




DEPARTMENT OF CITY PLANNING Executive Office

City Hall, 200 N. Spring Street, Room 525, Los Angeles, CA 90012

DATE: September 25, 2020

TO: Interested Parties
Department of City Planning Staff

FROM: Vincent P. Bertoni, AICP 
Director of Planning
Department of City Planning

SUBJECT: **AFFORDABLE HOUSING APPROVAL PROCESS PER SB 35 (2017) AND AB 2162 (2018); STREAMLINED INFILL PROJECTS (SIP)**

Background

California Senate Bill (SB) 35 (2017) and Assembly Bill (AB) 2162 (2018) created new streamlined ministerial processes for qualified affordable and supportive housing projects that meet all objective zoning standards and request a streamlined review (see Gov. C. Secs. 65913.4 and 65650 et seq.). A streamlined ministerial approval process is defined in state law as a process that does not require a discretionary review process. In addition, the California Environmental Quality Act (CEQA) does not apply to the ministerial approval process.

While both state bills provide for a ministerial review process, each has its own eligibility requirements and review criteria. For example, SB 35 currently applies only to residential or mixed-use developments with at least 50% of the units set-aside as affordable for lower income households (80% of area median income or below), based on the City's current Regional Housing Needs Assessment (RHNA) progress. Please see the following City Planning documents for additional information ([SB 35 FAQ](#) and [SB 35 Application Instructions](#)). AB 2162 applies only to 100% affordable projects that include at least 25% of the units as supportive housing.

To implement these bills, Los Angeles City Planning created a new administrative procedure for processing and tracking housing developments that request these types of state streamlining, called a [Streamlined Infill Project \(SIP\)](#). The SIP process is designed to ensure the project meets all necessary objective zoning standards, while providing a streamlined ministerial review process. SB 35 defines objective zoning standards as those 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."

Discretionary vs. Ministerial Procedures

There are significant procedural differences for projects that undergo a ministerial versus discretionary review, as outlined in the Los Angeles Municipal Code (LAMC). While procedures vary according to the type of Planning entitlement being sought, discretionary processes typically include public hearings, non-objective findings of approval, an appeal process, public oversight by a decision-making body (or appellate body), such as the City Planning Commission, as well as public notification of the decision. Ministerial procedures emphasize compliance with objective and verifiable development standards (such as building codes or objective zoning regulations) and do not typically include the discretionary processes listed above.

Discretionary actions typically include more substantive public review processes and procedures because decision-makers have more flexibility to approve, conditionally approve, or deny a project. Public notice and public hearings serve the purpose of raising issues that may inform or affect the discretion of the decision-maker. In contrast, ministerial actions only require consideration of whether the project adheres to the established objective development standards. In addition, discretionary actions are typically decided by, or appealable to, a decision-making body that must act by a quorum of its members at an agendaized public meeting. In contrast, ministerial actions are decided administratively by City Planning staff without the requirement of a quorum or an agendaized public meeting.

Procedures Under SB 35 and AB 2162

The text of SB 35 and AB 2162 provide limited guidance on the implementation of local code required public notifications, hearings and appeals in the context of a streamlined ministerial approval process. To help clarify various provisions in SB 35, the California Department of Housing and Community Development (HCD) issued *Streamlined Ministerial Approval Process Guidelines* (published November 29, 2018). The Guidelines lay out the development review and approval process local governments “shall adhere” to, as follows:

1. Review the project application to ensure it contains all materials required by the agency for the proposed project;
2. Make a determination of consistency within 60 days, or 90 days for projects with more than 150 units; and
3. Within specified timelines, any design review or public oversight may be conducted but shall not in any way stall, delay or preclude the ministerial approval of a residential project that meets SB 35 approval standards.

As described above, SB 35 allows public hearings to take place during the streamlined ministerial review as a part of an established public oversight or design review process, but introduces various limitations to the process. However, given that the statute states that public oversight “*may* be conducted... as *appropriate*” (emphasis added), jurisdictions have the option of holding public hearings.

City Planning sought additional guidance from HCD, and has reviewed the procedures of other cities. Cities such as Berkeley, San Francisco and Cupertino have issued public documents confirming that their public hearing processes do not apply for state streamlined projects. HCD staff advised City Planning staff that jurisdictions should treat streamlined ministerial projects the same way other ministerial projects are handled by Planning. If public hearings and appeals are not part of City Planning's ministerial process, they should not be used to approve streamlined affordable projects.

In line with this information and guidance, City Planning staff has identified and reviewed the ministerial approval processes currently in use by City Planning. The Zoning Code provides for two types of ministerial approval processes used citywide by City Planning: an Administrative Clearance (ADM) process used in various supplemental use districts (Article 3 of the Zoning Code) and a Public Benefit (PB) process for certain types of public benefit use projects (LAMC 14.00). These ministerial approval processes provide for a Director of Planning review regarding a project's compliance with objective zoning or development standards but generally do not involve a letter of determination, public hearing, public notification and a unique appeal process.

Conclusion

Effective September 25, 2020, for projects that qualify for SB 35 and AB 2162, City Planning will follow a streamlined ministerial approval process consistent with the Department's treatment of ministerial projects. This process shall be in place through the conclusion of the 2013-2021 Housing Element cycle. The case will be assigned an ADM (administrative) prefix with the Director of Planning as the decision maker. Public hearings will not be required, and any appeal process in the LAMC unique to the type of entitlement being requested will not be utilized. A City Planning letter of decision deeming the case consistent with the applicable objective development standards and state law criteria will be prepared and transmitted according to the requirements for written decisions in the LAMC for the underlying entitlement.

If there are any questions about this memo, please contact the Department of City Planning Housing Services Unit at dcpphp@lacity.org.