

# SB35 Affordable Housing: Streamlined Approval Process

## WHAT IS SB35 AFFORDABLE HOUSING STREAMLINED APPROVAL?

SB-35 allows qualifying development projects with certain minimum affordable housing guarantees to move more quickly through the local government review process and restricts the ability of local governments to reject these proposals. This is a voluntary program that a project sponsor may elect to pursue, provided that certain eligibility criteria are met. The bill was signed into law in 2017 and became effective on January 1, 2018.

The bill created a streamlined approval process for infill developments in localities that have failed to meet their regional housing needs allocation (RHNA). The bill amends Government Code Section 65913.4 to require local entities to streamline the approval of certain housing projects by providing a ministerial approval process, removing the requirement for CEQA analysis, and removing the requirement for discretionary entitlements granted by the Planning Commission.

## IS MY PROJECT ELIGIBLE FOR SB35 AFFORDABLE HOUSING STREAMLINED APPROVAL?

In order to be eligible for streamlining, the project must meet all of the following criteria:

- **Affordability:** At least 50% of the proposed residential units must be dedicated as affordable to households at 80% AMI for either rental or ownership projects. In order to assure that the affordable units remain so dedicated, they must comply with the Morgan Hill Inclusionary Housing Program with regard to monitoring, enforcement, and procedures for eligibility.
- **Number of Units:** The development must contain at least two or more net new residential units.
- **Zoning and Residential Uses:** The development must be located on a legal parcel or parcels that are zoned for residential uses. At least 2/3 of the floor area of the proposed development must be dedicated to residential uses.
- **Location:** The development must be located on a property that is not within a coastal zone, prime farmland, wetlands, a high fire hazard 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 a conservation easement.
- **Demolition of Residential Units:** The project does not demolish 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 are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes.
- **Historic Buildings:** The project does not demolish a historic structure that has been placed on a national, state, or local historic register.
- **Consistent with Objective Standards:** The project must meet all objective standards of the Zoning Code at the time of SB-35 application submittal. Such objective standards are those that require no personal or subjective (discretionary) judgment, such as objective dimensional requirements, and as otherwise set forth below.
- **Prevailing Wages:** If the development is not in its entirety a public work, as defined in Government Code Section 65913.4 (a)(8)(A), all construction workers employed in the execution of the development must be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.
- **Skilled and Trained Workforce provisions:** A skilled and trained workforce, as defined in Government Code Section 65913.4 (a)(8)(B)iii, must complete the development if the project consists of 50 or more units.
- **Subdivisions:** The development did not or does not involve a subdivision of a parcel that is subject to the California Subdivision Map Act, unless the development 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 to use a skilled and trained workforce.
- **Notification to California Native American tribes:** After providing notice of the intent to develop the site to California Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed development site, a determination by the City that: the development site is not a tribal or cultural

resource on a national, state, tribal or local historic register list; that the parties to a scoping consultation have documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment; or that the parties to the scoping consultation do not disagree as to whether a potential tribal cultural resource will be affected by the proposed development.

### **WHAT IS THE PROCESS FOR STREAMLINED APPROVAL?**

Prior to accepting an application for SB-35 approval, the City must notify relevant California Native American tribes about the proposed development. A notice of intent to submit an SB-35 application shall include a Project Application, SB-35 Application Supplemental, State Density Bonus application supplemental (if required), a Preliminary Application pursuant to SB-330, and architectural plans. If there is no response to the notification of intent or there is an agreement reached in a scoping consultation and the project application is deemed complete and eligible for SB-35 review, the project is eligible for SB-35 (ministerial) approval. If there is no agreement reached, a project is not eligible for SB-35 approval. Provided that the notification and scoping session result in either an agreement or no response, SB-35 timelines shall commence provide a building permit is submitted.

Projects that elect to take advantage of streamlining stipulated in SB-35 must submit a building permit application and an SB-35 Streamlined Development application demonstrating the project's eligibility.

CEQA review is not required for SB-35 eligible projects because they are subject to a ministerial approval process. The building permit will not be subject to any applicable neighborhood notice requirements in the Zoning Code, and the Department will not accept Discretionary Review applications for these projects because they are subject to a ministerial approval process.

SB-35 includes timelines for streamlined review. Planning staff must determine if a project is eligible for streamlining within 60 days of application submittal for projects of 150 or fewer units, and 90 days for projects containing more than 150 units.

If the Department provides written comments to an Applicant detailing how a project is not SB-35 eligible as proposed, or requests additional information to make such a determination, then the 60 or 90 day timeline will restart upon submittal of a revised development application in response to that written notice.

Any design review or public oversight must be completed in 90 days for 150 or fewer units and 180 days for projects with more than 150 units, measured from the date of the SB-35 application submittal. The Development Services Director may decide, on a case by case basis, to schedule a design review hearing for an SB-35 project at the Planning Commission.

### **State Density Bonus Projects under CA Govt. Code Section 65915**

Projects that use the State Density Bonus Program and meet all other eligibility requirements above qualify for streamlining under SB-35. Any waivers, concessions, or incentives, conferred through the State Density Bonus Law are considered code-complying, and therefore are consistent with the objective standards of the Zoning Code. In addition, qualifying 100% affordable projects may qualify for the State Density Bonus set forth in CA Govt. Code Section 65915.