

Multifamily Housing Production Act

CA Senate Bill 35 (SB 35), which became effective Jan. 1, 2018, adopted several provisions designed to promote housing production throughout the state, including a streamlined, expedited ministerial review process for multifamily housing developments under Gov. Code [§65913.4](#).

This info-bulletin provides an overview of when SB 35 processing is triggered, minimum project eligibility requirements, and impacts on the city’s normal review and approval processes. The bulletin is only intended to summarize the many provisions of state law rather than cite them in total, and has been updated to include subsequent housing bills that amended state law, including [SB 423](#), which, among other things, extended SB 35 to Jan. 1, 2036.



BACKGROUND

Under state housing law, CA Department of Housing and Community Development (HCD) assigns each jurisdiction housing production goals for different income categories; this is referred to as the Regional Housing Needs Allocation (RHNA) goals.

For the current housing cycle (2021-2029), Carlsbad was assigned housing production goals reflected in the chart below. Refer to [IB-137](#) to learn more about the Carlsbad Housing Plan and how the city is accommodating its share of regional housing needs for these different household income groups.

Income Category	RHNA
Very Low	1,311 units
Low	784 units
Moderate	749 units
Above Moderate	1,029 units

Documents Referenced

- Multifamily Housing Streamlining Law; [§65913.4](#)
- HCD 2021 Updated SB 35 [Guidelines](#)
- 2010 Census – Urbanized Area Reference [Map](#)
- HCD Statewide Determination [Summary](#)
- Carlsbad Housing Plan, [IB-137](#)
- State Density Bonus Law, [IB-112](#)
- SB-330 Housing Crisis Act; [IB-132](#)
- Middle Class Housing Act; [IB-136](#)
- Development Permit Application, [P-2](#)
- Housing Development (SB-330) Pre-Application; [P-32](#)
- SB Streamline Checklist, [P-35](#)

Housing law requires cities to submit to HCD by April 1st a Housing Element Annual Progress Report that shows their housing entitlement and production figures for the year. HCD reviews the reports and decides whether the jurisdiction is on track to meeting its RHNA obligations for the housing cycle.

If HCD determines that a jurisdiction is falling behind in achieving their RHNA allocation in any of the income categories or has failed to timely file their Housing Element Annual Progress Report, SB 35 allowances are triggered.

As further explained in the bulletin, jurisdictions subject to SB 35 are required to offer an expedited ministerial (“by-right”) approval process for certain multifamily development projects, exempting them from public hearings and environmental review.

SB 35 AND THE CITY OF CARLSBAD

Two factors must first be triggered before a project can be considered for SB 35 processing:

- The RHNA income category/categories HCD finds the city being deficient; and
- The amount of affordable housing proposed in the multifamily housing project.

Pursuant to SB 35, a project is eligible for streamlined, expedited review under this state law if...

- HCD finds the jurisdiction is making insufficient progress towards meeting its Above-Moderate RHNA requirements; and the development dedicates at least 10% of the units affordable.

- HCD finds that the jurisdiction has failed to timely submit their Housing Element Annual Progress Report; and the development project dedicates at least 10% of its units affordable.
- HCD finds the jurisdiction is making insufficient progress towards meeting its Low-/Very-Low RHNA requirements; and the development dedicates at least 50% of the units affordable.

HCD typically posts their housing production compliance determinations in June/July each year. According to HCD’s most recent [Statewide Determination Summary](#), Carlsbad was found to be making sufficient progress in meeting its Above-Moderate housing goals, but making insufficient progress toward meeting its lower income RHNA requirements (Low- and Very-Low income). The city filed its annual report timely ([Resolution #2023-084](#)).

As such, residential projects that dedicate at least 50% of their units as affordable and meet the required project development criteria specified in [§65913.4](#) (summarized in this bulletin), are subject to streamlined, expedited review under SB 35. Multifamily projects that propose less than 50% affordability remain subject to the city’s normal permit review processes.



PROJECT ELIGIBILITY CRITERIA

Development projects are eligible for the streamlined, ministerial approval process under SB 35 if they meet the following criteria. Applicants should review technical definitions and guidance provided in (1) Gov. Code §65913.4(m) [Definitions], (2) Gov. Code §65913.4(a) [Eligibility Criteria], (3) [HCD’s 2021 Updated SB-35 Guidelines](#) (or any subsequent updates), and (4) any subsequent statutory updates.

Minimum Affordable Units

As referenced, the City of Carlsbad is currently subject to SB 35 streamlining for residential developments where at least 50% of the total proposed housing units are dedicated affordable to low- or very low-income households.

The affordable units must be subject to recorded restrictions or covenants for at least 55 years for rental units and 45 years for ownership units.

Urban Infill

At least 75% of the site's perimeter adjoins parcels that are developed with urban uses. “Urban uses” means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. Parcels that are only separated by a street or highway shall be considered adjoined.

