



- c) Design review or public oversight must be completed in a specified timeframe, and must not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable.
- d) The development proponent may request modifications to a development approved under SB 35 if the request is submitted to the local government before the local government issues the final building permit required for construction.
- e) The local government's review of any modification requests must follow established timeframes and requirements, including that the local government can only apply objective planning standards adopted after the development application was first submitted if the requested modification:
  - i) Changes the total number of residential units or square footage by 15% or more, exclusive of any underground space; or
  - ii) Changes the total number of residential units or square footage by 5% or more, exclusive of any underground space, and the local government deems it necessary to subject the development to new standards that were not in effect when the development was first proposed to reduce a specific harm to public health or safety, with no feasible alternative method to mitigate the adverse impact.

**This bill:**

- 1) Authorizes a local government to apply objective planning standards adopted after an approved SB 35 development application was first submitted when a developer requests to modify the project in the following ways:
  - a) The total square footage of the development increases by 15% or more, exclusive of underground space, or the total number of units decreases by 15% or more; or,
  - b) The total square footage of the development increases by 5% or more, exclusive of underground space, or the total number of units decreases by 5% or more, and the local government deems it necessary to subject the development to new standards that were not in effect when the development was first proposed to reduce a specific harm to public health or safety, with no feasible alternative method to mitigate the adverse impact.

**COMMENTS:**

- 1) *Author's statement.* "Housing developers have experienced challenges with the changing market trends, such as less demand for office space or increasing cost of construction. Modifying the 15% threshold in SB 35 will give projects the flexibility to reduce the size of their project to better respond to market needs or

increase the unit count to take advantage of the state density bonus law. California is facing a housing crisis and we must continue to build the much-needed housing. AB 3122 will help these projects move forward and ensure these developments are successful and can provide the housing our cities and counties need.”

- 2) *Housing needs and approvals generally.* Every city and county in California is required to develop a general plan that outlines the community’s vision of future development through a series of policy statements and goals. A community’s general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. Each community’s general plan must include a housing element, which outlines a long-term plan for meeting the community’s existing and projected housing needs, which are allocated through the regional housing needs allocation (RHNA) process. The housing element demonstrates how the community plans to accommodate its “fair share” of its region’s housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the California Environmental Quality Act (CEQA), while projects permitted ministerially generally are not.

In addition to bypassing the CEQA process and the potential for litigation, housing streamlining provides more certainty as to what is required for permitting approval, and generally also requires approval within specified timelines. This certainty and shortened approval timelines are particularly beneficial to affordable housing developers seeking funding from multiple federal, state, and local public funding sources. Additionally, this certainty provides more opportunities for multifamily developers to build in jurisdictions that are not housing friendly. Some local governments have intentionally made entitlement and permitting onerous to such a degree that developers – and in particular affordable housing developers – have avoided working in those jurisdictions altogether. Longer, uncertain permitting situations are risky for developers, and could kill projects all together. Streamlining unlocks more land opportunities, particularly in higher-resource, unfriendly housing cities.

- 3) *SB 35 (Wiener, 2017)*. In 2017, SB 35 (Wiener) created a streamlined approval process for infill projects with two or more residential units in localities that have failed to produce sufficient housing to meet their RHNA. 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 including that the development is not on an environmentally sensitive site or would result in the demolition of housing that has been rented out in the last ten years. Localities must provide written documentation to the developer if there is a failure to meet the specifications for streamlined approval, within specified a period of time. If the locality does not meet those deadlines, the development shall be deemed to satisfy the requirements for streamlined approval and must be approved by right.

According to data provided by local governments in their annual progress reports (APRs) between 2018 and 2021<sup>1</sup> statewide, SB 35 has resulted in 19,239 units, 60% of which are affordable to lower-income households. This is likely an undercount, as some cities have shared with the author and committee that more projects have been approved than HCD has data. For example, San Francisco has received 26 total SB 35 project applications, for a total of 3,404 units, 2,970 of which are affordable. One affordable housing developer, Related, testified in a joint oversight hearing of the Senate Housing Committee and Assembly Housing and Community Development Committee on February 28, 2023 that they have entitled 818 units in seven projects, with another 1176 in process — some just months away. In the same hearing, a representative of San Francisco testified that SB 35 has reduced housing permitting times in San

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<sup>1</sup> 2022 APRs are not due to HCD until April 1, 2023, so 2022 data is not yet available.

