

What's allowed under the HOUSING AFFORDABILITY ACT?

California Senate Bill 35, the Housing Accountability and Affordability Act, was signed by Governor Jerry Brown on Sept. 29, 2017, and became effective Jan. 1, 2018. Under state housing law, the State Department of Housing and Community Development assigns each jurisdiction housing production goals for different income categories; this is referred to as the Regional Housing Needs Allocation goals.

Every year cities and counties are required to report to HCD their housing production (by income category) according to the number of building permits issued within the jurisdiction. If HCD finds that a jurisdiction's RHNA goals are not being satisfied, SB 35 requires cities and counties to streamline the review and approval process of certain affordable housing projects.

For the current housing cycle (2013-2021), Carlsbad was assigned the following housing production goals.

Income Category	RHNA Assigned	RHNA Permitted ¹
Very Low	912 units	44 units
Low	693 units	272 units
Moderate	1,062 units	316 units
Above Moderate	2,332 units	3,056 units

¹As of Dec. 31, 2019

Carlsbad has significantly exceeded unit production goals for the above moderate household income category, but not met its obligations for the other income categories. As such, Carlsbad is subject to SB 35 streamlining for projects where 50% of the units in the project are proposed for lower income families.

STREAMLINED MINISTERIAL APPROVAL

SB 35 requires cities and counties to streamline review and approval of eligible affordable housing projects by providing a ministerial approval process, exempting such projects from environmental review under the California Environmental Quality Act.

This process does not allow public hearings; only design review or public oversight is allowed, which must be objective and strictly focused on assessing compliance with criteria required for streamlined projects as well as objective design review of the project.

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.



ELIGIBILITY CRITERIA

Development projects are eligible for the streamlined, ministerial approval process under SB 35 if they meet all the following criteria:

Minimum Affordable Units

- At least 50% of the total units must be restricted for low or very low income housing for a period of no less than 55 years.

Urban Infill

- The property must be in an urban area (services readily available), with 75% of the site's perimeter already developed.

Minimum Units

- At least two residential units must be proposed.

Designated Residential Use

- The city's current general plan and zoning designation must allow residential or residential mixed-use with at least two-thirds of the proposed development square footage designated for residential use.

Location

- The development cannot be located on property within any of the following areas:
 - » The Coastal Zone
 - » Very or very high fire hazard severity zone
 - » Delineated earthquake fault zone
 - » Habitat for protected species or wetlands
 - » Farmland (prime/statewide significance)
 - » Under a conservation easement
 - » Flood plain/floodway
 - » Hazardous waste site

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 rental prices to levels affordable to persons and families of moderate, low or very low incomes.

Historic Buildings

Development cannot demolish a historic structure that is currently listed on a national, state or local historic register at the time of application submittal.

Consistent with Objective Planning Standards

Development must meet all objective general plan, zoning and design review standards in effect at the time the application is submitted, except for density bonus (see section on SB35 and density bonus).

Note: 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.

Prevailing Wages

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. Public work projects as defined in Government Code Section 65913.4(a)(8)(A), are exempt.

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% subsidized affordable housing.

Subdivisions

Does not involve a subdivision, unless the development:

- 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

Must provide at least one parking space/unit, however, no parking may be required under the following:

- The project is located within:
 - » Half mile of a public transit stop
 - » Architecturally or historically significant historic district
 - » One block of a car-share station
- On-street parking permits are required but not offered to the development occupants.

SB 35 AND 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.

APPROVAL TIMELINE

Projects that elect to take advantage of this process must specifically request SB 35 processing.

The city must determine whether the project is eligible for streamlining within 60 days of application submittal for projects with 150 or fewer units, and 90 days for projects with more than 150 units.

Thereafter, 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 HEARING REQUIREMENTS

SB 35 projects are ministerial, which do not require public hearings. SB 35 allows “design review or public oversight” to occur if a city so chooses. This process may be conducted by the Planning Commission or an equivalent board or commission responsible for review and approval of development projects, or the City Council.

Design review or public oversight must be objective and strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards that were in effect before the application was submitted. This process may not in any way “inhibit, chill, or preclude the ministerial approval” allowed by SB 35.

ENVIRONMENTAL/IMPACT REVIEW

SB 35 projects are considered ministerial and therefore not subject to CEQA. As such, the city cannot require applicants to prepare any studies that would be required under CEQA (i.e., traffic, air quality, noise).

The city can only require an applicant to abide by objective planning standards that were in effect at the time the SB 35 application was submitted. 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.

APPROVAL EXPIRATION

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

- Projects 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 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 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.