Specified Zones

- The site must have a general plan designation or be zoned for residential or mixed use where at least two-thirds of the proposed development square footage designated for residential use. See Gov. Code §65913.4(a)(2)(C) for guidance on square footage calculations.
- The site is zoned for office or retail uses and meets the criteria set forth in the Middle-Class Housing Act of 2022 (Gov. Code § 65852.24). Refer to info-bulletin [IB-136](#) for information.

Minimum Number of Units

At least two residential units must be proposed.

Site Location

The development cannot be located on property within any of the following areas:

- Delineated earthquake fault zone.
- Habitat for protected species or wetlands.
- Conservation plan/conservation easement.
- Flood plain/floodway.
- Hazardous waste site.
- Farmland (prime/statewide significance).
- Must not demolish housing occupied by tenants or be on a site governed by laws that regulate mobile homes, campers, or recreational vehicles.
- The project site may not contain tribal cultural resources, and jurisdictions must engage in a

tribal consultation process prior to accepting an application for streamlined, ministerial approval.

Development in Fire Hazard Zones

Under the original state law, SB 35 processing was not available to projects located in a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Gov. Code § 51178.

SB 423 maintains that prohibition but exempts sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development, including, but not limited to, standards established under all the following or their successor provisions:

- Section 4291 of the Public Resources Code or Section 51182, as applicable.
- Section 4290 of the Public Resources Code.
- Chapter 7A of the California Building Code (Title 24 of the California Code of Regulations).

SB 423 essentially defined additional standards under which multifamily housing may be developed to mitigate risks associated with high or very high fire hazards severity zones.



CA Coastal Zone

Under the original state law, SB 35 processing was not available for projects located within the [CA Coastal Zone](#). SB 423 changed that to allow SB 35 processing within the Coastal Zone so long as the project does NOT meet any one of specified conditions:

- Located between the ocean and the first public road paralleling the ocean or within 300 feet of the inland extent of any beach or of the mean high tideline of the ocean where there is no beach, whichever is the greater distance.
- Located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.
- Located on a parcel that is not zoned for multifamily housing.
- Located in an area not subject to a certified local coastal program or a certified land use plan.

- Located in an area that is vulnerable to five feet of sea level rise, as determined by the National Oceanic and Atmospheric Administration, the Ocean Protection Council, the United States Geological Survey, the University of California, or a local government's coastal hazards vulnerability assessment.
- Located on, or within a 100-foot radius of, a wetland, as defined in Section 30121 of the Public Resources Code.
- Located on prime agricultural land, as defined in Sections 30113 and 30241 of the Public Resources Code.

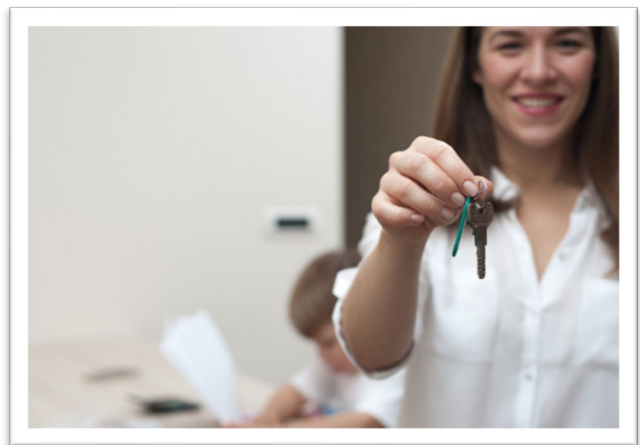
Demolition of Existing Residential Units

Development cannot demolish any existing housing units that meet one of the following:

- Occupied by tenants in the last 10 years.
- Subject to any form of rent or price control.
- Subject to a local law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes.
- Development cannot be on a site used for housing that was occupied by tenants that was demolished within 10 years.

Historic Buildings

Development cannot demolish a historic structure that was placed on a national, state, or local historic register before the submission of an application.



Objective Design Standards

The project must meet all objective general plan, zoning, subdivision, and design review standards in effect at the time the application is submitted

(excluding inconsistencies arising from a Density Bonus or related concessions/incentives/waivers).

SB 35 defines objective standards as those standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

Skilled & Trained Labor

SB 423 established a new three-tiered regime for projects that include market-rate units.

- Projects proposing fewer than 10 units have no additional labor provisions.
- Projects proposing 10 to 50 units must pay prevailing wage. See §65913.4(a)(8)(A) for additional details.
- Projects proposing greater than 50 units must employ apprentices and provide health care benefits for workers.
- Projects over 85 feet in height (generally projects that use steel-frame construction), must utilize a “skilled and trained” workforce.

Subdivision of Land

Does not involve a subdivision, unless the development:

- Is consistent with all objective subdivision standards; and either;
- Receives a low-income housing tax credit and is subject to the requirement that prevailing wages be paid; or,
- Subject to requirements to pay prevailing wages and use a skilled/trained workforce.

Parking

The city cannot require more than one parking space per residential unit, regardless of the city’s residential parking standards contained in [CMC §21.44.020](#). However, no parking may be required under the following conditions:

- The project is located within:
 - One-half mile of a public transit;
 - Architecturally or historically significant historic district; or,

- one block of a car-share station; or,
- On-street parking permits are required, but not offered to the development occupants.



