



A Technical Guide to Zoning for AB 2923 Conformance

PUBLIC DRAFT: JUNE 2020

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT



Acknowledgements

This guide is the result of meetings with and input from staff of all jurisdictions affected by AB 2923:

Cities: Antioch, Berkeley, Concord, Daly City, Dublin, El Cerrito, Fremont, Hayward, Lafayette, Oakland, Orinda, Pittsburg, Pleasanton, Richmond, San Francisco, San Leandro, Union City, and Walnut Creek.

Counties: Alameda, Contra Costa

Special thanks to staff at the cities of Berkeley, Hayward, Pittsburg, and San Leandro for their additional participation in development of this guide.

Representatives from the following groups or organizations attended stakeholder meetings and/or webinars and provided input:

Local jurisdictional staff, as indicated above

Regional and funding agencies: Metropolitan Transportation Commission (MTC), Valley Transportation Authority (VTA), California Housing and Community Development (HCD), California Department of Transportation (Caltrans)

Planning experts and advocates: San Francisco Bay Area Planning and Urban Research Association (SPUR), TransForm, Urban Habitat, Greenbelt Alliance, California Yes In My Backyard (CA YIMBY), Policy Link, Urban Land Institute (ULI), Turner Center for Housing Innovation, San Francisco Foundation, individual residents from Berkeley

Builders: Northern California Carpenters Regional Council (NCCRC), California Building Trades

Affordable housing organizations and developers: Non-Profit Housing of Northern California (NPH), East Bay Housing Organizations (EBHO), Resources for Community Development (RCD), East Bay Asian Local Development Corporation (EBALDC), Enterprise Community Partners, Monument Impact

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Front Cover:
Pleasant Hill/Contra Costa Centre Transit Village
Photo Credit: Streets.mn

About AB 2923 and This Technical Guide

About AB 2923 and This Technical Guide

The San Francisco Bay Area Rapid Transit District (BART) has voluntarily provided this technical guide to California State Assembly Bill 2923 (AB 2923, 2018, Chiu/Grayson) for the benefit of local jurisdictions and other stakeholders. It offers clarity about what is expected within the law and how BART will play its designated role in determining conformance.

AB 2923 was signed into law on September 30, 2018 by then-Governor Jerry Brown. It requires local jurisdictions to ensure that zoning on certain BART-owned property supports transit-oriented development (TOD). BART adopted a neutral position during the crafting and passage of this legislation, but is designated in the law as the main agency with certain responsibilities, including determining conformance with zoning standards.

AB 2923 only applies to a select subset of parcels that meet the following criteria:

- Located within a half a mile of BART stations;
- Located in San Francisco, Alameda, and Contra Costa counties;
- At least one-quarter acre in size (either individual or contiguous parcels);
- Owned by BART on or before July 1, 2018; and
- An infill site (defined in section 21061.3 of the Public Resources Code as a site that had previous development or a site without development immediately adjacent to urban uses).

AB 2923 requires BART to set standards for four elements of zoning: residential density, building height, floor area ratio (FAR), and parking for both motor vehicles and bicycles. BART has an initial deadline of July 1, 2020 to establish these standards. Local jurisdictions then have until July 1, 2022 to ensure their zoning conforms with BART's standards. The purpose of establishing land-use zoning standards on AB 2923-eligible land around the station areas is to encourage TOD and to help address California's housing and climate crises.

AB 2923 establishes baseline zoning standards by referencing BART’s 2017 Transit-Oriented Development Guidelines ([2017 TOD Guidelines](#)). The 2017 TOD Guidelines were developed to articulate BART’s vision for TOD, the process for development, and expectations for station area planning. AB 2923 dictates that Figure 1 and Table 1 from the 2017 TOD Guidelines serve as the baseline zoning standards if BART takes no action to set standards at a station, but it also allows BART to develop new standards if it chooses to do so.

Exhibit 1 shows BART stations that are subject to AB 2923 as one of three “TOD Place Types”: Regional Center; Urban Neighborhood/City Center; and Neighborhood/Town Center. The TOD Place Types are loosely based on those used by the Metropolitan Transportation Commission (MTC) for its regional document, Plan Bay Area (2013).

Exhibit 2 shows baseline zoning standards for each TOD Place Type per AB 2923 for residential density, building height, floor area ratio (building intensity), and vehicle/bicycle parking requirements.

Exhibit 3 illustrates the concept of floor area ratio (FAR), which is the size of the building compared to lot area.

Exhibit 1: TOD Place Types for Stations Subject to AB 2923



System Map as of June 13, 2020

Information Source: Figure 1 from BART's 2017 TOD Guidelines

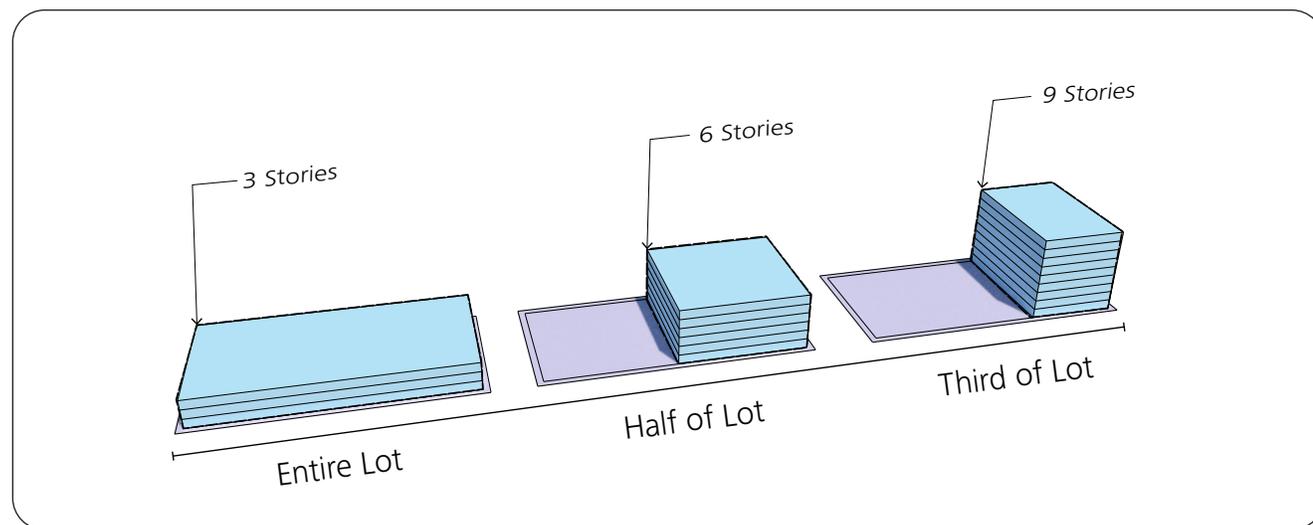
Exhibit 2: AB 2923 Baseline Zoning Standards for Each TOD Place Type

 Neighborhood/ Town Center	 Urban Neighborhood/ City Center	 Regional Center
Allowable Residential Density		
75 dwelling units per acre or higher		
Allowable Height		
5 stories or higher	7 stories or higher	12 stories or higher
Allowable Floor Area Ratio (FAR)		
3.0 FAR or higher	4.2 FAR or higher	7.2 FAR or higher
Minimum Vehicle Parking		
Zero (no minimum requirement allowed)		
Maximum Residential Vehicle Parking		
1.0 spaces per unit or lower	0.5 spaces per unit or lower	0.375 spaces per unit or lower
Maximum Office Vehicle Parking		
2.5 per 1,000 square feet or lower	1.6 per 1,000 square feet or lower	0 per 1,000 square feet or lower
Shared Or Unbundled Vehicle Parking		
Allowed (neither prohibited nor required)		
Minimum Secure Bike Parking		
1 space per residential unit or higher		

Information source: Table 1 from BART’s 2017 TOD Guidelines and AB 2923 section 29010.6.(a)(2).

Exhibit 3: Description of Floor Area Ratio (FAR)

FAR is the size of a building compared to the lot area. The example below shows multiple ways that a FAR of 3.0 can be achieved on a lot.



Process for Development Standards

On June 13, 2019, BART staff held an informational session with the BART Board regarding AB 2923 to offer various approaches the District could take to address the law's requirements. The approaches ranged from taking no action (thus, defaulting to the baseline standards in Exhibits 1 and 2) to setting other new standards which would require a BART-led California Environmental Quality Act (CEQA) process. Staff recommended taking no action on setting new standards by the July 1, 2020 deadline following an analysis of current zoning and meetings with all affected local jurisdictions to discuss zoning, economic, and political conditions.

Thus, the baseline standards shown in Exhibits 1 and 2 are the applicable zoning standards for each BART station area. AB 2923 states that local jurisdictions must rezone eligible BART-owned parcels, if needed, to meet these standards by July 1, 2022, in order to be in conformance with the law.

BART is responsible for determining conformance with the baseline zoning standards, which will focus exclusively on the four zoning parameters defined in AB 2923: residential density, building height, floor area ratio, and parking (for both vehicles and bicycles). If a jurisdiction chooses not to set its own zoning standards, the baseline standards will become local zoning on July 1, 2022 for those portions of a jurisdiction's zoning code that are nonconforming.

In preparing this technical guide, BART conducted significant outreach to local jurisdictions and other stakeholders. This included individual meetings with staff from each affected jurisdiction in BART's service area, several in-person workshops with jurisdictions and other stakeholders, webinars, and open public comment on this technical guide that was provided, both in writing and during publicly-noticed Board meetings. BART will continue to collaborate with local jurisdictions and community stakeholders, in particular with communities of concern, throughout the rezoning and development process.

AB 2923 requires BART to complete a number of efforts. They are:

- Travel demand management (TDM) requirements to reduce automobile traffic generated by TOD projects on BART property.
- An anti-displacement strategy to address potential loss of affordable housing units and to prevent displacement of tenants.
- A parking replacement policy that specifically considers auto-dependent, end-of-the-line stations. This will be based on BART’s existing [station access policy](#), adopted in 2016. The policy is used to determine how TOD projects can best accommodate BART customers who walk, bike, take transit, and drive to the station to ensure a project that increases BART ridership.
- Biannual reporting to the State’s Department of Housing and Community Development.
- Outreach to relevant local jurisdictions.
- Outreach to communities of concern around each station, as defined by MTC’s regional transportation plan.

