

STREAMLINED PROCESSING OF MINISTERIAL PROJECTS UNDER SB 35

League of California Cities

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- Adopted in 2017, became effective January 1, 2018
- Creates a ministerial review and approval process to streamline certain qualifying affordable housing projects in jurisdictions that have not yet made sufficient progress towards their allocation of regional housing needs
- Department of Housing and Community Development (HCD) issued final guidelines for implementation on November 29, 2018. These Guidelines apply to applications submitted on or after January 1, 2019

- Intent of SB 35 is to facilitate and expedite construction of housing and to mitigate against high housing costs
- Legislature determined affordable housing is a matter of statewide concern and declared SB 35 applicable to all jurisdictions (including charter cities and counties)
- SB 35 automatically sunsets on January 1, 2026

Hurdles in Securing Project Approvals

- Extraordinary amount of time to process applications
- High costs in processing and constructing housing
- Public opposition
- CEQA and other legal challenges
- Referenda and Initiatives



Project approval is streamlined and ministerial (not subject to discretionary review or approval)

If project qualifies, approval in 180 days or less

Extremely limited public review opportunities

Exempt from CEQA because CEQA only applies to “discretionary” actions. SB 35 was amended in 2018 to specifically state that SB 35 projects are exempt (and HCD Guidelines state exemption)

Project must be located in a jurisdiction that HCD determined has issued less than its share of building permits to meet its regional housing needs, by income category within a “reporting period.” (HCD website*)

- 13 jurisdictions that meet their RHNA numbers
- Above moderate housing (378 jurisdictions failing)
- Below moderate housing (low and very low) (148 jurisdictions failing)

* Determination represents Annual Progress Report data received as of January 31, 2018 and is to be updated “quarterly.”

If the answer to all of the following questions is “YES,” the proposed project is subject to SB 35 streamlining

- YES NO **Affordability.** Does the proposed project dedicate the qualifying amount of affordable housing?
- YES NO **Number of Units.** Does the proposed project contain at least two or more residential units?
- YES NO **Zoning and Residential Uses.** Is the project located on legal parcels that have a general designation or are zoned for residential, with at least 2/3 of the square footage dedicated to residential uses?

If the answer to all of the following questions is “YES,” the proposed project is subject to SB 35 streamlining

- YES NO **Location.** Is the project located on property that is not within a coastal zone, prime farmland, wetlands, a high fire severity zone, hazardous waste site, a delineated earthquake fault zone, a flood plain, a floodway, a community conservation plan area, a habitat for protected species, or under/encumbered by a conservation easement?

If the answer to all of the following questions is “YES,” the proposed project is subject to SB 35 streamlining

- YES NO **Prevailing Wages.** If the proposed project is not itself a public work, as defined under Government Code Section 65913.4(a)(8)(A), are all construction workers employed in the execution of the development to be paid the general prevailing rate of per diem wages for the type of work and demographic area, as determined by the California Department of Industrial Relations?

If the answer to all of the following questions is “YES,” the proposed project is subject to SB 35 streamlining

- YES NO **Skilled and Trained Workforce.** If the development consists of 75 or more units that are not 100 percent subsidized affordable housing, will the work be performed by a skilled and trained workforce, as that term is defined under California Government Code 65913.4(a)(8)(B)(iii)?

If the answer to all of the following questions is “YES,” the proposed project is subject to SB 35 streamlining

- YES NO **Consistent with Objective Standards.** Is the proposed project consistent with all applicable objective planning standards at the time of SB 35 application submittal, including all dimensional, height, setback and density (for purposes of this section, any waivers, concessions or incentives conferred through the State Density Bonus Law are considered consistent with objective standards)?

If the answer to any of the following questions is “YES,” the proposed project is not subject to SB 35 streamlining

- YES NO **Subdivisions.** Unless the proposed project either: i) receives a low-income housing tax credit and is subject to the requirement that prevailing wages be paid, or ii) is subject to the requirements to pay prevailing wages and use a skilled and trained workforce, does the proposed project involve the subdivision of a parcel that is subject to the California Subdivision Map Act?

If the answer to any of the following questions is “YES,” the proposed project is not subject to SB 35 streamlining

- YES NO **Historic Buildings.** Does the proposed project require demolition of a historic structure that is on a national, state or local historic register?

