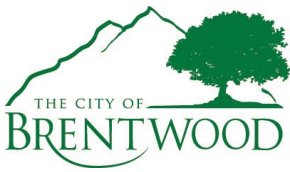
An AB 2011 application and Design Review (DR 24-002) was submitted on January 9, 2024, seeking ministerial, streamlined, approval of a proposal to build a 26-unit mixed-income, multi-family, apartment project. AB 2011 requires an agency to determine if a project would qualify for ministerial approval within 60 days of submittal of the development proposal. If the application is deemed consistent with the provisions of AB 2011, then the reviewing agency has 90 days, from the date of initial submittal, to conduct a design review and approve the project. This design review can only be objective and be strictly focused on assessing compliance with criteria required to qualify for ministerial approval.

This is an informational item to make the City Council aware that such an application was submitted to the City and has been reviewed by Staff. Based on compliance with the required criteria (as described below) staff has found that the project qualifies for streamlined, ministerial approval.

AB 2011 exempts qualifying projects from the provisions of the California Environmental Quality Act (CEQA).

FISCAL IMPACT

The project proponent, TA O'Hara, LLC, has paid a total of \$9,600 to process the application.



BACKGROUND AND PROJECT DESCRIPTION

AB 2011

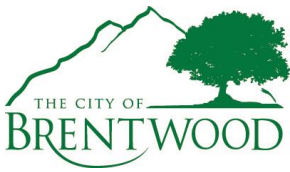
In 2022, Assembly Bill 2011 was signed into law. It is known as the “Affordable Housing and High Road Jobs Act of 2022” (see [Gov. Code section 65912.100](#) et seq.). Like much of California’s recent housing legislation, the bill essentially overrides local General Plan and zoning designations. Regardless of the General Plan designation since AB 2011 does not require consistency with the General Plan and focuses solely on limited, objective zoning requirements. In addition, GC § 65912.120 states that “[n]otwithstanding 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 65912.124 if the proposed housing development satisfies all of the requirements in Sections 65912.121, 65912.122, and 65912.123.” (Emphasis added.)

AB 2011 creates a ministerial, CEQA-exempt approval process for multifamily housing developments on sites within zones where either office, retail, or parking are a principally permitted use. Ministerial approval means that these projects are approved at an administrative/staff level without review by the Planning Commission or City Council. While the law provides for slightly different qualifying criteria based on whether a project is 100% affordable or a mixed-income project, any qualifying project must pay prevailing wages to construction workers and comply with certain labor standards.

In order to qualify for the AB 2011 ministerial approval, a project must comply with certain eligibility criteria generally known as the “site and project criteria,” the “affordability criteria,” and the “objective development standards criteria.” Among other things, those criteria include the following:

- inclusion of below market rate affordable units (mixed-income rental projects must include 8% of the total units as affordable to very low-income and 5% affordable to extremely low-income, or 15% affordable to low-income; mixed-income ownership projects must include 30% of the units as affordable to moderate income or 15% affordable to low-income)¹;
- payment of prevailing wages to all construction workers;

¹ Very-low income households earn 50% or less of the area median income (AMI) for Contra Costa County. Low-income households earn 80% or less of AMI, and moderate households earn 120% or less of AMI.



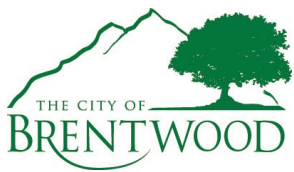
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- located in a zone where office, retail, or parking are a principally permitted use and abutting a “commercial corridor”;
- located on a site where 75% of the adjacent parcels are developed with urban uses that is not within 500 feet of a freeway or within 3,200 feet of an oil or natural gas extraction or refinery;
- not located within certain environmentally sensitive areas (e.g. prime farmland, wetlands, fire hazard zones, hazardous waste sites, flood plains) or on a site that requires demolition of certain types of housing or historic structures, or on a site governed by certain state mobile home laws; and
- confirmation that the project will meet certain density requirements based on a sliding scale of site size and other locational criteria (e.g. the project site must meet or exceed the greater of the following: the existing residential density permitted (if any); for sites less than 1 acre, a density of 30 units/acre; for sites of 1 or more acres on a commercial corridor less than 100 feet wide, a density of 40 units/acre; for sites of 1 or more acres on a commercial corridor greater than 100 feet wide, a density of 60 units/acre; and for sites within ½ mile of a major transit stop, a density of 80 units/acre).