In addition to these required efforts, BART will voluntarily produce the following documents to support local jurisdictions and others with an interest in AB 2923:

- A Technical Guide to Zoning for AB 2923 Conformance (this document), which is focused on zoning AB 2923-eligible parcels.
- A TOD Work Plan (a companion document to this technical guide), which establishes how BART will prioritize development at all property where TOD is feasible, not just those parcels subject to AB 2923.
- A TDM Toolkit (a companion to the TDM requirements mentioned above).
- Model Zoning language, primarily focused on the major parameters of AB 2923 (i.e. residential density, building height, FAR, and parking), to assist local jurisdictions in amending their zoning ordinances.
- Conformance Checklist, which lists and describes the information needed from each local jurisdiction to demonstrate conformance with AB 2923.

More detail on these efforts can be found in Chapter 8.

01

Introduction





Photo Credit: Steve Proehl, courtesy of BRIDGE Housing

Background

On September 30, 2018, then-Governor Jerry Brown signed Assembly Bill 2923 (AB 2923) into law, which added sections 29010.1 through 29010.12 to the California's Public Utilities Code (PUC). AB 2923 requires that the San Francisco Bay Area Rapid Transit District (BART) establish land-use zoning standards on select BART-owned land around BART stations in San Francisco, Alameda, and Contra Costa counties. These zoning standards regulate building height, residential density, floor-area ratio (FAR), and parking ratios for both vehicles¹ and bicycles. These standards are meant to enable successful transit-oriented development (TOD) projects that promote residential and commercial development at BART stations. Data shows that mixed-use TOD projects in California are consistently effective for increasing transit use and reducing vehicle miles traveled, which in turn reduces greenhouse gas (GHG) emissions². Local jurisdictions are required to adopt zoning ordinances that conform with BART's TOD zoning standards within two years from the time BART develops them.

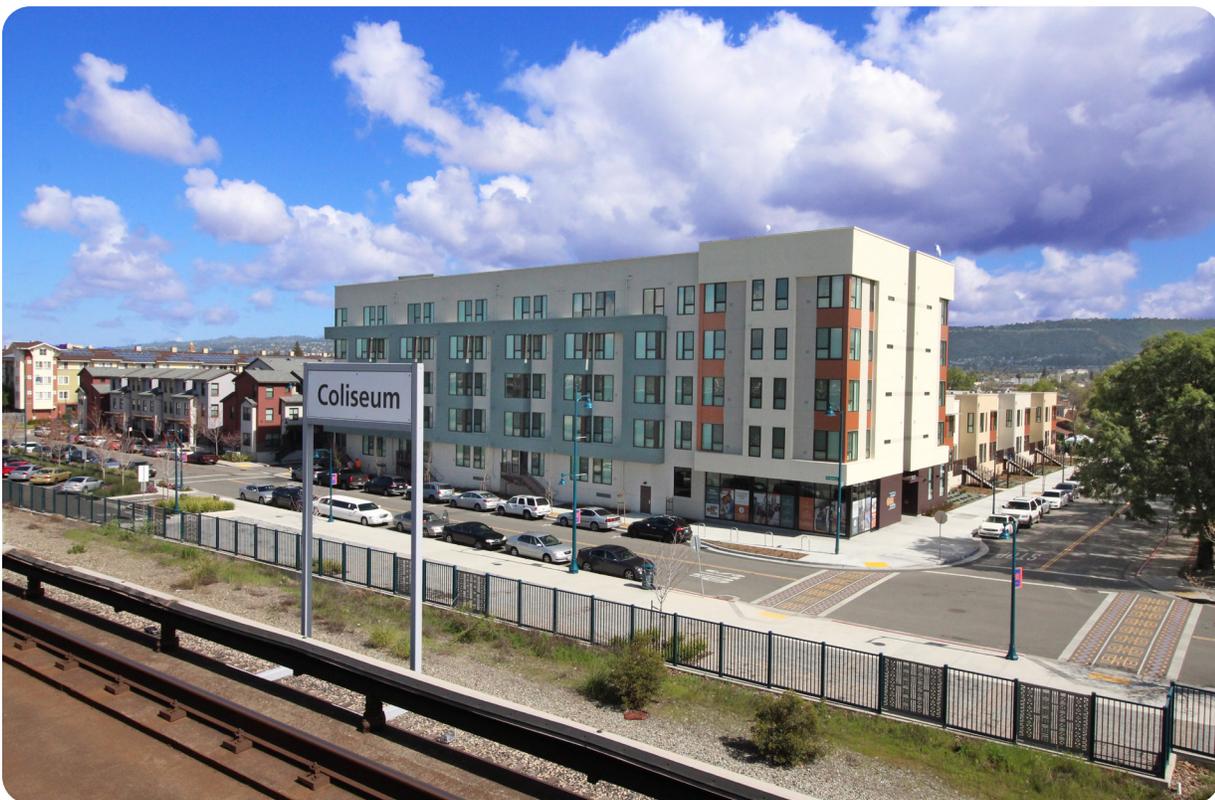


Photo Credit: CEF Realty Advisors, Inc

¹ The use of the term "vehicle" in this document is used to describe a motor vehicle, an automobile, or a car.

² *Travel Characteristics of Transit-Oriented Development in California (2004, Hollie Lund, Robert Cervero, and Richard Willson)* found that TOD residents were 5 times more likely to commute by transit compared to the typical commuter living in the same city. Similarly, TOD office workers were 3.5 times more likely to commute by transit compared to the typical office worker in the same region.

Purpose

BART prepared this technical guide to explain the requirements of AB 2923 and provide guidance to local jurisdictions on how to review and amend their zoning ordinances, if needed, in order to conform with the law. Since BART did not adopt new TOD standards by July 1, 2020, this guide references the baseline zoning standards identified in AB 2923.

This document is organized topically. Following this chapter is an overview of AB 2923. The subsequent four chapters explain in more detail the major zoning requirements of AB 2923 and how this law relates to local zoning and other BART programs. The final two chapters address cross-cutting questions and describe other relevant BART projects related to AB 2923.

The topics of the chapters are as follows:

- Introduction
- Overview of AB 2923
- Residential Density
- Building Height
- Floor Area Ratio (FAR)
- Parking (Vehicle and Bicycle)
- General Zoning and Conformance
- Other Related Efforts

For ease of understanding the law, chapters 3 through 7 are written in a question and answer format. The questions are the result of dozens of meetings and workshops with local jurisdictions and other stakeholders from January 2019 through May 2020, as well as BART Board review and public comment received from December 2018 through July 2020.

02

**Overview
of AB 2923**





This chapter provides an overview of AB 2923, including background on transit-oriented development (TOD), the criteria for AB 2923, development standards as defined in the law, and the difference between zoning and TOD development projects.

BART'S Transit-Oriented Development Program

AB 2923 states that “the growth and success of the Bay Area’s economy is threatened by several challenges, including inadequate and unaffordable housing and excessive and increasing roadway congestion. In the state-mandated sustainable communities strategy for the Bay Area, locating affordable and market-rate housing near high-capacity transit is a primary tool with which to address these challenges and will keep the Bay Area on track to meet its state-mandated greenhouse gas emissions reduction targets.” (PUC SEC. 1(a)).

AB 2923 was thus passed to help address California’s housing and climate crises by supporting BART’s own adopted goals to produce 20,000 homes – 35 percent of which would be affordable – and 4.5 million square feet of commercial space on its property by 2040³. The law supports BART’s Transit-Oriented Development (TOD) program through changing in zoning of BART-owned property in collaboration with local jurisdictions.

BART’s TOD Program is guided by several policies adopted by the Board in 2016. In sum, the program’s goals are to:

- Support complete communities
- Advance regional plans to reduce greenhouse gas emissions
- Increase ridership where and when BART has capacity
- Capture value for BART and other public services
- Provide sustainable transportation choices
- Provide affordable housing

3 *The BART Board adopted TOD Policy Performance Measures and Targets on December 1, 2016, [found here](#)*

Transit-Oriented Development (TOD)

Transit-oriented development (TOD) is a pattern of development that encourages greater concentration of residential, commercial, and recreational spaces oriented around public transportation services.

Research shows that TOD increases transit use, walking, and biking; reduces driving; and reduces per capita greenhouse gas emissions, among other benefits. BART has been building TOD projects in collaboration with cities and developers for over 25 years and has built over 2,600 homes. Examples of these developments include Fruitvale Transit Village, Workday Headquarters at the West Dublin/Pleasanton Station, and Avalon Walnut Creek Apartments at the Pleasant Hill/Contra Costa Centre station. To support local and regional climate and housing goals, BART will continue to build housing, job centers, and other transit-supportive development on its properties in addition to its core function as a regional transit agency.



Photo Credit: Sergio Ruiz

Property Subject to AB 2923

Not all properties owned by BART are subject to the zoning standards established by AB 2923. PUC section 29010.1(a)(2) states that only properties that meet the minimum criteria listed below are affected by AB 2923. Exhibit 4 graphically represents these concepts. The criteria are:

1. Currently owned by BART and was not acquired by eminent domain by BART on or after July 1, 2018.
2. Located in Alameda, Contra Costa, or San Francisco counties. These are the areas with elected representation on the BART Board. TOD development may occur on other parcels owned by BART, but they are not subject to the zoning standards in AB 2923.
3. Singular or contiguous parcels of at least 0.25 acre in size. Parcels may individually be less than 0.25 acres if they are contiguous with other BART-owned parcels and together add up to at least 0.25 acres.
4. Parcels within a half mile of a BART station entrance so long as 75 percent of the parcel is within the half mile radius.
5. On an infill site as defined by section 21061.3 of the Public Resources Code. An “infill site” is defined as one that has had previous development or a site without development that is immediately adjacent to urban uses.

Parcels that meet all these criteria are referred to as AB 2923-eligible parcels throughout this document.

Furthermore, PUC section 29010.6(a)(5) states that BART “is not required to establish TOD zoning standards for a station where, according to the district’s assessment, it would be impractical to develop an eligible TOD project greater than one-half acre.” As such, BART has determined that the following parcels do not need to be rezoned, as it would be impractical to develop a TOD project on them:

- Parcels that are utilized solely for BART’s operations, such as parcels that include track right-of-way or immovable BART infrastructure, as their current uses will continue well into the future.
- Parcels with existing vertical development, such as parking garages or TOD, as their current uses will continue well into the future.
- Parcels with steep terrain or other environmental constraints where development is not practical.
- Parcels mostly within the area of influence of the BART trackway, station, or other critical infrastructure, where current, cost-effective technologies could not ensure the ongoing preservation of BART operations in a major catastrophic event. This area of influence will vary, but is generally defined as a minimum of 30 feet around above-ground trackway.

