SB 423: Modifications to Streamlined Ministerial Approval Process

(Government Code Section 65913.4)

February 2024

Overview

Senate Bill (SB) 423 amends the streamlined ministerial approval process for qualifying multifamily and mixed-use affordable housing projects as defined in Government Code Section 65913.4 — generally known as the "SB 35" process.

Major amendments to this streamlined ministerial approval process include:

- Modified affordability provisions.
- Updated labor standards.
- Amendments to qualifying locations eligible for streamlined ministerial approval.
- Minor clarifications for determining review and approval timelines.
- Addition of a public meeting in certain locations.
- Extension of the sunset date to January 1, 2036.

Purpose

This document is intended solely as a technical overview of new legislation. It is not intended to serve as legal advice regarding any jurisdiction's specific policies or any proposed housing development project. Local staff should consult with their city attorney or county counsel before taking any action to implement these changes.

Background on the "SB 35" Streamlined Ministerial Approval Process

Pursuant to Government Code Section 65913.4, local governments that do not have a compliant housing element, that have had insufficient progress towards their Regional Housing Needs Allocation (RHNA), and/or that have not submitted the latest Annual Progress Report (APR) on their housing element, are required to provide a streamlined ministerial review process for qualifying multifamily housing projects if the proposed development meets specified eligibility criteria.[1]

Qualifying projects must be approved through a streamlined ministerial approval process, subject to specific timelines. Ministerial projects can only be reviewed for consistency with objective design and development standards. Ministerial projects are not subject to

[1] The State Department of Housing and Community Development (HCD) is responsible for making a determination whether a jurisdiction is subject to the streamlined ministerial approval process. As defined in Government Code Section 65913.4 (a)(4), this determination shall be based on permit data received through the most recent APR provided. Jurisdictions that do not submit their latest APR prior to HCD's determination are automatically subject to the streamlined ministerial approval process.

environmental review under the California Environmental Quality Act (CEQA) and may not be subject to a conditional use permit (CUP) or discretionary design review process.

Qualifying Projects

To qualify for streamlined ministerial approval, projects must meet a specific set of requirements. As listed in Section 65913.4, projects must be:

- A multifamily housing development (at least two residential units) in an urbanized area,
- Located where 75% of the perimeter of the site is developed,
- Zoned or designated by the general plan for residential or mixed-use residential development,
- One that includes affordable housing in accordance with the minimum requirements included in Section 65913.4 (4),
- In a location that does not have an adopted, compliant housing element certified by the California Department of Housing and Community Development (HCD) or a location where the locality's share of regional housing needs, by income level, have not been satisfied based on issued building permits,
- Consistent with objective zoning and design review standards; and,
- Willing to pay construction workers the state-determined prevailing wage.

Modified Affordability Provisions

A qualifying development must provide a minimum percentage of below market rate housing and commit to providing these units at affordable housing costs for the mandated periods of time. Previously, to be eligible for the SB 35 ministerial approval process, any project (rental or for-sale) in a jurisdiction that had insufficient RHNA progress for above-moderate income units was required to dedicate a minimum of 10 percent of total number of units to households making at or below 80 percent of area median income (AMI). With SB 423 changes, rental and for-sale projects in those qualifying jurisdictions are now required to provide either (i) at least 10 percent of the total units to households making at or below 50 percent of AMI or (ii) comply with the locality's inclusionary ordinance where that ordinance requires greater than 10 percent of the units to be dedicated to households making at or below 50 percent AMI.

Updated Labor Standards

Government Code Section 65913.4requires developers to comply with certain wage and labor standards, including that all construction workers will be paid prevailing wages. These requirements do not apply to a project that consists of 10 or fewer units and is not a public work. In addition, SB 423 modified requirements regarding labor standards. Projects with over 50 units must employ apprentices and provide health care for workers. For projects more than 85 feet high, a "skilled and trained" workforce must be used, unless qualified contractors are not available.