If the answer to any of the following questions is “YES,” the proposed project is not subject to SB 35 streamlining

- YES NO **Demolition of Residential Uses.** Does the proposed project require demolition of any housing units that have been occupied by tenants in the last 10 years; are subject to any form of rent or price control, or subject to any recorded covenant, law or ordinance that restricts rents to levels affordable to persons and families of moderate, low or very low incomes?

If the answer to any of the following questions is “YES,” the proposed project is not subject to SB 35 streamlining

- YES NO **Mobile Homes.** Is the site governed by the Mobile Home Residency Law, Recreational Vehicle Park Occupancy Law, the Mobile Home Parks Act or Special Occupancy Parks Act?

No parking requirements may be imposed on a SB 35 qualified streamlining project if it is located:

- Within a half-mile of public transit;
- Within an architecturally and historically significant historic district;
- In an area where on-street parking permits are required but not offered to the occupants of the development; or
- Where there is a car-share vehicle located within one block of the proposed project.

One parking space per unit may be required of all other SB 35 projects.

Determine Eligibility

- 60 days if project has 150 fewer housing units
- 90 days if project has more than 150 housing units

Approval

- 90 days from date application submitted if 150 fewer housing units
- 180 days from date application submitted if more than 150 housing units

- HCD Guidelines require locality to provide information about its ministerial approval process, including materials required for an application and relevant objective standards to be used in the evaluation.
- Determine consistency with objective general plan, zoning, subdivision, and/or design review standards.
- If objective standards are inconsistent in the locality's documents, the standard in the general plan prevails.
- SB 35 requires **objective zoning, subdivision and design review standards** to be *knowable by the applicant and public official* before submission.

- SB 35 requires the design review or public oversight process to only focus on reasonable **objective design standards** *published and adopted by ordinance or resolution* before submission of a development application and shall be broadly applicable to development within the jurisdiction.
- In APR due each year, locality must indicate to HCD number of applications submitted, location and number of developments approved, total number of building permits issued and total number of units constructed by ownership status (renter or owner) and income category for SB 35 projects.

- Not required because a ministerial project
- Can permit “design review or public oversight”
 - Can be conducted by planning commission, equivalent board responsible for approval of development projects, or the city council.
 - Must be “objective and strictly focus on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards” in effect before application submitted.
 - Cannot in any way “inhibit, chill, or preclude the ministerial approval” allowed by SB 35.

- Projects that include public investment in housing affordability will not expire where 50% are affordable to at or below moderate income levels.
- Projects that do not include 50% as affordable to at or below moderate income levels automatically expire after 3 years except a one-time, one-year extension may be granted if progress is being made toward construction, such as filing a building permit application. Approval remains valid as long as vertical construction commences and is in process.

Modifications to Project Approval

Guidelines allow modifications after project approval and before building permit issuance.

By Applicant if:

- 1) Consistent with HCD Guidelines;
- 2) Change will not modify project's consistency with objective standards;
- 3) Change will not conflict with a plan, ordinance or policy addressing community health or safety; and
- 4) Will not modify concessions, incentives or waivers.

By Locality only once if:

- 1) Necessary to comply with construction codes (including building, plumbing, electrical, fire, grading);
- 2) Necessary to comply with federal or state laws; or
- 3) Necessary to mitigate a specific, adverse impact upon public health or safety and no “feasible” way to “satisfactorily” mitigate or avoid the impact without modifying the development.

Query – SB 35 only allows objective standards to be applied that were in effect at the time the application was submitted. So can locality request a change to impose “new” codes and laws?

- 1) What are “objective zoning, subdivision and design standards” Must they be in “writing” and must they originate from an adopted resolution or ordinance?
- 2) Who determines if the application meets these standards?
- 3) How is it determined that a project includes at least 2/3 of the square footage dedicated to residential use?
- 4) How does the city attorney inform decision makers they can't hold public hearings?
- 5) Can conditions of approval or mitigation measures be imposed (i.e., indemnification provision) on the project?

- (6) Can the locality, in its general plan or other planning document, require preparation of CEQA related studies (traffic reports, air quality analysis) and impose the measures recommended in those studies?
- (7) Can the locality impose a condition on a mixed use project that requires affordable housing to be built first or at the same time as the other project uses?
- (8) How does a locality assure skilled and trained workforce and prevailing wage is used?

- (9) HCD Guidelines state ministerial approval cannot require a conditional use permit or “other discretionary local government review or approval.” How does this effect inclusionary housing agreements, and subdivision improvement agreements?

- (10) What steps should the locality take to assure an adequate record is in place if the denial or approval is challenged?

Thank You!

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and
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