Appendix II of this document includes Station Area Fact Sheets for BART-owned land in Alameda, Contra Costa, and San Francisco counties that identify AB 2923-eligible parcels, among other details. BART provides a link to an external site which provides jurisdictions with an online map of AB 2923-eligible parcels, [found here](#)

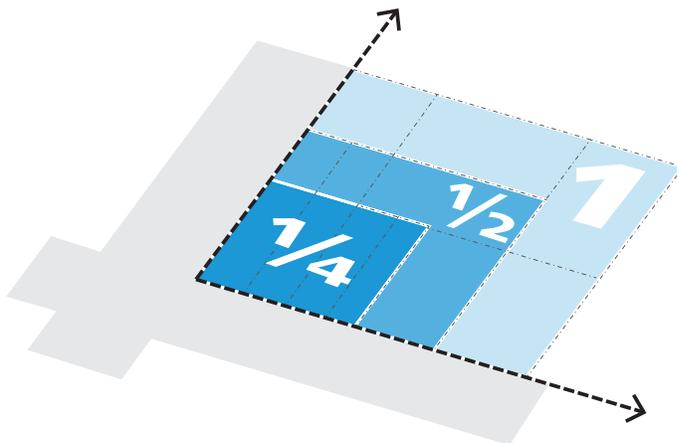
Exhibit 4: Properties Affected by AB 2923



BART-owned property located in Alameda, Contra Costa, or San Francisco counties (areas that elect BART Board representatives);



Within a half a mile of a BART station entrance. Parcels must contain at least 75 percent of their total land area within the half-mile radius; and



Single or contiguous parcels of at least one-quarter acre in size.

BART's Transit-Oriented Development Guidelines and Its Relation to AB 2923

AB 2923 used elements of BART's 2017 Transit-Oriented Development Guidelines ([2017 TOD Guidelines](#)) to determine baseline zoning standards for AB 2923-eligible parcels. PUC section 29010.6(a)(2) states that "[t]he zoning standards published in Table 1 and Figure 1 of the BART TOD Guidelines (2017) shall serve as the minimum allowable density and height limits, and the highest allowable parking limits to which the board is required to adhere in adopting TOD zoning standards."

The 2017 TOD Guidelines were created to implement the TOD Policy, originally adopted in 2016 by BART's Board of Directors, which directs staff to "utilize BART's TOD Guidelines to ensure future development and investments seamlessly connect BART stations with surrounding communities." When written, the 2017 TOD Guidelines were not intended to function as zoning standards but rather were intended to inform local jurisdictions and developers of the types of development BART wished to see in station areas. To ensure context-sensitivity, the 2017 TOD Guidelines assigned one of three TOD Place Types for each station area: Regional Center, Urban Neighborhood/City Center, and Neighborhood/Town Center. Each TOD Place Type then had development targets for residential density, building height, and parking spaces for vehicles and bicycles.

State lawmakers, when drafting the legislation for AB 2923, used the TOD Place Types and development targets in the 2017 TOD Guidelines to establish baseline zoning standards. In addition, they added a floor area ratio (FAR) requirement, calculated by multiplying 0.6 by the applicable building height standard. (PUC section 29010.6(a)(4)(B)(ii)). This established the full set of baseline zoning standards for AB 2923-eligible parcels, as summarized in Exhibits 5 and 6.

AB 2923 allows BART the authority to set zoning standards that require higher residential density, building heights, FAR, and secure bike parking than the baseline zoning standards, as well as lower vehicle parking maximums. (PUC section 29010.6 (a)(2)). However, neither BART nor local jurisdictions can adopt zoning that diminishes these baseline standards for AB 2923-eligible parcels.

BART's Approach to Adopting Standards

The law specifies an initial deadline of July 1, 2020 for the BART Board to set standards for all AB 2923-eligible parcels, if it so chooses, but also allows the Board to set new zoning standards after this date. (PUC section 29010.6(a)(4)(A)). Jurisdictions then have until July 1, 2022, or two years after BART sets applicable standards, to adopt a local ordinance that addresses zoning inconsistencies to conform to AB 2923. (PUC section 29010.6(d) (1)). BART staff contemplated multiple standards-setting approaches to meet the July 1, 2020 deadline. They ranged from using the baseline zoning standards to leading an environmental process for setting more intensive standards. Ultimately, BART staff recommended using the baseline zoning standards to the BART Board at its June 13, 2019 meeting.

The recommendation to default to the baseline zoning standards was based on two factors. First, BART staff determined that the baseline zoning standards were appropriately defined to align with feasible building

types in the different geographies. As such, seeking additional height or FAR allowed in AB 2923 would not result in larger buildings as the baseline heights indicate the tallest building heights feasible in the current market. Second, the initial deadline of July 1, 2020 identified in the law limited BART's ability to complete an environmental process for different standards given BART's available budget, schedule, and workforce. While BART is not pursuing different standards at this time, the law allows BART to adopt new zoning standards in the future; if the BART Board were to adopt new zoning standards, AB 2923 gives jurisdictions two-years from adoption to adopt a zoning ordinance that conforms.

Baseline Zoning Standards

Baseline zoning standards for AB 2923-eligible parcels as of July 1, 2020 align with TOD Place Types. Exhibit 5 shows the TOD Place Type (Regional Center, Urban Neighborhood/City Center, and Neighborhood/Town Center) for each BART stations with AB 2923-eligible parcels. These place types were inspired by the priority development area (PDA) place types defined in the Metropolitan Transportation Commission's regional effort, Plan Bay Area (2013).

Exhibit 6 summarizes the baseline zoning standards for each TOD Place Type shown in Exhibit 5. They include standards for the following:

- Allowable residential density
- Allowable building height
- Allowable FAR
- Vehicle parking minimums and maximums
- Allowing shared and unbundled vehicle parking
- Bicycle parking minimum

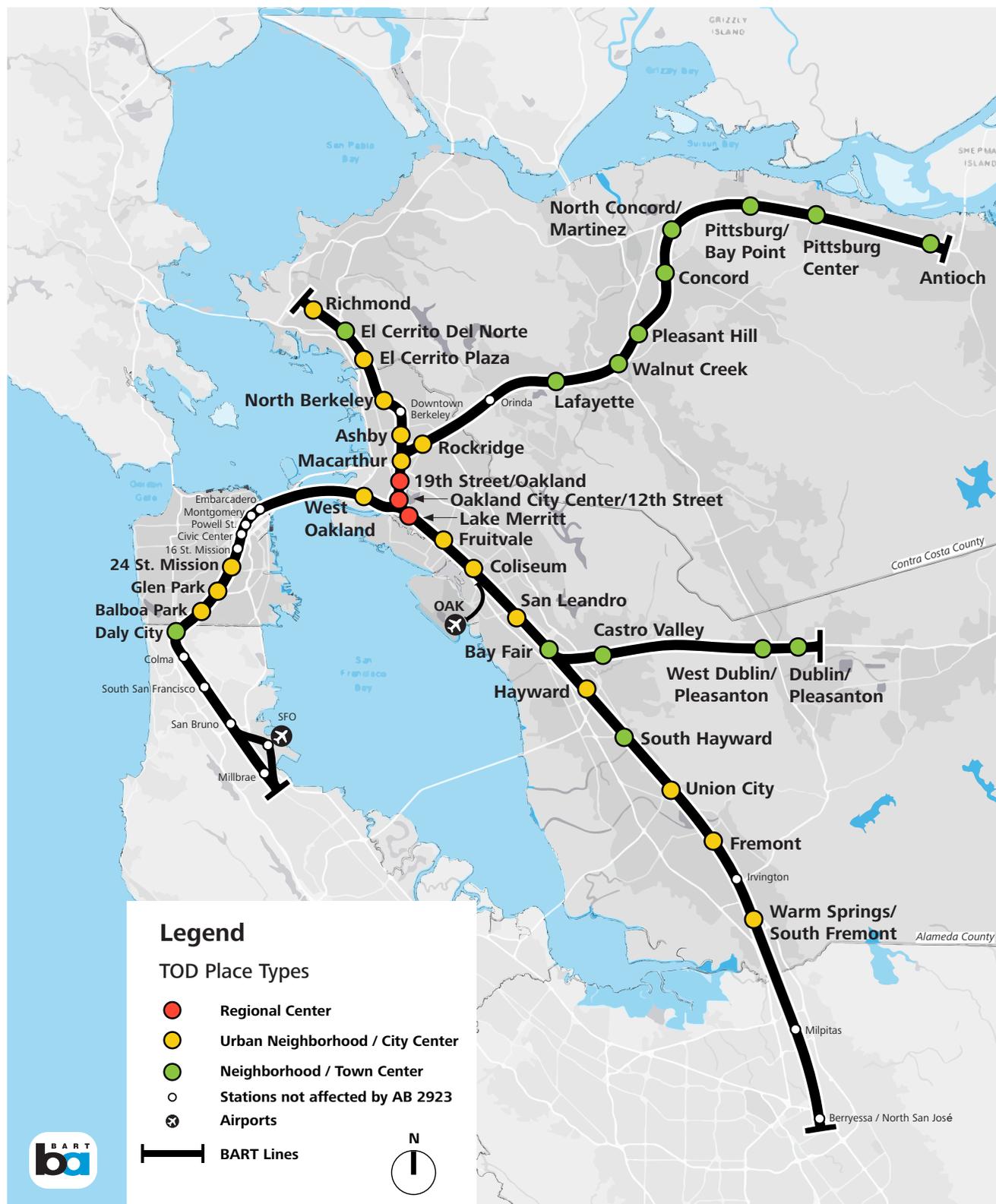
Local jurisdictions must ensure that zoning for AB 2923-eligible BART parcels conforms with the baseline zoning standards shown in Exhibits 5 and 6. (PUC section 29010.6(a)(2)). Alternatively, jurisdictions may choose to adopt zoning standards that set higher allowable residential densities, building heights, and FAR; higher minimums for secure residential bike parking spaces; or lower vehicle parking maximums. However, jurisdictions may not zone AB 2923-eligible parcels that in a way that diminishes the baseline zoning standards in Exhibits 5 and 6.