Mixed-income projects (like the one described in this staff report) must comply with the following additional criteria:

- project site is 20 acres or less;
- project would not require the demolition of affordable housing, housing subject to rent control, housing occupied by tenants in the last 10 years, or a historic structure;
- there was not a previously-demolished residential use on the site in the past 10 years;
- site does not contain four or fewer dwelling units nor is zoned for housing (other than multifamily residential);
- notice is provided to commercial tenants and project complies with certain relocation assistance requirements; and
- affordable units are equitably distributed throughout the project and have the same bedroom/bathroom ratios and same quality finishes as the market rate units.

Projects meeting the above criteria that contain 150 units or less must be processed within 90 days, and the City must identify any inconsistencies with qualifying criteria within 60 days. Projects meeting the above criteria that contain more than 150 units must be processed within 180 days, and the City must identify any inconsistencies with qualifying criteria within 90 days. The City is also required to include certain



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information about AB 2011 projects in its annual housing element report to the Department of Housing and Community Development.

Because this is the first AB 2011 project in the City, staff desired to update the Council on the AB 2011 approval process and to inform the City Council and the public of the project’s administrative approval based on the limited options provided by the law. If the Council desires reports on other projects approved under AB 2011, staff can provide periodic updates to the Council.

PROJECT DESCRIPTION

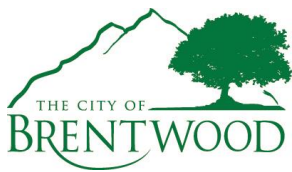
The applicant, TA O’Hara, LLC, requested ministerial approval of Design Review (DR 24-002), per the provisions of AB 2011, to construct a 26-unit multi-family, mixed-income, apartment building and on-site improvements on a vacant 0.78-acre site located at 7460 Lone Tree Way (APN 018-070-017). This is the only AB 2011 application submitted to and processed by the City to date.

• Apartment Building

Details of the proposed apartment building are as follows:

Table 1: Building Details

Number of Units, Density, and Affordability	
Total number of units	26
1 Bedroom 2 Bedroom 3 Bedroom	9 Units 13 Units 4 Units
<u>Density:</u> AB 2011 requires a development project to have a density of at least 30 du/ac for lots smaller than 20 acres.	33 du/acre (26 units / 0.78 acres)
<u>Affordability:</u> AB 2011 requires 15% of the units to be set aside for low-income tenants.	5 low-income units (4 low and 1 very low) will be provided for a total of 19.2% of the units.
Building Details	
Height	40 feet



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<u>Setbacks</u> Front Street Side Interior Side Rear	<u>Proposed</u> 10 feet 10 feet 48 feet 55 feet
<u>Usable (private) open space:</u> Ground Floor Units Upper Floor Units	<u>Proposed</u> 80 sq. ft. 60 sq. ft.

• **Architecture**

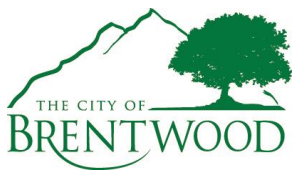
The proposed apartment building would be of a contemporary architectural style consisting of multiple linear planes and a flat roof with varying parapet heights. Recessed balconies would serve to break up the massing and linear profile. The building materials would include stucco, fiber-cement board and batten siding, porcelain tile and thin brick veneer. The porcelain tile and board and batten will be used as accents to further break up the massing as well as the varying roof heights. The applicant has indicated that parapets will be used to screen the rooftop mechanical equipment.

• **Parking**

Per AB 2011, no parking is required except for accessible, electric vehicle (EV) and bicycle parking that would have been required under the applicable zoning requirements. All parking provided, even the non-required spaces, are in compliance with the City's parking lot development standards. The following table details the quantities and types of proposed parking.

Table 2: Parking Provided

Parking Provided:		
Total parking	38 Spaces	1.46 Spaces/Unit
Garages Surface Parking	15 Spaces 23 Spaces (Includes 2 Accessible Spaces)	
Compact parking	10	27% of parking will be compact
EV Parking Provided:		



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	3 EV Charging Spaces	8%
	10 EV Ready Spaces	26%
	3 EV Capable Spaces	8%
Total:	16 Spaces	42%
Bicycle Parking Provided:		
Long-Term:	13 Spaces	34% Vehicle Parking
Short Term:	2 Spaces	5% Vehicle Parking

- **Landscaping**

The applicant provided landscape plans indicating that the site will be landscaped in a manner consistent with the City's design guidelines. The proposed landscape plan depicts 10 required parking lot shade trees and two accent trees. The proposed plant schedule lists a variety of ground cover, shrubs, and vines. The storm water retention area is located on the northern portion of the parcel. The applicant did not provide a detailed planting plan; however, the City's objective standards do not require one and the City cannot deny the project on that basis.

