



AFFORDABLE HOUSING STREAMLINED APPROVAL PURSUANT TO SENATE BILL 35 AND PLANNING DIRECTOR BULLETIN #5 INFORMATIONAL PACKET

California Senate Bill 35 (SB-35) was signed by Governor Jerry Brown on September 29, 2017 and will be effective January 1, 2018. SB-35 applies in cities that are not meeting their Regional Housing Need Allocation (RHNA) goal for construction of above-moderate income housing and/or housing for households below 80% area median income (AMI). SB-35 amends Government Code Section 65913.4 to require local entities to streamline the approval of certain housing projects by providing a ministerial approval process. Currently, San Francisco meets its RHNA goal for construction of above-moderate income housing. However, the City is not meeting the RHNA goal for affordable housing below 80% AMI. Therefore, at this time, projects providing on-site affordable housing at 80% AMI are eligible for streamlining in San Francisco provided they meet all of the eligibility criteria.

Planning Department staff is available to advise you in the preparation of this application. Call (415) 558-6377 for further information.

WHAT IS AFFORDABLE HOUSING STREAMLINED APPROVAL?

SB-35 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 Conditional Use Authorization or other similar discretionary entitlements granted by the Planning Commission or Historic Preservation Commission. This is a voluntary program that a project sponsor may elect to pursue, provided that certain eligibility criteria are met.

IS MY PROJECT ELIGIBLE FOR 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 San Francisco Inclusionary Affordable Housing Program Procedures Manual with regard to monitoring, enforcement, and procedures for eligibility, including the lottery.
- **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. A local historic register includes those properties listed within Article 10 or 11 of the San Francisco Planning Code.
- **Consistent with Objective Standards:** The project must meet all objective standards of the Planning 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 75 or more units that are not 100 percent subsidized affordable housing.
- **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.

WHAT IS THE PROCESS FOR STREAMLINED APPROVAL?

Projects that elect to take advantage of streamlining stipulated in SB-35 must submit a site or building permit application and an SB-35 Streamlined Development application demonstrating the project's eligibility. These can be submitted at the Department of Building Inspection (DBI), under the same procedure as site and building permit submittals. When speaking with a planner at the Public Information Center (PIC), please indicate that this is an SB-35 submittal to ensure that it is routed to the appropriate planner.

CEQA review is not required for SB-35 eligible projects because they are subject to a ministerial approval process. The site or building permit will be subject to any applicable neighborhood notice requirements in the Planning Code. However, 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 a Project Sponsor 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 AB-35 application submittal. The Planning Director may decide, on a case by case basis, to schedule a design review hearing for an SB-35 project at the Planning Commission and/or Historic Preservation Commission.

HOW DOES THIS PROCESS INTERSECT WITH 100% AFFORDABLE PROJECTS THAT REQUIRE ADMINISTRATIVE APPROVAL AND THE 100% AFFORDABLE HOUSING BONUS PROGRAM?

There are various programs and entitlement paths in the Planning Code for projects providing 50-100% of the residential units as affordable. The following section provides information about these specific project types.

100% Affordable Housing Projects under Planning Code Section 315

Currently, 100% Affordable Housing Projects are considered a principally permitted use and must comply with administrative review procedures provided in Planning Code Section 315. Under Planning Code Section 315, an Affordable Housing Project may seek exceptions to Planning Code requirements that may otherwise be available through the Planning Code, including but not limited to Sections 253, 303, 304, 309, and 329, without a Planning Commission hearing. These have been considered discretionary exceptions from the objective controls of the Planning Code.

When SB 35 becomes effective as of January 1, 2018, the Planning Department will ministerially grant an SB-35 eligible project that is also 100% affordable any exception that is equal to or less than the Zoning Modifications automatically granted to a 100% Affordable Housing Bonus Project pursuant to Planning Code Section 206.4. Any 100% Affordable Housing Project granted such an exception, pursuant to Planning Code Section 315 and this Bulletin, will be considered to be consistent with the objective controls of the Planning Code.

Under Planning Code Section 206.4, qualifying projects are entitled to receive certain Zoning Modifications, as well as a density bonus and height increase. These modifications are provided in detail as follows:

- **Rear Yard:** The required rear yard per Section 134 or any applicable special use district may be reduced to no less than 20% of the lot depth or 15 feet, whichever is greater. Corner properties may provide 20% of the lot area at the interior corner of the property to meet the minimum rear yard requirement, provided that each horizontal dimension of the open area is a minimum of 15 feet; and that the open area is wholly or partially contiguous to the existing midblock open space, if any, formed by the rear yards of adjacent properties.
- **Dwelling Unit Exposure:** The dwelling unit exposure requirements of Section 140(a) (2) may be satisfied through qualifying windows facing an unobstructed open area that is no less than 15 feet in every horizontal dimension, and such open area is not required to expand in every horizontal dimension at each subsequent floor.
- **Off Street Loading:** No off-street loading spaces under Section 152.
- **Automobile Parking:** Up to a 100% reduction in the minimum off-street residential and commercial automobile parking requirement under Article 1.5 of the Planning Code.
- **Open Space:** Up to a 10% reduction in common open space requirements if required by Section 135, but no less than 36 square feet of open space per unit.