HOW TO SUBMIT

Eligible projects are first required to complete an SB 35 permit streamline eligibility checklist form ([P-35](#)), a “Notice of Intent” to file in the form of a Preliminary Housing Development Pre-Application ([P-32](#)), and a complete development permit application ([P-2](#)). Please contact the Planning Division to schedule an intake appointment.

PROCESSING TIMELINE

Depending upon the number of housing units proposed in the project, the city has a short timeframe to review the application to determine if it is eligible for processing under SB 35. If it is determined that the project is eligible, SB 35 specifies the timeframes within which the city must make a final decision on the application (Gov. Code §65913.4(c).)

Once a Notice of Intent is filed, the city must determine whether the project conflicts with objective planning standards within 60 days of application submittal for projects with 150 or fewer units, and 90 days for projects with more than 150 units.

Project design review and consideration of any information requested of the applicant for ministerial review must be completed with a final approval in 90 days from project application submittal for projects with 150 or fewer units and 180 days from project submittal for projects with more than 150 units.



PUBLIC MEETINGS

Certain Designated Census Tracks

SB 423 also added a provision requiring a public meeting for proposed development projects located within the following designated census tracks.

- Moderate resource area,
- Low resource area, or
- Area of high segregation and poverty

The city must notice the surrounding property owners and hold a public meeting to provide an opportunity for the public and the local government to comment on the development.

This meeting must be held within 45 days of receiving the Notice of Intent and **before** the development proponent applies for the proposed development.

Planning Commission Meetings

SB 35 projects are ministerial, which do not require public hearings. The state law allows a local Planning Commission (or equivalent) to consider SB 35 applications, but their review is strictly limited to whether the project complies with applicable objective design standards.

SB 35, later amended by SB 423 includes language requiring staff – rather than elected or appointed officials – to make final decisions about approving or denying ministerial projects. While a design review hearing remains allowed, the final action on the project must be taken by staff. Further, the process may not in any way “inhibit, chill, or preclude the ministerial approval” allowed under state law.

ENVIRONMENTAL REVIEW

SB 35 projects are considered ministerial and therefore not subject to the California Environmental Quality Act (CEQA). As such, the city cannot require applicants to provide studies, information or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards applicable to the development. This includes studies or analysis typically needed to assess environmental impacts under CEQA (e.g., transportation, air quality, noise).

If an objective planning standard requires certain studies to be performed and there are objective standards to address the preparation and results of those studies, then the applicant would be required to prepare and implement those requirements.

MODIFICATIONS

A development proponent may request a modification to a SB-35 development that has been approved if the request is submitted before the issuance of the final building permit.

Such modifications shall be approved if the modifications are consistent with the objective planning standards in effect when the original development application was first submitted. However, new objective planning standards may be applied if:

- The applicant modifies the number of residential units or square footage by $\geq 15\%$.
- The project is modified by $\geq 5\%$ and the standard mitigates/avoids a specific adverse impact.
- The standards are contained in the California Building Standards Code (Title 24 of the California Code of Regulations) and submitted prior to the first building permit application.

The city shall determine if the requested modification is consistent with the objective planning standard and either approve or deny the modification request within 60 days after submission of the modification,

or within 90 days if design review is required. See Gov. Code § 65913.4(h) for additional information.



APPROVAL EXPIRATION

The expiration dates for projects approved under SB 35 are as follows:

- Projects will not expire where both (A) the project includes public investment in housing affordability, beyond tax credits, and (B) at least 50% of the units are affordable to households making at or below 80% of the area median income.
- Projects that do not include housing noted in the bullet above automatically expire after three years.
- Projects shall remain valid for three years and shall remain in effect as long as construction activity, including demolition and grading activity, on the development site has begun pursuant to a permit issued by the local jurisdiction and is in progress. See Gov. Code § 65913.4(g)(2)(A) for additional information, including phased projects, and projects with cessation of construction for more than 180 days.
- A one-year extension to the original three-year period may be granted if the applicant can provide documentation that there has been significant progress toward getting the development construction ready.

DENSITY BONUS

SB 35 projects can utilize all the benefits offered under the State Density Bonus Law, which includes density bonus and the granting of concessions, incentives, and waivers of development standards to housing developments. Please refer to the city's informational bulletin [IB-112](#) for additional information on density bonus allowances.

PRE-APPLICATION REVIEW (OPTIONAL)

Early consultation with the city is strongly recommended since codes, standards and housing requirements may apply to your project that could affect the anticipated scope of a project. Although it is not required, staff recommends applicants informally discuss a preliminary review application with staff ([P-14](#)) to obtain input PRIOR to submitting an SB 35 application packet.

This review could assist in scoping the development project, may provide a road map for what applications will be required, and may raise important issues of concern as the project design is developed. This will help further streamline the review process, consistent with the intent and purpose SB 35.

YOUR OPTIONS FOR SERVICE

To schedule an appointment or to learn more about this process, please contact the Planning Division at 442-339-2600 or via email at Planning@carlsbadca.gov.

