

A BRAVE NEW WORLD?

OVER-THE-COUNTER APPROVALS FOR LARGE PROJECTS UNDER SENATE BILL 35

Sonoma State University

35th Annual Planning Commissioners Conference

December 1, 2018

Patricia E. Curtin
pcurtin@wendel.com
1111 Broadway, 24th Floor
Oakland, CA 94607
510-834-6600

ATTORNEYS AT LAW
**WENDEL
ROSEN**
BLACK & DEAN LLP

SB 35

(Government Code § 65913.4)

- 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) is preparing guidelines for implementation.

SB 35

- Intent of SB 35 is to facilitate and expedite construction of housing.
- Legislature found access to affordable housing is a matter of statewide concern and declared SB 35 applicable to all jurisdictions (including charter cities and counties).

Hurdles in Securing Project Approvals

- Extraordinary amount of time to process applications
- Public opposition
- Wavering public official support
- CEQA and other legal challenges
- Referendums and Initiatives



Key Aspects of SB 35

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

Is the Project Eligible?

Project must be located in a jurisdiction that HCD has 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 RENA numbers
- Above moderate housing (378 jurisdictions failing)
- Below moderate housing (low and very low) (148 jurisdictions failing)

If eligible, does the project meet the criteria on the SB-35 check list?

SB 35 Streamlining Checklist

If the answer for any 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?
- 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?

SB 35 Streamlining Checklist

If the answer for any 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?

- 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)?

SB 35 Streamlining Checklist

If the answer for any 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 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 code compliant, and thus consistent with objective standards)?

SB 35 Streamlining Checklist

If the answer for any 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?

- 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?

- 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?

Parking

No parking requirements may be imposed on an 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.

Timeframes

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

Public Hearings?

- Not allowed because a ministerial project
- Can permit “design review or public oversight”
 - Can be conducted by Planning Commission or equivalent board responsible for approval of development projects, including 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.

Life of Project

- Projects that include public investment in housing affordability will not expire where 50% of the units are affordable to households making below 80% of the area median income (below moderate income levels).
- Projects that do not include 50% of the units as affordable to households making below 80% of the area median income (below moderate income levels) automatically expire after three 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.
- Projects shall remain valid for three years and shall remain in effect as long as vertical construction has begun and is in progress. A one-year extension to the original three year period may be granted if making progress toward construction.

Issues in Implementing SB 35

What are the jurisdictions “objective zoning/design standards”?

Does the project meet those standards?

Does the project include 2/3 “residential use”?

Is the project a “hazardous waste site”?

Thank You!

Patricia E. Curtin

pcurtin@wendel.com

ATTORNEYS AT LAW

**WENDEL
ROSEN**

BLACK & DEAN LLP