



# Los Angeles County Department of Regional Planning

*Planning for the Challenges Ahead*



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## **Senate Bill 35: Streamlined Approval Process for Multi-family Residential Developments (UPDATED)**

On September 29, 2017, the Governor approved Senate Bill (SB) 35 Wiener, which added Section 65913.4 to the Government Code to require a streamlined ministerial review process for eligible multi-family residential developments that include a specified level of affordability, pay prevailing wages to all construction workers, hire a skilled and trained workforce, and meet other criteria pertaining to project locations and pre-existing site conditions. With the passage of SB 765 (Wiener) and AB 101 (Committee on Budget) on September 27, 2018 and July 31, 2019 respectively, as well as the release of the *Streamlined Ministerial Approval Process Guidelines* by the State Department of Housing and Community Development (HCD) on November 29, 2018, certain eligibility criteria have changed. This memo shall supersede the memo regarding SB 35 dated August 16, 2018. I encourage you to discuss these modifications with your respective staff in order to provide a consistent transition to the new regulations.

A copy of the new State law (Attachment A) and HCD's *Streamlined Ministerial Approval Process Guidelines* (Attachment B) is attached for your reference. Please be aware of the following changes pertaining to the approval of eligible projects (major changes in ***bold, italicized, and underlined***). The following changes shall supersede any contrary provisions in Title 22:

### **I. ELIGIBILITY FOR STREAMLINED MINISTERIAL REVIEW <sup>1</sup>**

***A multi-family residential use shall be subject to a streamlined ministerial review process specified in this memo*** if all of the following criteria are met:

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<sup>1</sup> ***It is not the intent of this memo to capture all projects that maybe eligible for a streamlined ministerial review pursuant to SB 35. Please refer to the attached State law and the HCD's Guidelines for further information.***

**A. Project Components.**

1. The project shall consist of two or more attached residential units and is one of the following:

**a. A development of more than 10 dwelling units, exclusive of additional units provided by a density bonus, with a minimum of 10 percent of such dwelling units set aside for lower or very low income households, subject to the following:<sup>2</sup>**

**i. Application Requirements.**

**(a) An Administrative Housing Permit (Section 22.166.040) application is required for all developments subject to this paragraph I.A.1.a; and**

**(b) A Ministerial Site Plan Review (Chapter 22.186) application is required if the project is a non-subdivision development; or**

**(c) A tentative map and a final map or a parcel map (Title 21) are required if the project is a subdivision.**

**ii. Duration of Affordability.**

**(a) All set-aside rental units shall be subject to 55 years of affordability; and**

**(b) All set-aside for-sale units shall be subject to 45 years of affordability; or**

**b. A development of 10 dwelling units or less, exclusive of additional units provided by a density bonus, with no affordable housing set-aside, subject to the following application requirements:**

**i. A Ministerial Site Plan Review (Chapter 22.186) application is required if the project is a non-subdivision development; or**

**ii. A tentative map and a final map or a parcel map (Title 21) are required if the project is a subdivision.**

2. **If the project is a mixed-use development, at least 2/3 of the total floor area shall be designated for residential use,<sup>3</sup> and the following shall apply:**

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<sup>2</sup> **"Minimum of 10 percent of such dwelling units" is calculated based on the total number of dwelling units in the development exclusive of a) any additional units provided by a density bonus and b) any manager's units. All calculations resulting in fractional numbers shall be rounded up to the next whole number.**

<sup>3</sup> **Additional dwelling units, floor area, incentive, or waiver or reduction of development standards granted pursuant to the Density Bonus Law shall be included in the square footage calculation.**

**a. Both residential and commercial components of a qualified mixed-use development are eligible for the streamlined ministerial review. However, individual businesses located in the commercial component are subject to any additional permitting requirements set forth in Title 22. For example, alcoholic beverage sale in a restaurant within the development is subject to an ABC CUP; and**

**b. If the commercial component is not part of a vertical mixed-use structure, construction of the residential component of a mixed-use development shall be completed prior to, or concurrent with, the commercial component.**