- **Inner Courts as Open Space:** In order for an inner court to qualify as useable common open space, Section 135(g)(2) requires it to be at least 20 feet in every horizontal dimension, and for the height of the walls and projections above the court on at least three sides (or 75% of the perimeter, whichever is greater) to be no higher than one foot for each foot that such point is horizontally distant from the opposite side of the clear space in the court. 100 Percent Affordable Housing Bonus Projects may instead provide an inner court that is at least 25 feet in every horizontal dimension, with no restriction on the heights of adjacent walls. All area within such an inner court shall qualify as common open space under Section 135.

100% Affordable Housing Bonus Projects under Planning Code Section 206.4

The 100% Affordable Housing Bonus Program allows for objective Zoning Modifications in association with a Development Bonuses, including a density bonus and height increase. Projects that are eligible for the 100% Affordable Housing Bonus Program pursuant to Section 206.4 qualify for streamlining pursuant to SB-35, provided they meet all eligibility requirements above, and require no additional Planning Code exceptions from the Planning Commission.

State Density Bonus Projects under Planning Code Section 206.5 or 206.6

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 Planning Code.

Mixed-Income Affordable Projects (50-99% Affordable)

Mixed-income projects that provide at least 50% of units that are affordable to qualifying households and meet all other eligibility requirements above are eligible for streamlining pursuant to SB-35. If Planning Code exceptions are required as part of a project approval including, but not limited to, a Variance (Sec. 305), a Downtown Authorization Project (Sec. 309), a HOME-SF Project Conditional Use authorization (Sec. 303), or a Large Project Authorization (Sec. 329), the project is not eligible for streamlining because it does not comply with objective standards of the Planning Code.

HOW WILL OTHER ENTITLEMENTS BE AFFECTED?

SB-35 states that a project must be consistent with objective zoning and design standards, which are standards that involve no personal or subjective judgment by a public official. They must be uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant and the public official prior to submittal. Therefore, projects that elect to take advantage of streamlining stipulated in SB-35 are only subject to objective standards and will not be required to follow subjective or discretionary processes.

Shadow Analysis Applications

Planning Code Section 295 mandates Planning Commission approval of new structures above 40 feet in height that would cast shadow on properties under the jurisdiction of, or designated to be acquired by the Recreation and Parks Department, provided that the Planning Commission determines the shadow to be insignificant or not adverse to the use of the park. This determination is either objective or subjective depending on the type of criteria that has been adopted to govern shadow limits on the particular park.

There are two types of parks: those with quantitative limits on the amount of new shadow that may be cast on the park (“budgets”), and those that have not been assigned quantitative shadow budgets. Projects would be eligible for streamlining pursuant to SB-35 if they cast a shadow on a park that **does not** have a quantitative shadow budget because the review standards for the new shadow on these parks are subjective. A Shadow Analysis application will not be required in this scenario.

When receiving an application, the assigned planner will complete a shadow fan to determine if there is any potential shadow on a park with a budget. If the shadow fan shows a potential shadow, the Department will provide written comments detailing how the project is not SB-35 eligible as proposed and the sponsor will be required to provide a shadow study. The 60 or 90 day timeline will restart upon submittal of a revised development application in response to the written notice. Projects will not be eligible for SB-35 streamlining if they cast a shadow on a park with a shadow budget that causes the shadow budget to be exceeded. If the shadow cast is within the park’s budget, the project is eligible for streamlining.

Certificate of Appropriateness and Permits to Alter

SB-35 prohibits demolition of historic buildings placed on local registers, such as Article 10 and Article 11 of the Planning Code, but does not limit development on landmark properties or lots within districts or demolition of noncontributory buildings. The Certificate of Appropriateness and the Permit to Alter are associated with Articles 10 and 11 of the Planning Code, respectively, and are discretionary approvals that rely upon subjective judgement. As such, they are not required for projects eligible for SB-35. However, there are occasional site-specific factors and characteristics for historic districts and city landmarks identified within Article 10 or 11 that are objective standards. Examples of objective standards may include specifications about which materials may be used or legislative setbacks. Projects that do not demolish Article 10 or 11 buildings may be eligible for SB-35 streamlining as long as the objective standards of Article 10 or 11 are met. Even though a building may have been considered a historic resource under the broad provisions of CEQA, it may not be considered a historic building under the narrower definition contained in SB-35.

With regard to process, after a SB-35 Streamlining application is submitted, preservation staff will review the project for compliance with Article 10 or 11 objective standards. If the project does not meet the objective standards, the Department will provide written comments detailing how the project is not SB-35 eligible as proposed and the sponsor could revise the project to maintain eligibility. The 60 or 90 day timeline will restart upon submittal of a revised development application in response to the written notice. Neither a Certificate of Appropriateness application nor a Permit to Alter application will be required for SB-35 eligible projects. The Planning Director may decide, on a case by case basis, to schedule a design review hearing for an SB-35 project at the Planning Commission and/or Historic Preservation Commission.



San Francisco Planning

FOR MORE INFORMATION:

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*Planning staff are available by phone and at the PIC counter.
No appointment is necessary.*