Amendments to Qualifying Locations Eligible for Streamlined Ministerial Approval

SB 423 amends Section 65913.4 (6) to extend and expand the applicability of streamlined ministerial approval in coastal zones and high and very high fire hazard severity zones. These provisions go into effect on January 1, 2025.

There are still several locations where developers may not apply for streamlined ministerial approval pursuant to the provisions of Government Code Section 65913.4. A project will not qualify if it is in specified environmentally sensitive areas or if the project requires demolition of existing multi-family or affordable housing.

Coastal Zones

SB 423 extends the applicability of streamlined ministerial approval processing to the coastal zone, with certain exceptions. Within the coastal zone, sites are not eligible unless they are zoned for multifamily housing. Sites within 100 feet of a wetland, estuary, or stream; on prime agricultural land; in a community that does not have a certified local coastal program or land use plan; are vulnerable to sea level rise; or located between the sea and first public road or within 300 feet of a beach or high tide or coastal bluff cannot utilize the streamlined ministerial approval process. For sites that are eligible, the local agency must approve a coastal development permit if it conforms with all objective standards of the certified local coastal program or land use plan. Any density bonus, concessions, waivers, or parking ratios allowed under density bonus law are not a basis to find the development inconsistent with the local coastal program.

Very High Fire Hazard Severity Zones

SB 423 also removes the prohibition against an SB 35 project being located within a high or very high fire hazard severity zone as indicated on maps adopted by the California Department of Forestry and Fire Protection (CAL FIRE). However, within a very high fire severity zone and the statutorily defined state responsibility area, the local jurisdiction must have adopted specified fire hazard mitigation measures applicable to the site for a project to be eligible for the streamlined ministerial process.

Equine or Equestrian Districts

SB 423 added provisions that streamlined ministerial approval processing is not applicable to housing development applications on sites within an equine or equestrian district submitted on or after January 1, 2024, but before July 1, 2025.

Minor Clarifications for Determining Review and Approval Timelines

Review and approval timelines are outlined in Section 65913.4 (c)(1) and (d)(1). Based on the total number of units in a proposed development, a local agency has 60 to 90 days to provide a written determination describing whether the proposal meets local objective standards. If the deadline is missed, the project is automatically deemed to meet the standards.

SB 423 provides clarification for the purposes of determining the total number of units in a proposed development. The total number of units in a development now includes (i) all projects developed on a site regardless of when those developments occur and (ii) all projects developed on adjacent sites pursuant to Government Code § 65913.4 if the adjacent site had been subdivided from the site development pursuant to Government Code § 65913.4 after January 1, 2023.

Addition of a Public Meeting in Certain Locations

SB 423 adds the requirement for a public meeting if the development is in a moderate resource area, low resource area, or an area of high segregation and poverty —as determined by the most recent "CTCAC/HCD Opportunity Map" published by the California Tax Credit Allocation Committee. If the development is in one of these areas, the local government is required to provide for a public meeting within 45 days of receiving a notice of intent before the applicant submits an application for the proposed development. The public meeting must be held at a regular city council or board of supervisors meeting, subject to the Brown Act. For cities or unincorporated area of a county with a population greater than 250,000 people, the meeting may be held by the jurisdiction's planning commission.

The applicant must attend the meeting and provide a written statement that they reviewed oral and written testimony in its submittal of an application for streamlined ministerial approval. Local agencies will need to arrange for public meetings in advance of the submission of certain projects; however, they cannot require applicants to modify the project in response to public comments. If the local government fails to hold the hearing within 45 days after receiving the notice of intent, the applicant then has a duty to hold a public meeting on the proposed development before submitting an application.

Extension of the Sunset Date to January 1, 2036

Previously the provisions set forth under Government Code Section 65913.4 were set to sunset in 2026, but SB 423 extends the provisions by 10 years to provide a new sunset date of January 1, 2036.