AB 2923 codified baseline zoning standards using the following:

- TOD place types from Figure 1 of the 2017 TOD Guidelines
- Development targets for each TOD place type from Table 1 of the 2017 TOD Guidelines
- FAR calculated in AB 2923 by multiplying 0.6 times the target building height

Neither BART nor local jurisdictions can adopt zoning that diminishes these baseline standards for AB 2923-eligible parcels.

Exhibit 5: TOD Place Types for Stations Subject to AB 2923



System Map as of June 13, 2020

Information Source: Figure 1 from BART's 2017 TOD Guidelines

Exhibit 6: AB 2923 Baseline Zoning Standards for each TOD Place Type

 Neighborhood/ Town Center	 Urban Neighborhood/ City Center	 Regional Center
Allowable Residential Density		
75 dwelling units per acre or higher		
Allowable Height		
5 stories or higher	7 stories or higher	12 stories or higher
Allowable Floor Area Ratio (FAR)		
3.0 FAR or higher	4.2 FAR or higher	7.2 FAR or higher
Minimum Vehicle Parking		
Zero (no minimum requirement allowed)		
Maximum Residential Vehicle Parking		
1.0 spaces per unit or lower	0.5 spaces per unit or lower	0.375 spaces per unit or lower
Maximum Office Vehicle Parking		
2.5 per 1,000 square feet or lower	1.6 per 1,000 square feet or lower	0 per 1,000 square feet or lower
Shared Or Unbundled Vehicle Parking		
Allowed (neither prohibited nor required)		
Minimum Secure Bike Parking		
1 space per residential unit or higher		

Information source: Table 1 from BART’s 2017 TOD Guidelines and AB 2923 section 29010.6.(a)(2).

Zoning Conformance

As previously stated, AB 2923 requires jurisdictions to adopt a local zoning ordinance that conforms to the baseline zoning standards. Because BART does not intend to set new standards before July 1, 2020, the baseline zoning, as shown in Exhibits 5 and 6, will become the standards for AB 2923-eligible parcels for this initial deadline.

BART is tasked with making a finding "... as to whether the local zoning ordinance conforms to the TOD zoning standards." (PUC section 29010.6(d)(2)). BART staff will work with local jurisdictions to determine conformance. If BART determines that a zoning ordinance does not conform as of July 1, 2022, the baseline zoning standards shall become the local zoning for AB 2923-eligible parcels for those portions of a jurisdiction's zoning code that are nonconforming. (PUC section 29010.6(d)(2)).

Exemptions to Baseline Zoning Standards

The law states that all AB 2923-eligible parcels must meet baseline zoning standards. However, it provides an exemption for parcels zoned, as of July 1, 2018, within 10 percent of the baseline standards for building height and FAR. In these instances, a local jurisdiction will not need to rezone their parcel(s) to meet the baseline standards for allowable residential density, building height, and FAR. However, the baseline standards for parking would still apply and would replace local requirements. (PUC section 29010.6(d)(4)).

In order for an AB 2923-eligible parcel to be exempt from baseline zoning standards, the local zoning ordinance must show that both allowable building height and allowable FAR are within 10 percent of the building height and FAR specified in Exhibits 5 and 6 as of July 1, 2018. Thus, if only one standard, and not both, is within 10 percent of the baseline zoning standards, the local zoning ordinance must be modified to fully conform with the baseline zoning standards.

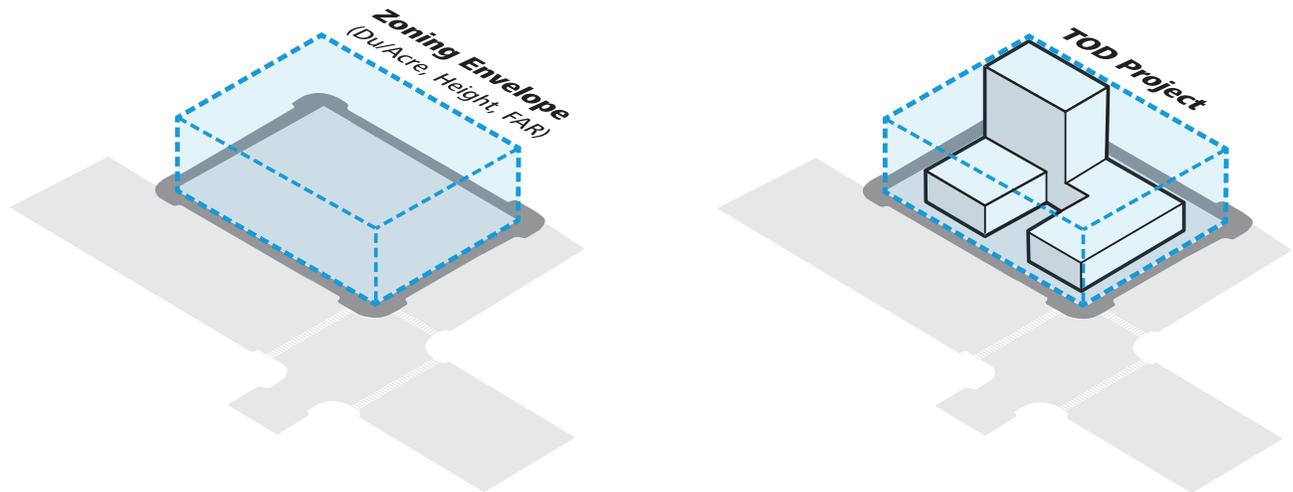
Zoning vs. Development of a TOD Project

AB 2923 does not set requirements for actual development of a TOD project on BART property. Instead, PUC section 29010.6 requires that BART and affected local jurisdictions ensure that the zoning of AB 2023-eligible parcels meet the baseline standards. Conformance with the law will be based exclusively on the four parameters as defined in AB 2923. A built TOD development project does not need to meet these zoning standards in order to be in conformance with AB 2923. For example, a TOD project can be within the zoning envelope, as set by the local zoning standards, but built at less than the maximum allowed density, height, and/or FAR. Exhibit 7 shows how a hypothetical TOD project can be built within the zoning standards identified in PUC Section 29010.6.

Further, zoning standards are different than an entitlement. A TOD project designed to meet the maximum allowable residential density and volumetric requirements, such as height limits, is not guaranteed to receive project entitlements or approvals. In addition, developers are not guaranteed that an individual project on an actual parcel, when tested against the zoning standards, will be able or permitted to achieve the maximum development allowed by the zoning envelope.

BART remains committed to delivering projects with densities and intensities that support the region's multibillion-dollar investment in transit operations. BART's TOD policy directs staff to advance projects in areas with a "transit supportive land use plan" and engage the community and stakeholders to gain a better understanding of the unique local context for each development project. Individual project decisions regarding design, circulation and access, and housing affordability, among other topics, will be made with input from community members and other stakeholders. Partnering with communities, stakeholders, and local jurisdictions is a core component of BART's TOD policy, BART's standard practice in its TOD program, and a priority for AB 2923 implementation.

Exhibit 7: Illustrative Difference Between Zoning and Development of a TOD Project



On AB 2923-eligible BART properties, local jurisdictions must ensure they conform with the baseline zoning standards for residential density, building heights, and FAR. They must also align parking requirements to meet baseline standards.

*Zoning represents the parcel's envelope, but a TOD project can be developed at any level up to and including the maximum allowed by the site's zoning**

** The California Density Bonus applies as it normally would.*

Timeline for AB 2923 Implementation

To summarize, AB 2923 identifies specific milestones that BART and local jurisdictions must meet to conform with the law, as discussed above. They are described below.

- **July 1, 2020:** BART adopts zoning standards for all BART properties covered by AB 2923 by this date, or the baseline zoning standards become the TOD zoning standards. As discussed above, BART will not adopt unique standards for each station by July 1, 2020 and will instead allow the baseline zoning to become the standards (see Exhibits 5 and 6 above).
- **July 1, 2022:** Local Jurisdictions adopt zoning for AB 2923-eligible parcels, meeting the AB 2923 criteria identified earlier in this chapter, by this date. Otherwise, the baseline standards become the local zoning for AB 2923-eligible parcels for those portions of a jurisdiction's zoning code that are nonconforming. BART will determine whether local zoning conforms with these baseline zoning standards.
- **January 1, 2029:** AB 2923 remains in effect until this date.

Throughout the term of AB 2923, the BART Board can adopt more intensive zoning standards for AB 2923-eligible parcels through an environmental process. Local jurisdictions would have two years to adopt zoning that meets these standards, if such standards were adopted. (PUC section 29010.6(a)(4)(B)(i)).

03

Residential Density

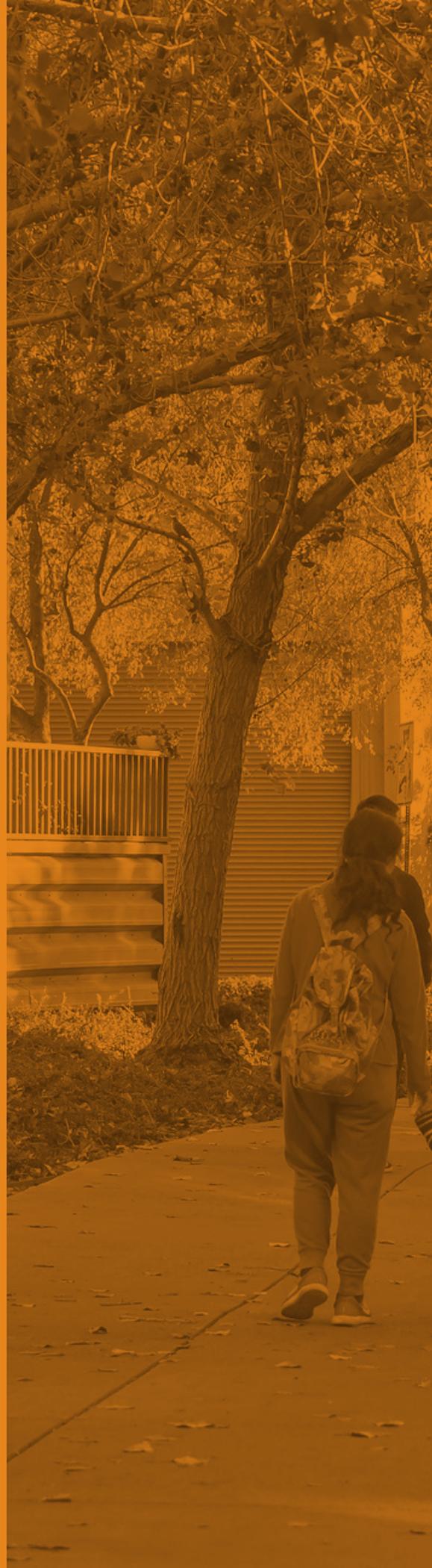




Photo Credit: Sergio Ruiz

The law requires that all AB 2923-eligible parcels (see “Property Subject to AB 2923” in Chapter 2) be zoned to allow for the residential densities identified in Exhibit 6. The baseline zoning standard for residential density is 75 dwelling units/acre (DU/acre), regardless of the TOD Place Type. Therefore, all AB 2923-eligible parcels must be zoned to allow for 75 DU/acre. However, jurisdictions are free to allow for greater residential densities, if desired.