**B. Project Location.** The project shall satisfy all of the following:

1. The project site is a legal parcel or parcels located entirely within an urbanized area or urban cluster, as designated by the U.S. Census Bureau;
2. The project site has at least 75% of its perimeter adjoining parcels developed with urban uses, which include any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses;<sup>4</sup>
3. The project site is zoned for residential or residential and commercial mixed-use developments, or has a General Plan land use designation that allows residential or residential and commercial mixed-use developments **by-right or with a Conditional Use Permit**; and
4. No portion of the project site shall be located in any of the following:
  - a. A Coastal Zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code;
  - b. Prime Farmland or Farmland of Statewide Importance, as identified by the California Department of Conservation;
  - c. Wetlands, as defined in the U.S. Fish and Wildlife Service Manual;
  - d. A High or Very High Fire Hazard Severity Zone, as identified by the California Department of Forestry and Fire Protection;
  - e. A hazardous waste site listed in Section 65962.5 of the Government Code (the Cortese List, which is available at <https://calepa.ca.gov/SiteCleanup/CorteseList>), **unless the site has been cleared for residential use or residential mixed uses by the State**

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<sup>4</sup> Parcels that are only separated by a street or highway shall be considered to be adjoined.

**Department of Public Health, State Water Resources Control Board, or  
Department of Toxic Substances Control;**

- f. A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency (FEMA) in any official maps published by the FEMA, unless:
    - i. The site has been subject to a Letter of Map Revision prepared by the FEMA and issued to the County; or
    - ii. The site meets FEMA requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations;<sup>5</sup>
  - g. A regulatory floodway as determined by the FEMA in any official maps published by the FEMA, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations;
  - h. A Significant Ecological Area; or
  - i. A critical habitat designated by the U.S Fish and Wildlife Service.
- C. **Pre-Existing Site Condition.** The project is not located on a site where any of the following apply:
- 1. There is an existing residential use, which is subject to a recorded covenant and agreement restricting rents to levels affordable to moderate, lower, or very low income households, that would be demolished as a result of the proposed development;
  - 2. There is an existing residential use, which has been occupied by tenants during the 10-year period prior to the application submittal, that would be demolished as a result of the proposed development;
  - 3. There was a residential use occupied by tenants and subsequently demolished during the 10-year period prior to the application submittal;
  - 4. There is an existing historic structure, which was placed on a national, state, or local historic register, that would be demolished as a result of the proposed development;

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<sup>5</sup> **A hydrology study must be submitted to and reviewed by the Department of Public Works in order to determine the sites' compliance with all applicable FEMA requirements.**

5. **There is an existing residential use, which is occupied by tenants, that would require a subdivision (condo conversion) as a result of the proposed development; or**
6. There is an existing mobilehome park, recreational trailer park, or travel trailer park.

The applicant shall submit the "Pre-Existing Site Condition Questionnaire" (Attachment C).

- D. **Zoning Conformance.** The project, excluding any additional density and/or incentives granted via the Administrative Housing Permit pursuant to Section 22.52.1830 and 22.52.1840, shall comply with all applicable development standards in the Zone, Community Standards District, or Specific Plan where the project is located.
1. **Density and Floor Area Ratio (FAR).** In determining whether the project is consistent with development standards pertaining to maximum allowable density and FAR, the General Plan shall prevail and supersede any contrary provisions in Title 22.
  2. **Parking**
    - a. The project shall be exempt from any parking requirements if any of the following apply:
      - i. **The project is located within a ½ mile of public transit. "Public transit" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. Measurements for frequency of bus service can include multiple bus lines;**<sup>6</sup>
      - ii. **The project is located within a historic district;**
      - iii. When on-street parking permits are required but not offered to the occupants of the development; or
      - iv. When there is a car share vehicle located within one block of the development.<sup>7</sup> For example, this can be verified by checking the maps on Zipcar ([www.zipcar.com](http://www.zipcar.com)).

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<sup>6</sup> Planners should check the bus schedule to verify frequency of bus service.

<sup>7</sup> **A block can be up to 1,000 linear feet of pedestrian travel along a public street from the development.**

- b. If the project does not fall within any of the criteria described in Subsection 2.a. above, one parking space shall be required per unit unless fewer parking spaces are required by the Density Bonus Law (i.e., AB 744), if applicable, in which case the parking ratio provided by the Density Bonus Law shall prevail.