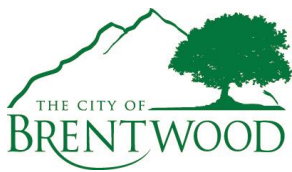
ANALYSIS

As mentioned above, per the requirements of AB 2011, the application would need to be in compliance with the "site and project criteria," "affordability criteria," and "objective development standards criteria" in order to be eligible for the streamlined process established by AB 2011.

- **Site and Project Criteria**

The proposed project satisfies all site criteria requirements to qualify for the streamlined, ministerial review process as demonstrated in the Site and Project Criteria checklist (attached). The most noteworthy criterion is that the project site must be located in a zone where office, retail, or parking are a principally permitted use. The project site is zoned Thoroughfare Commercial (C-3), which allows all permitted uses found in the General Commercial (C-2) zoning district. The C-2 zoning district allows for retail as a principally permitted use. Per AB 2011, the project site must be abutting a commercial corridor that has a right-of-way of at least 70 feet. The project site is abutting Lone Tree way, which has a right-of-way greater than 70 feet.

AB 2011 does not require conformance with the General Plan land use designation and only focuses on limited zoning requirements. The subject site has a land use



designation of General Commercial (GC); however since this is a residential project, none of the goals, policies or standards related to the GC land use designation apply to this project.

- **Affordability Criteria**

The proposed project satisfies all site criteria requirements to qualify for the streamlined, ministerial review process as demonstrated in the Affordability Criteria checklist (attached). The project would comply with the AB 2011 15% affordability requirement, which is greater than the City's 13% requirement, by providing approximately 19% of the units as affordable (4 low income and 1 very low income for a total of 19.2%). Under the law, the project must include the higher of the percentage of affordable units required either by AB 2011 (15%) or local regulation (13%); the proposed project meets, and in fact exceeds, AB 2011's 15% affordability criteria.

- **Objective Development Standards Criteria**

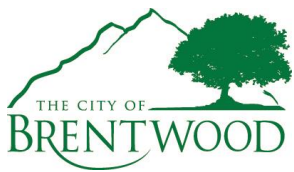
The proposed project satisfies all site criteria requirements to qualify for the streamlined, ministerial review process as demonstrated in the Affordability Criteria checklist (attached). An AB 2011 project is not required to provide parking other than accessible, EV, and bicycle spaces. The Objective Development Standards Criteria requires the application to be in compliance with the City's Interim Objective Design Standards (IODS). However, the project does not comply with all of these standards. The applicant has thus included a State Density Bonus Law application seeking waivers from said standards as detailed below.

- **State Density Bonus Law**

Pursuant to the State Density Bonus Law (SDBL), the density bonus is set on a sliding scale, based on the percentage of affordable units provided. The proposed project is providing five units for lower income households which is 19% of the total number of units and therefore exceeds the SDBL threshold, of 10%, for a base density bonus ([Government Code § 65915 \(f\)\(2\)\(B\)\(1\)\(b\)\)](#). However, the project is not proposing to construct any of the allowed bonus units but is requesting to utilize the concession and waivers allowed under the SDBL with respect to some of the IODS.

Table 3: State Density Bonus Law

Affordability Level	Minimum number of units required	Proposed	Does the project meet minimum
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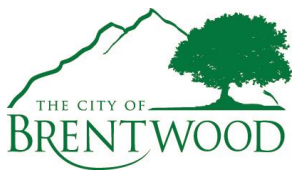
			qualifications for SDBL eligibility?
Lower Income (4 low income units 1 very low income unit)	10% (2.6 units rounded to 3 units)	5/26 = 19.2%	Yes

• **Waivers**

Under the SDBL, a qualified applicant may request waivers of development standards such as the IODS. Pursuant to the SDBL, the City is not permitted to apply any development standards that would physically preclude the construction of the project as designed at its permitted density with the concessions allowed under the law (if any are used). The City is not required to waive or reduce development standards that would (1) have a specific, adverse impact on public health/safety or on a property listed on the California Register of Historical Resources for which there is no feasible method to satisfactorily mitigate the impact without rendering the project unaffordable, or (2) be contrary to state or federal law. Furthermore, a waiver does not count as an incentive/concession, and there is no limit on the number of waivers that may be requested or granted. The following table provides a summary of the waivers requested by the applicant:

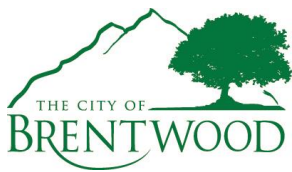
Table 4: Waivers

	IODS Standard	Waiver Requested	Analysis
1	3.4.G Building facades visible from any street frontage, adjacent public park, publicly accessible outdoor space, or designated open space, may not extend more than 40 feet in length without a five-foot variation in depth in the wall plane utilizing varying setbacks, building entries and recesses, courtyards or structural bays. Major breaks shall be a minimum of 5 feet deep and 10 feet wide, and must extend at least two-thirds of the height of	Elimination of this requirement	Creating major breaks in the building would eliminate the ability to provide the project's 3-bedroom units and would therefore physically preclude development of the proposed project.



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	IODS Standard	Waiver Requested	Analysis
	<p>the building. Exceptions include:</p> <p>For buildings with upper stories (above first floor) stepped back at least five feet, the major break need only extend two-thirds of the height of the portion of the front façade that is not stepped back.</p>		
2	<p>3.4.R</p> <p>If the elevation facing a public or private street is longer than 50 feet, no more than 50 percent of a building façade must be on a single plane. An average of a five-foot offset, with a minimum of one foot offset, is required for the remaining 50 percent of the building façade.</p>	Elimination of this requirement	Conformance with this standard would result in the increase the minimum building setback resulting in the elimination of dwelling units.
3	<p>3.4.S</p> <p>Elevations not facing a public or private street must have no more than 75 percent of a building façade on a single plane. An average of a five-foot offset, with a minimum of one foot offset, is required for the remaining 25 percent of the building façade.</p>	Elimination of this requirement	Conformance with this standard would result in the elimination of units and would preclude the project being built as proposed.
4	<p>3.5. A</p> <p>Standards related to providing private and shared usable open space.</p> <p>Minimum 500 square feet of usable shared open space must be provided per unit.</p>	Elimination of this requirement	<p>Compliance with this standard would reduce the number of units that can be built and therefore the project could not be constructed at the proposed density.</p> <p>Elimination of this standard makes IODS 3.5.B-D* inapplicable</p>



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	IODS Standard	Waiver Requested	Analysis
	75% of all units must be provided usable private open space		since no private or shared open space is being provided.
* IODS 3.5B-D would have required: (B) provision of two passive and one active recreation outdoor amenities totaling 1,100 square feet, (C) unless located on the rooftop, shared outdoor spaces must be designed to be visible from inside the building, such as windows located at building entrances and/or dwelling unit windows, and (D) up to 15% of the shared outdoor space may be landscaped using required stormwater treatment planters that are contiguous with the common outdoor space.			

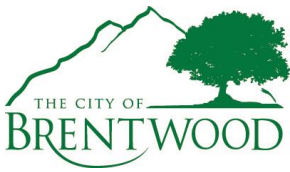
Staff has analyzed whether all of the above-mentioned waivers are subject to denial and has determined that they are not, for the following reasons:

- (1) there are no specific, adverse impacts on public health or safety for which there is no feasible method of mitigation or avoidance that would be associated with granting this requested waiver;
- (2) there are no specific, adverse impacts on public health or safety on any real property listed in the California Register of Historical Resources; and
- (3) the requested waivers are not contrary to state or federal law.

AB 2011 PROJECT REVIEW PROCESS

Within 60 days of the project submittal, the City must determine that the project is consistent with the provisions of AB 2011 and that it qualifies for expedited ministerial approval. Ministerial approval means that the project is only reviewed for consistency with a fixed set of standards without any subjective judgement, or discretion, from the approving body. Design Review of the project can be conducted and must be completed within 90 days of project submittal; however, it is strictly limited to assessing compliance with the three criteria (as described above) required for streamlined, ministerial approval and cannot in anyway inhibit, chill, or preclude the ministerial process (including a continuance).