Local zoning may need to be amended to allow the baseline residential density for AB 2923-eligible parcels. If a local jurisdiction’s zoning ordinance does not conform to the residential density by July 1, 2022, then the baseline zoning standard for residential density will become the local zoning.

The questions and answers further explain the residential density requirements of AB 2923, assuming baseline zoning standards, and how they apply to local zoning.



Examples of Conformance

Below are example residential zoning standards that would conform with AB 2923.

- Example 1: Minimum 30 DU/ acre, maximum 80 DU/ acre
- Example 2: Minimum 30 DU/ acre, no maximum
- Example 3: No minimum, maximum of 75 DU/ acre

3a. What density must jurisdictions allow in their zoning code? What does the “lowest permissible density limit” mean?

All AB 2923-eligible parcels must be zoned to allow for 75 DU/acre, regardless of the TOD Place Type. The term used in AB 2923 is “lowest permissible density limit,” which means that a jurisdiction cannot set a density limit below the baseline standard of 75 DU/acre. (PUC section 29010.6(a)(2)). The intent of this allowable density is to ensure that there is enough housing at BART stations to support transit use, increase affordable housing, and improve the environment. Jurisdictions are encouraged to zone for higher than 75 DU/acre to support transit-oriented development, but they may not have zoning that does not allow for 75 DU/acre.

3b. What if current zoning does not allow for housing?

The law states that all AB 2923-eligible parcels must allow for 75 DU/acre. If a jurisdiction’s zoning currently does not allow for housing, all AB 2923-eligible parcels must be rezoned to allow for housing. However, if local zoning, as of July 1, 2018, is within 10 percent of both the building height and FAR standards of the baseline zoning standards (see Exhibit 6), then the local jurisdiction does not need to rezone its parcels to meet the baseline standards. (PUC section 29010.6(d) (4)). In this case, a local jurisdiction is not required to allow for housing. Note that regardless of this 10 percent exemption, a local jurisdiction must conform to the vehicle and parking standards as summarized in Exhibits 5 and 6. In addition, if an adopted specific plan that applies to the AB 2923-eligible parcels does not allow for housing, then the AB 2923-eligible parcels must be rezoned to allow for housing at 75 DU/acre.

3c. Should zoning allow for mixed-use?

AB 2923 does not require a jurisdiction to zone for mixed-use development. However, BART encourages zoning for mixed-use development at BART stations – where people can live, work, and shop – to reduce dependency on cars.



Go to
Chapter 7
for General
Zoning and
Conformance

3d. What if there is no residential density specified in the current municipal code?

Although most jurisdictions use residential density (DU/acre) to indicate the amount of residential development allowable on a site, some jurisdictions use “form-based” or “vision-based” codes that emphasize form and character over land use and numeric standards. According to the law, zoning for all AB 2923-eligible parcels must include a numeric residential density that allows 75 DU/acre. Jurisdictions with zoning that does not specify a numeric dwelling unit standard per acre will have to amend their zoning to conform with the requirements of AB 2923.

3e. Is the allowable DU/acre limit based on gross or net calculations?

AB 2923 is silent on whether zoning for DU/acre is based on gross or net acreage, so jurisdictions can use their own definition of DU/acre. For jurisdictions that have a definition of DU/acre in their zoning ordinance, BART will use the local definition in calculating the amount of allowable development. For jurisdictions that lack a definition of DU/acre in their zoning ordinance, BART will rely on the definition of DU/acre described below, and such jurisdictions may amend their zoning code to align with, or include, this definition. Using the FAR definition in PUC section 29010.1(a)(3), BART defines DU/acre to mean the ratio of the number of dwelling units of the development proposed for the project divided by the total area of the parcel or parcels used by the project. BART has interpreted the “total area of the parcel or parcels used by the project” to mean the parcel or parcels on which a TOD project is situated, as determined by BART.

3f. Could residential zoning be an average of 75 DU/acre across the property, but zoned for lower or higher densities in certain portions of the site? Can a jurisdiction zone for more than 75 DU/acre?

In order to meet the requirement of AB 2923, a jurisdiction’s zoning must allow for 75 DU/acre for the entire AB 2923-eligible parcel. However, a jurisdiction could allow for a higher residential density for all or portions of the site. For example, zoning could establish a 75 DU/acre maximum for $\frac{3}{4}$ of the site and a 100 DU/acre maximum for the remaining $\frac{1}{4}$ of the site. Allowing higher densities may result in BART prioritizing a TOD project for such a station, as indicated in BART’s TOD Work Plan.

3g. If the zoning code only allows for residential units, does the code also need to include FAR standards that conform to the baseline standards as well?

Yes. Regardless of whether zoning allows for residential only or mixed-use development, every AB 2923-eligible parcel must be zoned to allow both the residential density and the FAR, as specified in the baseline zoning standards (see Exhibits 5 and 6).



Go to [Chapter 5](#) for Floor Area Ratio

3h. Are there BART requirements for dwelling unit type or size?

AB 2923 is silent on dwelling unit type or the size of each unit. Thus, each jurisdiction may dictate the mix of dwelling unit types (i.e., studio, one bedroom, two bedroom, etc.) and/or the size of each unit appropriate for their community. Many jurisdictions already have calculation requirements in their municipal codes on unit size which could be applied to AB 2923-eligible parcels.



Go to [Chapter 7](#) for General Zoning and Conformance

3i. Does a “TOD project” need to meet the allowable DU/acre limit?

AB 2923 establishes zoning requirements, not development requirements. A TOD project is the actual development that is built within the zoning standards or zoning envelope established by the jurisdiction. As with all development, the actual built project may have a lower residential density, building height, and/or FAR than what is allowed in the zoning code.



Go to [Chapter 2](#) for Zoning vs. TOD Project

04

Building Height





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The law requires that all AB 2923-eligible parcels (see “Property Subject to AB 2923” in Chapter 2) are zoned to allow the baseline zoning standards for building heights, which vary by TOD Place Type, as shown in Exhibits 5 and 6. All AB 2923-eligible parcels must be zoned to allow the following building heights:

- Neighborhood/Town Center: 5 stories
- Urban Neighborhood/City Center: 7 stories
- Regional Center: 12 stories

However, jurisdictions are free to establish higher building height limits, if desired.

Local zoning may need to be amended to allow the baseline building heights for AB 2923-eligible parcels. If a local jurisdiction’s zoning ordinance does not conform to the building height limit by July 1, 2022, then the baseline zoning standards for building heights will become the local zoning.

The questions and answers further explain the building height requirements of AB 2923, assuming baseline zoning standards, and how they apply to local zoning.



Examples of Conformance

Below are example building height zoning standards that would conform with AB 2923 for the TOD Place Type of Neighborhood/ Town Center.

- Example 1: Minimum 3 stories, maximum 6 stories
- Example 2: Minimum 3 stories, no maximum
- Example 3: No minimum, maximum of 5 stories

4a. What does the “lowest permissible height limit” mean? What does the “minimum allowable height limit” mean?

The terms “lowest permissible height limit” and “minimum allowable height limit” mean the most stringent building height limits that a jurisdiction is allowed to impose on AB 2923-eligible parcels. For example, a jurisdiction must zone AB 2923-eligible parcels in a Neighborhood/Town Center area to allow for buildings that are 5 stories high. The jurisdiction can set a 6-story height limit but not a 4-story height limit.

However, AB 2923 does not require a TOD project to be built to the height limit allowed in the zoning code. As with other standards in a zoning code, a TOD project may be shorter than the height limit.

4b. Does the law define how height should be calculated in the zoning code? What calculation should be used to convert the number of building stories to feet?

AB 2923 does not define how height should be calculated in the zoning code. It establishes allowable building height requirements in stories, not feet, and provides no conversion factor (i.e. 1 story = x feet) or definition of building height. Each jurisdiction typically includes a definition of building height and some codes provide conversions between stories and feet. Since the law provides no guidance, BART will rely on each local jurisdiction to define building height and the conversion of stories to feet.

As an option, jurisdictions could use the general conversion factors developed for this guide to demonstrate conformance with building height requirements in the law if they don’t have conversion factors already. The general guidelines are as follows:

- A full level of parking will count as a story
- Ground floors should be between 11 and 15 feet (from the ground plane) depending on the use. Residential ground floors should be approximately 11 feet with commercial uses approximately 15 feet.
- Ground floors that include a single story of habitable space (either residential or commercial and 2 levels of parking will count as 1 story.
- Upper residential stories should be a minimum of 11 feet (floor to floor) to allow for quality residential units.
- Upper commercial stories should be a minimum of 13 feet (floor to floor).
- Partially below grade space can count as a story if more than 6 feet of the finished space (measured vertically) is above the ground plane.



Go to
[Chapter 6](#)
for Parking

4c. Does a story of parking or ground floor commercial development count as a story for purposes of AB 2923?

AB 2923 is silent on whether parking counts as a story for purposes of the baseline zoning standards. Thus, local jurisdictions may use their own zoning code to make the determination whether a parking level counts as a story. If a local zoning code does not address this issue, BART would determine conformance assuming the allowable building height applies to all above-ground stories. As discussed directly above, for purposes of conformance, BART considers partially below grade space as a story if more than six feet of the finished space (measured vertically) is above the ground plane.



Go to
[Chapter 5](#)
for Floor Area Ratio

4d. What happens if a TOD project cannot achieve the applicable FAR within its associated building height limit?

AB 2923 applies to zoning, not development. The zoning must allow for the baseline standards for building height and FAR for AB 2923-eligible parcels, as shown in Exhibits 5 and 6. However, a TOD project is not required to achieve allowed standards. Thus, a TOD project may include less FAR than allowed while staying within the zoning envelope for building height.

4e. Could zoning for building heights be an average of the minimum height limit across the property, but restrict to lower or higher heights in certain portions of the site?