#### **E. Labor Compliance**

1. ***Prevailing Wages.*** If the project is more than 10 units, or if the project is or will be under contract and funded in whole or in part by public money, all construction workers employed in the execution of the project shall be paid prevailing wages pursuant to the State Prevailing Wage Law (Sections 1720 et seq. of the Labor Code).

The applicant shall submit a notarized self-certification form (Attachment D) and the "Source of Funds Questionnaire" (Attachment E).

2. ***Skilled and Trained Workforce.*** If the project is not 100% affordable to lower or very low income households and consists of 75 or more units,<sup>8</sup> the project shall use a skilled and trained workforce as defined in Sections 2600 et seq. of the State Public Contract Code.

The applicant shall submit a notarized self-certification form (Attachment F).

3. ***Additional Requirements for Subdivisions. If the project is a condominium development, either of the following shall apply:***

- i. The project has received or will receive a low-income housing tax credit and is subject to the prevailing wage requirement set forth in paragraph E.1, above.***

- ii. The project is subject to the prevailing wage requirement and the hiring of a skilled and trained workforce requirement set forth in paragraph E.1 and E.2, above.***

#### **II. TIME LIMITS FOR NOTIFICATION AND DECISION**

- A. **Written Notification on Ineligibility.** If, upon reviewing all required application materials, it is determined that a project is ineligible for the streamlined ministerial review in accordance with the abovementioned criteria, the applicant shall be notified, in writing, of which criterion or criteria the project fails to meet with detailed explanations within the required time period, as follows:<sup>9</sup>

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<sup>8</sup> Or 50 or more units for projects approved on and after January 1, 2022.

<sup>9</sup> If a written notification is not provided to the applicant within the required time period, the project is deemed to meet all the criteria and therefore eligible for a streamlined ministerial review.

1. Within 60 days of application submittal if the project contains 150 or fewer units.
  2. Within 90 days of application submittal if the project contains more than 150 units.
- B. **Permit Processing.** A decision on the Administrative Housing Permit, *the Site Plan Review, and/or the subdivision* application shall be made within the required time period, as follows:
1. Within 90 days of application submittal if the project contains 150 or fewer units.
  2. Within 180 days of application submittal if the project contains more than 150 units.
- C. **Modification. Following the approval of the Administrative Housing Permit, the Site Plan Review, and/or the subdivision application but prior to the issuance of a building permit for the project, the applicant may submit a written request to modify the project. Approval of the modification request must be completed within 60 days of submittal of the modification, subject to the following findings:**
- 1. The change is consistent with all criteria set forth in this memo and HCD's Streamlined Ministerial Approval Process Guidelines;**
  - 2. The change will not modify the project's consistency with all applicable development standards in the Zone, Community Standards District, or Specific Plan where the project is located;**
  - 3. The change will not conflict with a plan, ordinance or policy addressing community health and safety; and**
  - 4. The change will not result in modifications to the incentives or waivers to development standards granted pursuant to Chapter 22.120 (Density Bonus).**

### III. APPROVAL EXPIRATION AND TIME EXTENSION

The streamlined ministerial approval is valid for three years, except that:

- A. A project may receive a discretionary one-time, one-year extension if the applicant can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.
- B. The approval shall not expire if the project 1) contains a minimum of 50% of the total number of units for lower or very low income households; and 2) receives public funding for affordable housing other than tax credits.
- C. Approval shall remain valid beyond the three years so long as vertical construction of the development has begun and is in progress.

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If you have any questions regarding this memo, please contact Connie Chung in the General Plan Development and Housing Section at (213) 974-6417 or [cchung@planning.lacounty.gov](mailto:cchung@planning.lacounty.gov).

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Attachments:

- A. Government Code Section 65913.4
- B. HCD Streamlined Ministerial Approval Process Guidelines
- C. Pre-Existing Site Condition Questionnaire
- D. Prevailing Wage Certification
- E. Source of Funds Questionnaire
- F. Skilled and Trained Workforce Certification