

SB 35 SUMMARY – Streamlined Approvals for Infill Developments – RHNA Implementation

On September 15, 2017, the California Senate and Assembly passed Senate Bill 35, which is a bill designed to create a streamlined, ministerial approval process for infill developments in communities that have failed to meet their regional housing needs assessment (RHNA) numbers.

The streamlined approval process requires some level of affordable housing to be included in the housing development. To receive the streamlined process for housing developments, the developer must demonstrate that the development meets a number of requirements. The list of requirements is quite long and complex, which reduces the potential adverse impact of this bill. An outline of the development requirements is attached as Exhibit A.

The City must provide written documentation to the developer if there is a failure to meet the specifications for streamlined approval, within specified periods of time. If the City does not meet those deadlines, the development shall be deemed to satisfy the requirements for streamlined approval.

Current law already requires that the City must submit an annual housing progress report by April 1 each year. The new law increases the amount of information that the City must provide regarding type and location of net units produced, and the number of applications received, approved and disapproved. In addition, the new law requires the state to post the data in the reports from cities in a manner that is easily available to the public.

If the state determines that the City is not on pace to achieve its allocation for all categories of affordable housing each year (Moderate, Low Income, Very Low Income), then the City loses community approval authority for qualifying development projects until the City catches up.

Qualifying development proponents would enjoy a streamlined approval process without public hearings if the City is behind on achieving its allocation goals. The City would remain subject to the streamlined approval of qualifying developments until the state's determination for the next reporting period.

Design review of the development may be conducted by the Planning Commission or City Council, as appropriate. The design review must be objective and strictly focused on assessing compliance with criteria for streamlined projects. Design review must be completed within 90 days for projects containing 150 units or fewer and within 180 days for projects containing more than 150 units.

EXHIBIT A

SB 35 allows a development proponent to submit an application for a development that is subject to the streamlined, ministerial approval process, and not subject to a conditional use permit, if the development contains two or more residential units and satisfies ALL of the following objective planning standards:

a) The development is located on a site that satisfies all of the following:

i) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the U.S. Census Bureau;

ii) A site in which at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses;

iii) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage designated for residential use; and

iv) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for 55 years for units that are rented or 45 years for units that are owned.

b) The development satisfies both of the following:

i) Is located in a locality that HCD has determined, based on the last production report submitted by the locality to HCD, is subject on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. Note that a locality shall remain eligible until HCD's determination for the next reporting period. In addition, a locality is subject to this if it has not submitted an annual housing element report to HCD for at least two consecutive years before the development submitted an application for approval; and

ii) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on either one of the following:

(1) The locality did not submit its latest production report to HCD by the time period required, or that report reflects that there were fewer units of above moderate-income housing approved than were required for the regional housing needs assessment cycle for that year. Requires, if the project contains more than 10 units of housing, the project seeking approval to dedicate a minimum of 10% of the total number of units to housing affordable to households making below 80% of the area median income, or higher as determined by a local ordinance;

(2) The locality did not submit its latest production report to HCD by the time period required, or that report reflects that there were fewer units of housing affordable to households making below 80% of the area median income that were issued building permits than were required for the regional housing needs assessment cycle for that year, and the project seeking approval

dedicates 50% of the total number of units to housing affordable to households making below 80% of the area median income, or higher as determined by a local ordinance; or,

(3) The locality did not submit its latest production report to HCD by the time period required, or if the production report reflects that there were fewer units of housing affordable to any income level described in clause (1) or (2) above, that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (1) or (2), above.

c) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law, is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government.

d) The development is not located on a site that is any of the following:

- i) A coastal zone;
- ii) Either prime farmland or farmland of statewide importance or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction;
- iii) Wetlands;
- iv) Within a very high fire hazard severity zone or within a high or very high fire hazard severity zone;
- v) A hazardous waste site, unless otherwise specified;
- vi) Within a delineated earthquake fault zone, unless otherwise specified;
- vii) Within a flood plain, unless otherwise specified;
- viii) Within a floodway, unless otherwise specified;
- ix) Lands identified for conservation in an adopted natural community conservation plan;
- x) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies;
- xi) Lands under conservation easement.

e) The development proponent has done both of the following, as applicable:

i) Certified to the locality that either of the following is true:

(1) The entirety of the development is a public work or,

(2) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as specified, except that

apprentices registered in programs approved by the chief of the division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

ii) For specified developments, a skilled and trained workforce shall be used to complete the development.