AB 2923-eligible parcels must be zoned to allow for the building heights set forth in Exhibits 5 and 6 for the entire property. However, a jurisdiction can adopt a higher height limit on all or a portion of the parcel. For example, a parcel in the Neighborhood/ Town Center TOD Place Type could be zoned for a 5-story height limit for 75 percent of the site and a 7-story height limit for the remaining 25 percent of the site. Such variations in height limits are not uncommon in form-based codes, which emphasize building form and character.

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05

Floor Area Ratio (FAR)





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Photo Credit: Sergio Ruiz

The law requires that all AB 2923-eligible parcels (see “Property Subject to AB 2923” in Chapter 2) are zoned to allow the baseline zoning standards for FAR, which vary by TOD Place Types, as shown in Exhibits 5 and 6. All AB 2923-eligible parcels must be zoned to allow the following FAR:

- Neighborhood/Town Center: 3.0
- Urban Neighborhood/City Center: 4.2
- Regional Center: 7.2

However, jurisdictions are free to establish a higher allowable FAR, if desired.

Local zoning may need to be amended to allow the baseline FAR for AB 2923-eligible parcels. If a local jurisdiction’s zoning ordinance does not conform to the FAR standards by July 1, 2022, then the baseline zoning standards for FAR will become the local zoning.

The questions and answers further explain the FAR requirements of AB 2923, assuming baseline zoning standards, and how they apply to local zoning.



Examples of Conformance

Below are example FAR zoning standards that would conform with AB 2923 for the TOD Place Type of Neighborhood/ Town Center.

- Example 1: Minimum 2.0 FAR, maximum 3.5 FAR
- Example 2: Minimum 2.0 FAR, no maximum
- Example 3: No minimum, maximum of 3.0 FAR

5a. What does the “lowest permissible FAR limit” mean? What does the “minimum allowable FAR limit” mean? How was the allowable FAR limit determined?

The terms “lowest permissible FAR limit” and “minimum allowable FAR limit” mean the most stringent FAR limits that a jurisdiction is allowed to impose on AB 2923-eligible parcels. For example, a jurisdiction must zone AB 2923-eligible parcels in a Neighborhood/Town Center area to allow buildings with 3.0 FAR. The jurisdiction may adopt a 3.5 FAR limit but may not adopt a 2.5 FAR limit. However, AB 2923 does not require a TOD project to be built to the FAR allowed in the zoning code. A TOD project may be less than the FAR limit.

AB 2923 establishes the FAR standards by multiplying the building height for each TOD Place Type by 0.6. (PUC section 29010.6.(a)(2)).

5b. How does BART calculate FAR? Is the allowable FAR limit based on gross or net calculation? How is structured parking handled in the FAR standard?

AB 2923 is silent on whether the zoning for FAR calculation is based on gross or net acreage, so local jurisdictions can use their own FAR calculation. For jurisdictions that have a definition of FAR in their zoning ordinance, BART will use the local definition in calculating the amount of allowable development. For jurisdictions that lack a definition of FAR in their zoning ordinance, BART will rely on the definition of FAR described below, and such jurisdictions may amend their zoning code to align with, or include, this definition. PUC Section 29010.1(a)(3) defines FAR as “... the ratio of gross building area of the development, excluding structured parking areas, proposed for the project, divided by the total area of the parcel or parcels used by the project, where “gross building area” means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.” BART has interpreted the “total area of the parcel or parcels used by the project” to mean the parcel or parcels on which a TOD project is situated, as determined by BART.

5c. If zoning only allows residential uses, does the code still need to include the FAR standard?

Yes. In many zoning codes, residential projects are measured in DU/acre and not FAR. However, for AB 2923-eligible parcels, local zoning codes must include the FAR baseline zoning standard even if only residential uses are allowed on the parcel.



Go to
[Chapter 3](#)
for Residential
Density

5d. Are offices and non-residential uses allowed in the zoning for FAR?

Yes. AB 2923 emphasizes zoning for residential use but allows for office and non-residential uses. BART encourages zoning for mixed-use development at BART stations – where people can live, work, and shop – to reduce dependency on cars.



Go to [Chapter 4](#) for Building Height

5e. How do FAR and building height interact with each other?

PUC section 29010.6.(a)(2) explains that the lowest permissible FAR limit is determined by multiplying the building height for each TOD Place Type by 0.6. The baseline standards for FAR, residential density, and building height create a zoning “envelope” within which development may occur. Local jurisdiction’s zoning codes must allow for the FAR indicated by the baseline standards in Exhibits 5 and 6.

BART understands that there may be a mismatch between the permissible FAR limit and the building height limit, whereby the allowable FAR cannot be achieved within the allowable building height. BART staff will work collaboratively with communities and local jurisdictions to implement TOD projects that balance regional needs with the local context.

5f. How does a jurisdiction conform if it does not use FAR as a zoning measurement? What if a jurisdiction allows the heights specified but not the FAR?



Go to [Chapter 7](#) for General Zoning and Conformance

AB 2923 requires local jurisdictions to establish zoning standards for allowable FAR on AB 2923-eligible parcels, consistent with Exhibits 5 and 6. If a jurisdiction does not currently use FAR in its zoning code, or does not use FAR for residential or mixed-use zoning, the code will need to be amended to include FAR that conforms with the baseline zoning standards. If a jurisdiction’s zoning for FAR on AB 2923-eligible parcels does not conform by July 1, 2022, the baseline standards for FAR will become the local zoning.

5g. Are there exemptions/reductions in the FAR to account for architectural design of specific buildings within their surrounding context?

No. PUC section 29010.7(d)(1) states that applicable local design standards can be applied to development "... insofar as those standards do not prohibit the minimum height, minimum density, minimum floor area ratio, and maximum parking allowances required by the TOD zoning standards..."

5h. Does a TOD project need to meet the allowable FAR limit?

A TOD project may be built at a lower FAR than what is allowed by zoning. As previously indicated, BART is committed to working with jurisdictions and communities to design and build TOD projects that balance the regional needs for development with the context in which the project is located.



Go to
[Chapter 2](#)
for Zoning vs.
TOD Project

06

Parking





Photo Credit: Sergio Ruiz

The law requires that all AB 2923-eligible parcels (see “Property Subject to AB 2923” in Chapter 2) establish vehicle and bicycle parking standards, the intent of which is to support TOD. Baseline zoning standards for vehicle parking maximums on AB 2923-eligible parcels vary by TOD Place Types, as shown in Exhibits 5 and 6. In addition, baseline standards for AB 2923-eligible parcels at all TOD Place Types require that there be no vehicle parking minimums, that shared and unbundled vehicle parking be allowed, and that at least one secure bike parking space for each residential unit be provided.

Local zoning may need to be amended to set vehicle and bicycle parking requirements for AB 2923-eligible parcels. If a local jurisdiction’s zoning ordinance or parking requirements do not conform by July 1, 2022, then the baseline standards for parking will become the local requirements, as shown in Exhibits 5 and 6.

The questions and answers below further explain the parking requirements of AB 2923, assuming baseline zoning standards, and how they apply to local zoning. They are divided into 2 subsections: one for vehicle parking and one for bicycle parking.



Examples of Conformance

Below are example vehicle and bicycle parking standards that would conform with AB 2923 for the TOD Place Type of Neighborhood/ Town Center.

Residential Vehicle Parking:

- Example 1: No minimum, maximum 1.0 space per DU, shared and unbundled parking allowed
- Example 2: No minimum, maximum of 0.5 spaces per DU, shared and unbundled parking allowed

Office Vehicle Parking:

- Example 1: No minimum, maximum of 2.5 spaces per 1,000 square feet, shared and unbundled parking allowed
- Example 2: No minimum, maximum of 1.25 spaces per 1,000 square feet, shared and unbundled parking allowed

Residential Bicycle Parking:

- Example 1: Minimum 1.0 secure space per DU
- Example 2: Minimum 1.5 secure spaces per DU

Vehicle Parking

6a. What are the minimum and maximum vehicle parking standards by TOD Place Type?

The law requires that all AB 2923-eligible parcels have the following vehicle parking requirements, as shown in Exhibits 5 and 6:

Neighborhood/Town Center:

- Residential parking: No minimum; maximum of no more than 1.0 space per unit.
- Office parking: No minimum; maximum of no more than 2.5 spaces per 1,000 square feet.

Urban Neighborhood/City Center:

- Residential parking: No minimum; maximum of not more than 0.5 spaces per unit.
- Office parking: No minimum; maximum of no more than 1.6 spaces per 1,000 square feet.

Regional Center:

- Residential parking: No minimum; maximum of not more than 0.375 spaces per unit.
- Office parking: No minimum; maximum of 0.0 parking spaces per 1,000 square feet. Thus, any requirement for vehicle parking is prohibited.

It is important to note that while PUC section 29010.6(d)(4) provides an exemption to meeting the baseline zoning standards if FAR and building height are within 10 percent of the baseline zoning standards, this exemption does not apply to the parking standards.

6b. How do these parking requirements apply to BART customer parking?

AB 2923's parking requirements apply to residential and commercial TOD projects on AB 2923-eligible parcels only, not to BART customer parking. However, PUC Section 29010.6(g) addresses the concerns and needs of commuters arriving by car by stating that BART "shall establish, and amend as necessary, a parking replacement policy, consistent with the district's practice at auto-dependent stations and the district's station access policy." Furthermore, the policy must include provisions to ensure that patrons can still access the station by car with



Go to [Chapter 8](#) for description of BART's Parking Replacement Policy

particular attention to “end-of-the-line” stations, which are generally more auto-dependent than other stations.

It is important to note that this policy does not call for a one-to-one replacement of customer parking at BART stations. In situations where vehicle parking is reduced or eliminated as a result of a TOD project, BART must “develop and fund an access plan that maintains station access for at least the number of customers affected by the reduced number of commuter parking spaces, which shall include specific consideration for customers who live further than one-half mile from the station.” (PUC section 29010.6(E)(2)(h)). The law is therefore supportive of reduced parking at BART stations so long as station access for all modes is maintained.

Moreover, it is already established practice in BART’s transit-oriented development program to require that partner developers fund a station access plan. These plans are developed in coordination with BART staff and are implemented by the developer to ensure that the TOD project provides station access for its customers who walk, bike, take transit, and drive. It is a top priority of BART’s TOD and station access programs to use its adopted [station area access policy](#).



