

# SB-35 Multifamily Housing

CA Senate Bill 35 (SB-35) adopted several provisions related to housing, including a streamlined ministerial review process for multifamily housing developments under Gov. Code § 65913.4, which became effective Jan. 1, 2018. Qualifying projects are considered ministerial and not subject to a conditional use permit (CUP).

This Info-Bulletin provides an overview of how the SB-35 affects the city’s review and approval of eligible housing projects. This bulletin has been updated to include several bills amending Gov. Code § 65913.4, including AB-1174 (Sept. 2021).



## 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 the following housing production goals.

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

Refer to [IB-137](#) to learn more about the city’s RHNA obligations and how they are being accommodated in the city’s Housing (Plan) Element.

## Documents Referenced

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

Every year cities are required to report to HCD their housing production figures. If HCD finds that a jurisdiction’s RHNA goals in any of the income categories are not being timely satisfied, residential projects meeting certain development criteria are eligible for a ministerial, streamlined review process pursuant to SB-35.

HCD’s July 1, 2022 SB 35 [Statewide Determination Summary](#) identified the City of Carlsbad as a jurisdiction making insufficient progress toward its lower income RHNA (Very Low and low income) and concluded the City is subject to the SB 35 streamlined ministerial approval process for proposed housing developments with at least 50% affordability. The City of Carlsbad is located in an urbanized area, as defined by the [US Census Bureau](#).

## 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 (CEQA) and expedited ministerial permit review process (without the need for a CUP).

This process does not allow public hearings; only ministerial design review or public oversight is allowed, which must be objective and strictly focused on assessing compliance with objective development standards and criteria.

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).) These timeframes are discussed more in this bulletin.



## ELIGIBILITY CRITERIA

Development projects are eligible for the streamlined, ministerial approval process under SB-35 if they meet all the following criteria. Applicants should review technical definitions and guidance provided in (1) Gov. Code § 65913.4(k) [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

At least 10% (when the city fails to meet production goals for above market units) or 50% (when the city fails to meet production goals for moderate, low, or very low units) of the total proposed units (depends on what level of production goals the city fails to meet) must be restricted for low or very low-income housing for a period of no less than 55 years. As discussed above, the City is currently only subject to SB 35 streamlining for residential developments with at least 50% affordability.

### 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 to be adjoined.

### Minimum Units

At least two residential units must be proposed.

### Designated Residential Use

The city's current general plan or zoning designation must currently allow residential or residential mixed-use with 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.)

### Site Location

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

- Coastal Zone
- Very or very high fire hazard severity zone
- Delineated earthquake fault zone
- Habitat for protected species or wetlands
- Conservation plan/conservation easement
- Flood plain/floodway
- Hazardous waste site
- Farmland (prime/statewide significance)
- Land governed by Mobilehome Residency Law, Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act

### 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 is currently listed on a national, state, or local historic register at the time of application submittal.

### Consistent with Objective Planning 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.

### Prevailing Wages

The project must be a public work as defined by Labor Code § 1720, or 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. (See Government Code §65913.4(a)(8)(A) for additional details.) Projects which are not a public work and include 10 or fewer units are exempt from providing a prevailing wage.

### Skilled & Trained Workforce Provisions

A skilled and trained workforce, as defined in Government Code §65913.4(a)(8)(B)(i)(II), must complete the development if the project consists of 50 or more units that are not 100 percent subsidized affordable housing.

### 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:

- 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 (SB-330) Pre-Application ([P-32](#)), and a complete development permit application ([P-2](#)). Please contact the Planning Division to schedule an intake appointment.



## APPROVAL TIMELINE

Once a Notice of Intent is filed, the city must determine whether the project is in conflict 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 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 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 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 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 prepare any studies that would be required under CEQA (e.g., transportation, 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.

## MODIFICATIONS

A development proponent may request a modification to a SB-35 development that has been approved, provided that 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 15 percent or more.
- The project is modified by 5 percent or more and the new standards mitigate or avoid 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(g) 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(f)(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 760-602-4610 or via email at [Planning@carlsbadca.gov](mailto:Planning@carlsbadca.gov).

