

## **2023 Legislative Changes Affecting California Commercial Real Property**

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*Part I: This article provides an overview of major California laws impacting commercial real estate that became effective on January 1, 2023. Part II of this Article will address two measures which become effective on July 1, 2023 that permit residential development on property zoned for office, retail, or parking use.*

### Electrical Vehicle Charging Stations

California legislation effective in 2023 directs the California Building Standards Commission (CBSC) and the Department of Housing and Community Development (HCD), commencing with the 2025 triennial edition of the California Building Standards Code, to research and develop standards and propose mandatory regulations for the installation of electric vehicle charging stations in connection with retrofits, additions and alterations to existing parking facilities serving multifamily housing, hotels, motels and to all other nonresidential developments. It also directs the agencies to research, develop and propose for adoption mandatory standards for the installation of EV (electrical vehicle) chargers with power level 2 or higher in existing parking facilities that serve such developments (i.e., not in connection with a retrofit). Existing law and building codes already address the requirements for EV ready and EV capable parking spaces in the new construction of such properties. The proposed standards are to be reviewed every three years until 1) there is adequate availability of electric vehicle charging given near-term EV charging needs; and 2) there is sufficient charging capacity to support the State's goal that all new cars and passenger trucks sold in California be zero emissions vehicles by 2035. The requirements of the bill are effective until January 1, 2033 and thereafter are repealed.

### Parking Cash-Out

Since 1992, the adoption of a parking cash-out program has been imposed on California employers with more than fifty employees that lease a workplace in areas that do not meet state ambient air quality standards. If those employers subsidize employees' parking cost, the program would require that the employers give the employees the option to receive cash in the amount of the subsidy rather than the subsidized parking. The goal of the program is to incentivize employees to take public transportation rather than driving and thereby reduce air pollution. For the most part, the law has not been complied with, primarily because of the pre-requisite that the employer/tenant's parking cost be "unbundled" from the overall lease cost so that the tenant/employer can determine the value of the subsidized parking. Initial drafts of the 2022 legislation required that leasing costs be listed as a separate line item in all commercial leases with maximum occupancies of fifty or more. However, as enacted, the legislation instead clarifies how employers can determine the "market rate cost of parking" in order to calculate the value of the subsidized parking. That market rate cost is the amount that would be paid for

parking 1) at the closest publicly available parking location within 1/4 mile of the employer's workplace to a party unaffiliated with the property on which the parking is provided; or 2) if such amount cannot be determined, the amount for parking located within 1/4 mile of the workplace, as evidenced by a public offer such as an advertisement; each not to exceed \$350 per month. If the monthly market rate cost of parking cannot be determined by one of the foregoing, it is equal to the higher of \$50 or the monthly cost of the lowest transit service within ¼ mile of the site. All amounts are adjustable for inflation beginning January 1, 2024.

### Trauma Kits

In order to assure public safety, all business, educational, factory, institutional, residential and other designated buildings with an occupancy of 200 or more, and assembly buildings with an occupancy of 300 or more that are built after January 1, 2023 must place and maintain at least six trauma kits that contain designated materials in the premises in an easily accessible and recognizable location next to an automated external defibrillator, together with all information governing their use and maintenance. The law does not apply to a health facility or a structure that is vacant, or under construction or renovation. Tenants of the buildings must be notified of the location of the trauma kits and provided information on training available on the use of the kits. The law exempts from liability for civil damages: 1) a person who complies with the requirement to obtain and place the trauma kit, as to damages resulting from the rendering of emergency care by use of the trauma kit; and 2) a property manager for damages resulting from the failure, improper operation or malfunction of equipment or materials in a properly stocked trauma kit. The law also provides, as to the care rendered at the scene of any emergency by the use of a trauma kit, that 1) a lay rescuer or person who in good faith and without compensation is not liable for civil damages arising out of such care; 2) a person who receives compensation as an employee of a property managing entity, a tenant or any public or private employer but who is not compensated to provide emergency care is not providing emergency care "for compensation;" and 3) a person who is compensated to provide emergency care with the trauma kits is not exempt from civil liability.

### Business Improvement Districts

A city or county may set up a business improvement district and levy assessments on property owners in the district to pay for promotional activities and physical improvements. The California Constitution provides that no assessment shall be imposed on any parcel in the district that exceeds the cost of the proportional special benefit conferred on that parcel. Legislation effective January 1, 2023, enacted to codify a judicial decision, clarifies the scope and definition of a special benefit and provides that 1) the constitutional restriction is on costs that exceed the proportional benefit and a district may impose costs that are less than that benefit, e.g. a discounted cost to a non-profit, and such does not necessarily mean that other parcels are assessed more than the proportional cost of their special benefit; and 2) the fact that more than one parcel shares in a special benefit does not make the benefit a general benefit as to which there cannot be an assessment. The new legislation also deletes the prior requirement that the plan for the district include the total amount of special benefits and the total amount of general benefits to be conferred on properties in the district.

## Parking Requirements Within One-Half Mile of Public Transit

Designed to reduce the oversupply of parking spaces, reliance on automobiles, greenhouse gas emissions and high housing costs, and to encourage public transit use, a new law provides that a local agency may not impose minimum parking requirements on residential, commercial, or other development projects (other than hotel, motel, or other transient lodging) located within 1/2 mile of public transit. A local government can impose parking minimums if it can make specific written findings that not imposing the requirements would negatively impact the local government's ability to meet (1) its share of regional housing needs for low and very low-income households; (2) the special housing needs of the elderly or disabled; or (3) existing residential or commercial parking within 1/2 mile of the housing development project. Even if the local government can make these findings, a residential project is exempt from the imposition of parking minimums if (1) the project dedicates a minimum of 20% of the units to very low, low, or moderate-income households, students, the elderly or disabled; (2) the development contains fewer than 20 housing units; or (3) the development is subject to parking reductions based on other applicable law. The law does not override any requirement that a new multi-family residential or nonresidential development within 1/2 mile of public transit provide electric vehicle supply equipment or spaces that are accessible to persons with disabilities.

## Laws Impacting Affordable and Other Special Housing Development

A number of laws effective January 1, 2023 affect affordable and other special housing development. Those laws:

- 1) Require that surplus state land and state-owned buildings be used for affordable housing development with timelines imposed to determine criteria and create a list of these opportunities;
- 2) Impose new density standards for affordable housing projects;
- 3) Provide exemptions from local zoning and use restrictions for housing developments on land owned by educational agencies; and
- 4) Provide exemptions from CEQA applicable to qualifying university housing projects.

*Disclaimer: Nothing in this article shall be construed as giving legal advice. Practitioners are advised to consult with their individual legal advisers as to the legal effect of any item described in this article.*

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