Go to [Chapter 7](#) for General Zoning and Conformance

6c. Will BART consider zoning nonconforming if it does not have parking maximums for residential and/or office? Will BART consider zoning nonconforming if it retains parking minimums for residential and/or office?

Yes. BART will consider the zoning pertaining to parking for AB 2923-eligible parcels nonconforming if a local jurisdiction does not have the parking maximums indicated in Exhibits 5 and 6 or if a local jurisdiction has not eliminated parking minimums. Local jurisdictions may, however, establish parking maximums that are less than the baseline standards. If a local jurisdiction chooses not to amend their zoning code, then the parking maximums and minimums in Exhibits 5 and 6 shall apply. In addition, the parking maximums and minimums are not subject to the 10 percent exemption. (PUC section 29010.6(d)(4)).



Go to [Chapter 8](#) for description of ongoing TDM efforts

6d. How will a local jurisdiction’s Transportation Demand Management (TDM) program factor into the parking requirements?

AB 2923 identifies the maximum number of vehicle parking spaces that jurisdictions can require for AB 2923-eligible parcels. Jurisdictions are free to set maximum parking requirements lower than the baseline zoning standards shown in Exhibit 5 and 6. A local TDM program has no effect on, and is unrelated to, the AB 2923 requirements for parking maximums.

Further, AB 2923 requires BART to approve TDM requirements for TOD projects. PUC section 29010.6(c) states that “before or at the same time as adopting the TOD zoning standards, the board shall approve travel demand management requirements for TOD projects on district-owned real property, which shall be consistent with district station access, district sustainability, and district TOD policy goals.” BART is developing these TDM requirements, which will be adopted by the Board in 2020.

6e. Will BART require shared and/or unbundled parking?

PUC section 29010.6(i) prohibits local jurisdictions from doing the following:

- Require that parking, as part of an eligible TOD project, be associated with any specific use, residential unit, business, or portion of the TOD project.
- Prohibit parking from being sold, rented, or otherwise assigned separately from other parts of the eligible TOD project.

To be clear, jurisdictions must allow shared and unbundled parking for TOD projects on AB 2923-eligible parcels. However, BART will not necessarily require it as part of a specific TOD project.

Bicycle Parking

6f. Will BART consider zoning nonconforming if a jurisdiction’s secure bicycle parking minimum is lower than one per residential unit? What if there is no bicycle parking standard at all?

Yes. The law requires local zoning codes to adopt a standard of one secure bicycle parking space per residential unit for AB 2923-eligible parcels. Local jurisdictions may adopt a higher minimum for secure bicycle parking, if desired.

6g. If a jurisdiction’s bicycle parking requirement is per bedroom, how will conformance be determined?

AB 2923 requires a standard of one secure bicycle parking space per residential unit for AB 2923-eligible parcels. Zoning must meet or exceed this standard (i.e. more than one parking space per unit) to conform. Local jurisdictions can demonstrate how a different unit of measure conforms with AB 2923.



Go to
[Chapter 7](#)
for General
Zoning and
Conformance

07

General Zoning and Conformance



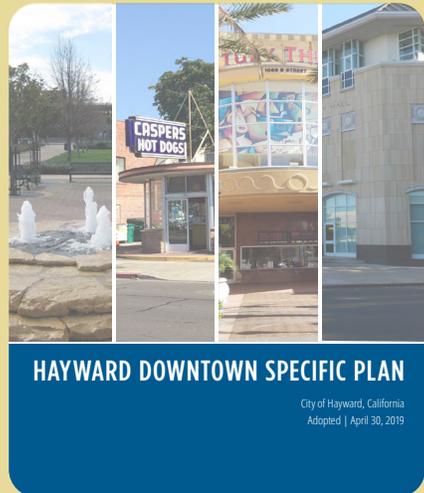
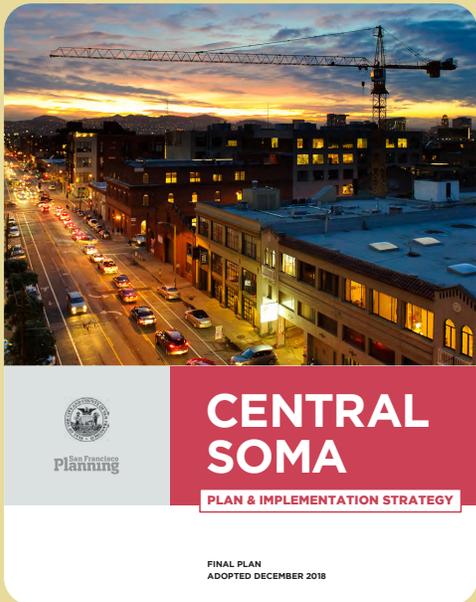


Photo Credit: BART

Local zoning may need to be amended for AB 2923-eligible parcels to conform with baseline zoning standards by July 1, 2022. If a local jurisdiction’s zoning ordinance is not in conformance and operative by July 1, 2022, then the baseline standards become the zoning for the portions of a local jurisdiction’s zoning code that are nonconforming.

If BART, at a later time, leads an environmental process to set different TOD zoning standards for a particular station area, local jurisdictions will have two years from the date that the BART Board adopts such standards to conform and make its local zoning ordinance operational. (PUC section 29010.6(d) (1)).

This section of the guide addresses general questions related to AB 2923 implementation.



7a. Would BART be willing to reclassify a station to a different TOD Place Type?

AB 2923 does not allow BART to reclassify stations to different TOD Place Types. PUC section 29010.1(a)(1) defines a TOD Place Type as "... the place type described in Table 1 and Figure 1 of the BART Transit-Oriented Development Guidelines (2017)." The TOD Place Types for AB 2923-eligible parcels are shown in Exhibit 5 of this guide.

BART understands that some jurisdictions or communities believe the zoning standards assigned to their TOD Place Type may be out of scale with the existing character and intensity of the area surrounding the station. BART is committed to working with each jurisdiction and the surrounding community to create TOD projects that balance the need to meet regional housing and climate goals with the neighborhood context. Further, it is important to remember that zoning does not equal building entitlement and development projects, with some exceptions, are rarely constructed to the maximum standards.



Go to
Chapter 2
for TOD Place
Types for
Stations Subject
to AB 2923

7b. How will BART determine if local zoning on BART's land conforms with the requirements of AB 2923 or not? What local plans or codes will BART utilize?

BART will provide a checklist to guide local jurisdictions in their submission of information to prove conformance for AB 2923-eligible parcels. Staff from local jurisdictions should use this checklist to provide a conformance memorandum to BART which demonstrates that the local jurisdiction's standards for residential density (DU/acre), building height, FAR, vehicle parking, and bicycle parking meet the baseline zoning standards outlined in this document. Based on the checklist, the conformance memorandum will likely include the following:

- A zoning map indicating all AB 2923-eligible parcels.
- Excerpts from the zoning code showing the specific standards for residential density, FAR, building height, and parking applicable for each AB 2923-eligible parcel.
- An explanation summarizing how and where a jurisdiction's zoning ordinance complies with the baseline zoning standards.
- Excerpts from the general plan, specific plan, overlay, or other verifiable document, if applicable, highlighting where and how conformance for AB 2923-eligible parcels is achieved.

BART will use this conformance memorandum to "... make a finding as to whether the local zoning ordinance conforms to the TOD zoning standards" (PUC section 29010.6(d)(2)) or whether the jurisdiction is exempt. BART will also use this memorandum to determine if zoning as of July 1, 2018 for AB 2923-eligible

parcels is within 10 percent of the building height and FAR requirements, per PUC section 29010.6(d)(4).

BART staff will work with jurisdictions who submit reports well in advance of the July 1, 2022 deadline to identify conformance issues and provide opportunities to address these issues before BART makes an official finding.

Some jurisdictions may not have numeric values for residential density, building height, or FAR in their existing zoning codes. This is often the case for jurisdictions that use form-based codes to regulate development. However, numeric values must be assigned for AB 2923-eligible parcels in order to determine conformance.

7c. What happens if a jurisdiction does not adopt the baseline zoning standards within two-years' time? What happens if a jurisdiction's zoning is not conforming?

The law requires local zoning codes to conform to the baseline zoning standards, shown in Exhibit 5 and 6, for AB 2923-eligible parcels by July 1, 2022. If BART determines that a jurisdiction's zoning does not conform by the deadline, then the baseline zoning standards will become the local zoning for AB 2923-eligible parcels for the portions of the jurisdiction's zoning code that are nonconforming. (PUC section 29010.6(d)(2)).

7d. How can a local jurisdiction conform if it is updating its General Plan, Specific Plan, and/or Form-Based Code?

The law does not indicate which documents or codes provide ultimate zoning authority for AB 2923-eligible parcels. If a local jurisdiction is in the process of amending any plans that contain AB 2923-eligible parcels, it should ensure conformance with the baseline zoning standards. Jurisdictions with a traditional "use-based" code could create a new district or overlay incorporating the baseline zoning standards. Jurisdictions that use a form-based code could create a new transect zone (i.e. zoning district) or an overlay for AB 2923-eligible parcels if the current code does not contain the necessary numeric values for residential density, building height, FAR, vehicle parking, or bicycle parking. Local jurisdictions will be expected to report in their conformance memorandum to BART which plans, municipal codes, or other zoning mechanisms provide ultimate zoning authority for each parcel.

Local jurisdictions should also review their other design standards and ensure that they do not limit the ability of a TOD developer to achieve the baseline zoning standards on AB 2923-eligible parcels. PUC Section 29010.7(d)(1) states that BART "...shall ensure any otherwise applicable local design standards, insofar as those standards do not prohibit the minimum height, minimum density, minimum floor area ratio, and maximum parking allowances required by the TOD zoning standards, are included as general guidance to the TOD developer."

7e. How are local standards other the baseline zoning standards, such as open space and other objective local design requirements, factored in?

AB 2923 focuses on four zoning standards – FAR, residential density, building height, and parking for vehicles and bicycles – to help ensure TOD at BART stations. Most zoning codes also include other standards that affect the total amount of development allowed on any site, including, but not limited to open space requirements; side, front, and rear setbacks; upper floor step backs from the street or adjacent parcels; and other design standards. The law accommodates these and other local zoning standards, but it is clear that these standards cannot preclude the ability of a development project from meeting the standards for residential density, building height, FAR, and parking for vehicles and bicycles laid out in AB 2923. PUC section 29019.7(d)(2) requires that a “TOD developer shall adhere to any applicable local design standards insofar as those standards do not prohibit the minimum height, minimum density, minimum floor area ratio, and maximum parking allowances required by the TOD zoning standards.”