Often, projects that receive discretionary approval are considered during a noticed public hearing, which allows the public to participate in the decision making process by giving testimony and the decision-makers exercise discretion informed through deliberation and public comments. Due to this, public hearings are required to be noticed in advanced in order to give the public an opportunity to participate. Since the project is ministerial and not discretionary it is not subject to any noticing requirements. Additionally, since the project is only held to a "pass/fail" review of objective standards it cannot be conditioned the way typical projects are conditioned.



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On March 8, 2024, (60 days from initial project submittal) the project was deemed to be consistent with the provisions of AB 2011 and qualifies for ministerial approval. AB 2011 requires a jurisdiction to approve the project within 90 days of initial submittal. Therefore, staff will need to issue a ministerial approval prior to April 9, 2024 (90 days from initial submittal). Once the project receives its ministerial approval the applicant would be able to submit for building permits.

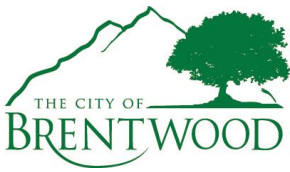
PROCESSING FUTURE AB 2011 PROJECTS

The purpose of this informational item was to make the City Council aware of the subject application and to explain AB 2011 in a public forum. As with other ministerial approvals, and in the absence of any local process to the contrary, staff has completed this review and will need to issue an approval prior to April 9.

As mentioned above, this is the City's first AB 2011 application. As of the date of the writing of this staff report no other AB 2011 applications have been submitted to the City. At this time staff would ask direction from the City Council as to how to proceed with future, if any, AB 2011 projects. The three options available are, with detailed descriptions that follow:

1. Continue to have staff complete the ministerial review and consideration of AB 2011 project applications, and provide the City Council with a report such as this one.
2. Continue to have staff complete the ministerial review and consideration of AB 2011 project applications, and not provide the City Council with a report.
3. Have the Planning Commission or City Council conduct the ministerial review and consideration of AB 2011 project applications. Note that with the very strict statutory deadlines associated with such applications, this may prove too difficult to manage. If the City Council opts for this option, staff will develop a process to bring back for future City Council review and consideration.

Option #1 would be similar to this application where the project is deemed consistent with AB 2011 and would receive ministerial approval after a City Council report. Staff would need to present the informational staff report before the City Council between the 60 days where the project is deemed consistent and the 90 days where the project must receive ministerial approval. Alternately, the informational item could come before the City Council after the 90 days, as the project would have already been determined as consistent within the first 60 days.



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Option #2 would be similar to this project except that the City Council would not receive an informational staff report, but notice would be provided to the City Council and public about the approval. Ministerial approval would occur after the project is deemed consistent with AB 2011.

Option #3 would be the most complex since a process would need to be developed outlining timeframes for the project being considered by the approving body within the first 60 days of project submittal. At that time the approving body would determine if the project qualifies for ministerial approval through a pass/fail review of the objective requirements. Note that AB 2011 prohibits any action that would prolong or “chill” the project, including a continuance or a request for additional information. If the project qualifies for ministerial approval then the approving body could 1) direct staff to issue the ministerial approval, 2) issue the ministerial approval through a resolution. Staff does not recommend this option due to the strict statutory deadlines.

CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

No previous actions.

DATE OF NOTICE

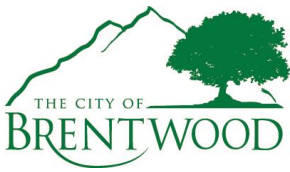
Not Applicable.

ENVIRONMENTAL DETERMINATION

Per Government Code section 65912.124(h), qualifying AB 2011 projects are exempt from the provisions of the California Environmental Quality Act (CEQA).

ALTERNATIVE OPTION(S)

This is an informational item and there are no options for Council to consider due to the ministerial approval requirements imposed by the Affordable Housing and High Road Jobs Act of 2022. The project cannot be denied or continued, as this would be in violation of the streamlined ministerial review process afforded by AB 2011.



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ATTACHMENT(S)

1. Full Plan Set
2. Density Bonus Request
3. Site and Project Criteria Checklist
4. Affordability Criteria Checklist
5. Objective Development Criteria Checklist
6. Interim Objective Design Standards Analysis, IODS Matrix
7. Urbanized Area Map
8. Biological Resource Assessment
9. Map (FEMA, Wetlands, Geotracker)
10. Fire Hazard Map
11. Fault Activity Map
12. Phase 1 (executive summary)
13. Prevailing Wage Certification
14. ALTA Survey
15. EnvirStor Map
16. Farmland Map
17. Cultural Report