Francisco by four (three to six months versus 18-24 months). The Senate Housing Committee received examples from a regional affordable housing group that their members experienced reduced approval timelines between six and 24 months, depending on the jurisdiction. Clear timelines for affordable housing permitting is particularly critical as affordable developers often require between eight and 12 different sources of funding to make an affordable housing development pencil financially, and any delays risk the loss of available public funds with varying and rapid deadlines.

Last year, the Governor signed SB 423 (Wiener, Chapter 778, Statutes of 2023), which: (1) extended the sunset date on SB 35 to January 1, 2036; (2) authorized streamlined approval in the coastal zone except in areas that are environmentally sensitive or hazardous, as specified; (3) revised the labor standards; and (4) required specified projects to provide at least 10% of the units affordable to very low-income households.

- 4) *Modifications to modifications provisions.* As housing projects evolve, developers sometimes need to make modifications to projects. This is because residential projects by their nature are complex and, for example, can involve building out lobbies, corridors, back of house spaces, storage, parking, amenity facilities, and outdoor areas, in addition to the units themselves. Many of these cannot be figured out until the completion of the design for the project for the building permit and final applications.

SB 35 allows any modifications to housing projects approved for streamlined approval to be subject to the same objective standards of the original approval, with certain exemptions, including that the unit count or square footage of the approved project cannot “change” by more than 15%. If local regulations have changed from the time of initial project submittal, the 15% change threshold could constrain a developer’s ability to modify their project. For example, an approved proposal to reduce square footage by more than 15% in response to market conditions could be precluded if local zoning regulations would no longer permit the uses contained in the approved project. The 15% limit also does not allow for larger increases in the unit count, which limits the ability to use some of the recent amendments to expand upon Density Bonus Law.

According to the sponsors, these limitations have affected entitled developments in the housing pipeline. Developers might need to revise their housing development proposals after initial approval for a variety of reasons, including changing market conditions, financial constraints, and unforeseen site challenges. Developers may encounter difficulties in completing their capital stack in a timely manner due to changes in investor sentiment, fluctuations in interest rates or insurance coverage, or stricter lending criteria from banks,

impacting overall project feasibility. It can take years for affordable housing projects relying on local, state, or federal funds to complete their capital stacks, and market conditions can change while this pursuit is underway.

According to the author, this bill will allow projects to adjust as market conditions change and lead to a greater likelihood of development.

5) *Double referral.* This bill was also referred to the Local Government Committee.

**RELATED LEGISLATION:**

**SB 423 (Wiener, Chapter , Statutes of 2023)** — extended the sunset on SB 35 (Wiener, Chapter 366, Statutes of 2017) to January 1, 2036, and makes other changes, as specified.

**AB 2668 (Grayson, Chapter 658, Statutes of 2022)** — added parameters for determining a project’s compliance with the streamlined, ministerial process created by SB 35 (Wiener, Chapter 366, Statutes of 2017).

**AB 1174 (Grayson, Chapter 160, Statues of 2021)** — made several changes to the SB 35 process.

**AB 831 (Grayson, Chapter 194, Statutes of 2020)** — added a process for SB 35 projects to be modified after their approval.

**AB 1485 (Wicks, Chapter 663, Statutes of 2019)** — made various changes to SB 35 including allowing for streamlining of housing developments that include a percentage of low-income and/or moderate-income housing.

**SB 35 (Wiener, Chapter 366, Statutes of 2017)** — created a ministerial approval process for specified infill, multifamily housing development projects.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS:** (Communicated to the committee before noon on Wednesday, May 29, 2024.)

**SUPPORT:**

Abundant Housing LA  
Bay Area Council  
California Community Builders

California YIMBY  
Housing Trust Silicon Valley  
Midpen Housing  
San Francisco Bay Area Planning and Urban Research Association (SPUR)  
Sand Hill Property Company  
YIMBY Action

**OPPOSITION:**

None received.

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