7f. How can local jurisdictions ensure that BART development projects achieve quality design expectations if local design requirements must accommodate baseline zoning standards?

BART is open to working with jurisdictions in advance of a developer solicitation to establish design expectations for a project and to enforce those through future development agreements. This would require early discussions to ensure design expectations do not unduly compromise BART’s own transit-oriented development policy goals.

7g. Is there a requirement for affordable housing for TOD projects?

All TOD projects proposed on AB 2923-eligible parcels are subject to the following affordable housing requirements (PUC section 29010.8(b)(1)(A)):

- At least 20 percent of all residential housing units (whether rental or owner-occupied) for occupancy must be restricted to very low and low-income households. This percentage is the same for both rental and owner-occupied units;
- The 20 percent minimum is in addition to any existing affordable units that must be replaced from due to development of the site; and
- Affordable units must adhere to an affordability restriction for at least 55 years for rental units and 45 years for owner-occupied units.

PUC section 29010.8(b)(1)(B) states that, where a local jurisdiction's affordable housing requirements mandate a higher percentage of affordable units or a deeper level of affordability than previously described, the local jurisdiction's requirements shall apply in place of the requirements in AB 2923.

In addition, PUC section 29010.8(c) states that BART is required to ensure that a systemwide total of 30 percent of housing units on district-owned land are affordable, with priority given to very- low- and low-income households. Individual TOD projects must help BART meet this target. BART's own target is 35 percent affordability systemwide, as adopted by the Board on December 1, 2016.

BART is required to report its progress in building affordable housing to the State's Department of Housing and Community Development every two years. (PUC section 29010.8(c)).



Go to [Chapter 8](#) for description of ongoing Anti-Displacement Strategy

7h. How does AB 2923 address the loss of existing affordable housing and displacement of tenants?

First, it is important to note that BART has no foreseeable plans to demolish existing housing on any of its AB 2923-eligible properties and thus the displacement of tenants and loss of existing housing is unlikely to occur.

However, BART is required by AB 2923 to do the following to avoid the loss of affordable housing units and to prevent the direct displacement of tenants (PUC section 29010.8(a)):

- Require that any eligible TOD project that involves the demolition of affordable housing replace all of the housing units to the same or lower income levels. Affordable housing is defined as housing subject to a recorded covenant, ordinance, or law that restricts rents or sale prices to affordable levels; housing subject to any form of local rent or price controls; and housing occupied by a primary tenant, within five years from the date of approval from the development agreement, who is low income and does not leave voluntarily; and
- Prohibit the demolition of any existing unit on an AB 2923-eligible parcel occupied by lower income tenants unless BART or the TOD developer has offered, in writing, the tenant a commensurate or better replacement affordable housing unit that is available for occupancy by the displaced tenant within one-half mile of the same district station at a rent that does not exceed the tenant's previous rent.

In addition, BART is required to develop a residential displacement strategy, in coordination with local jurisdictions, to increase affordable housing options; incentivize tenant protections (especially in "communities of concern" as defined in MTC's regional transportation plan); and address both the direct and indirect impacts from the demolition of housing near BART stations. (PUC section 29010.8(a)(6)).

7i. How does the State Density Bonus Law relate to AB 2923?

The State density bonus law (Cal. Gov. Code section 65915 et seq.) relates to AB 2923 zoning requirements in the same way that it relates to any locally approved zoning. PUC section 29010.6(j) states that “zoning as a result of this section shall be considered the same as locally approved zoning for all purposes, including the State density bonus law and the Housing Accountability Act.” In addition, PUC section 29010.7(c) states that a “developer of an eligible TOD project may apply for density bonus pursuant to Section 65915 of the Government Code.” This means that the State density bonus law applies to whatever the local zoning standards may be and, independently, the local zoning must allow for 75 DU/acre and the building heights in Exhibits 5 and 6. For example, if a local jurisdiction has a maximum of 85 DU/acre, this standard would conform with AB 2923 and the State density law would “be on top of” the 85 DU/acre.

7j. How does the 10 percent exemption noted in the law apply?

The law provides local jurisdictions some flexibility on AB 2923-eligible parcels. PUC section 29010.6(d)(4) exempts local jurisdictions from the baseline zoning standards if local zoning on AB 2923-eligible parcels “... approved as of July 1, 2018, is within 10 percent of the height and floor-area-ratio standards...” of baseline zoning. Thus, if a parcel was zoned as of July 1, 2018 to standards within 10 percent of both the baseline height standard and the baseline FAR standard (as specified in Exhibits 5 and 6), the local jurisdiction would not need to rezone that parcel to meet the baseline standards for allowable dwelling units, building height, and FAR. However, the parking requirements in Exhibits 5 and 6 would apply to these parcels.

In order for an AB 2923-eligible parcel to be exempt from baseline zoning standards, the local zoning ordinance must show that both building height and FAR are within 10 percent of the building height and FAR specified in Exhibits 5 and 6. If only the height standard or only the FAR standard are within the 10 percent of the baseline zoning standards, then the local zoning ordinance must fully conform with the baseline zoning standards.

7k. What happens to AB 2923-eligible parcels for which BART has signed development agreements?

Parcels where construction has begun or that contain vertical improvements were removed from AB 2923 conformance requirements if it would be “... impractical to develop an eligible TOD project greater than one-half an acre.” (PUC section 29010.6(a)(5)). AB 2923-eligible parcels where construction has not begun will need to conform to baseline zoning standards shown in Exhibit 5 and 6.

7l. Will BART lead a California Environmental Quality Act (CEQA) review effort for setting standards on its property? Will a jurisdiction be required to perform a CEQA analysis to rezone?

AB 2923 discusses CEQA in PUC section 29010.6(e). It states that BART is the “lead agency” for the “district’s approval of TOD zoning standards.” Instead of adopting new zoning standards, BART is letting the baseline zoning, as summarized in Exhibits 5 and 6, become the standards on AB 2923-eligible parcels as of the initial deadline of July 1, 2020. Thus, BART is not required to lead a CEQA effort.

Should BART decide to adopt different zoning standards than the baseline zoning for AB 2923-eligible parcels in the future, it will be required to follow the provisions of CEQA, as applicable. For additional information, see Chapter 2 “BART’s Approach to Adopting Standards”.

Jurisdictions will need to seek their own legal counsel’s legal advice on leading a CEQA effort to rezone in the absence of a BART effort for AB 2923-eligible parcels.

7m. If FAR, building height, parking and residential density are rigid standards, why would a jurisdiction consider proactively rezoning a property?

A jurisdiction may want to ensure that other zoning elements not covered by AB 2923 are included for these parcels. A jurisdiction may also want to adopt zoning that ensures development at the station area is prioritized in BART’s TOD Work Plan. Any local design standards for AB 2923-eligible parcels must not prohibit a TOD project from achieving what is allowed by baseline zoning. (PUC section 29010.7(d)(1)).

7n. Can exemptions or variances to the AB 2923 standards occur on a project-by-project basis?

AB 2923 is silent on the application of exemptions or variances, which typically apply to a specific development project rather than zoning codes. The only exemption allowed by AB 2923 is for local zoning adopted as of July 1, 2018 that is within 10 percent of building height and FAR.

7o. Are the provisions of AB 2923 permanent?

AB 2923 sunsets on January 1, 2029. Any amendments made to local zoning in response to AB 2923 will remain in effect after that date, unless further amended.

7p. Which parcels are AB 2923-eligible?

Based on the eligibility criteria outlined in Chapter 2, BART has determined and mapped which parcels are AB-2923-eligible parcels. Appendix II of this document includes Station Area Fact Sheets that identify AB 2923-eligible parcels for BART-owned land in Alameda, Contra Costa, and San Francisco Counties. An online map also provides jurisdictions with identification and information on subject parcels, [found here](#).

08

Other Related Efforts





Photo Credit: Sergio Ruiz

In addition to this technical guide, BART is developing other policies and documents to assist with the implementation of AB 2923. This section briefly describes these efforts and how they relate to AB 2923.

AB 2923 requires BART to complete a number of efforts, as follows:

- **Travel demand management (TDM)** requirements for TOD projects on BART property (PUC section 29010.6(c)), which must be approved by the Board. TDM is used to reduce the amount of single-occupancy vehicle traffic generated by the development. Once approved, TDM requirements will apply to all of BART's TOD projects, not just those subject to AB 2923.
- **An anti-displacement strategy** to mitigate any loss of affordable housing units or displacement of tenants and to create strategies to increase affordable housing options and incentivize protections for very low- and low-income residents within and around a TOD project area, in partnership with local jurisdictions. (PUC section 29010.8).
- **A parking replacement policy** that specifically considers auto-dependent and end-of-the-line stations. (PUC section 29010.6(g)). BART's [station access policy](#), adopted in 2016, already addresses BART's approach to parking replacement for all station types when a TOD project is proposed. Further, BART's long-standing practice has been to work with developers and local jurisdictions on station access studies that analyze how a TOD project can best accommodate BART customers who walk, bike, take transit, and drive to the station to ensure a project that increases BART ridership.
- **Report of progress in building affordable housing** to the State's Department of Housing and Community Development every two years. (PUC section 29010.8(c)).
- **Outreach to relevant local jurisdictions.** (PUC section 29010.6(b)(1)).
- **Outreach to communities of concern** around each station, as defined by MTC's regional transportation plan. (PUC section 29010.6(b)(1)).

In addition to these required efforts, BART is motivated by AB 2923 to voluntarily produce the following:

- **A Technical Guide to Zoning for AB 2923 Conformance** (this document), which is focused on zoning AB 2923-eligible parcels.
- **A TOD Work Plan** (a companion document to this technical guide), which establishes how BART will prioritize development at all property where TOD is feasible, not just those parcels subject to AB 2923. It will offer clarity to jurisdictions about BART's intentions for initiating development.
- **A TDM Toolkit** (a companion to the TDM requirements mentioned above) that will allow provide TOD developers to choose a standard set of strategies to encourage walking, biking, and transit use by TOD residents, employees, and visitors.
- **Model Zoning Language**, primarily focused on the major parameters of AB 2923 (i.e. residential density, building height, FAR, and parking), to assist local jurisdictions in amending their zoning ordinances.
- **Conformance Checklist**, which lists and describes the information needed from each local jurisdiction to demonstrate conformance with AB 2923.

