
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No: AB 2668 **Hearing Date:** 6/13/2022
Author: Grayson
Version: 6/6/2022 Amended
Urgency: No **Fiscal:** No
Consultant: Alison Hughes

SUBJECT: Planning and zoning: housing: streamlined, ministerial approval

DIGEST: This bill adds parameters for determining a project's compliance with the streamlined, ministerial process created by SB 35 (Wiener, Chapter 366, Statutes of 2017).

ANALYSIS:

Existing law, under SB 35 (Wiener, 2017):

- 1) 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 infill development contains two or more residential units and satisfies specified objective planning standards.
- 2) Requires, among other things, for sites subject to ministerial approval to be limited to zones for residential use or residential mixed-use development, with at least two-thirds of the square footage of the development designated for residential use.
- 3) Specifies, if a local government determines that a development submitted pursuant to the bill's provisions is in conflict with any of the objective planning standards listed in 1) above, that it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:
 - a) Within 60 days of submittal of the development to the local government if the development contains 150 or fewer housing units; or,
 - b) Within 90 days of submittal of the development to the local government if the development contains more than 150 housing units.

This bill:

- 1) Clarifies that an SB 35 project is not subject to a conditional use permit or any other non-legislative discretionary approval.
- 2) Provides that the inclusionary requirements apply to the base project, before calculating any density bonus units.
- 3) Provides that an SB 35 project shall be located on a hazardous waste site, unless there has been a uniform closure letter issued by the State Water Board, as specified.
- 4) Provides that a local government shall not determine that a development seeking to use SB 35 or modify an SB 35-approved project is in conflict with its objective planning standards based on the absence of application materials, provided the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.
- 5) Updates cross references to the California Public Records Act.

COMMENTS:

- 1) *Author's statement.* "The legislature has made enormous efforts to dramatically increase our housing supply. However, ambiguities in the law have been exploited by anti-growth community groups to delay and derail desperately needed housing projects. To help close these emergent loopholes, AB 2668 will clarify that a local government shall not determine that a development is in conflict with the objective planning standards on the basis that application materials are not included, if the application contains enough information for a reasonable person to conclude that the development is consistent with the objective standards. This small fix will help ensure that badly-needed housing projects are streamlined as intended under current law."
- 2) *Streamlined Ministerial Approval Under SB 35.* SB 35 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 regional housing needs allocation, as defined. To access the streamlined process, a developer must demonstrate that the development meets a number of planning standards including that the development includes a percentage of affordable housing units, meets specified labor standards, is not on an environmentally sensitive site, and would not result in the demolition of housing that has been

rented out in the last ten years. Localities that find a proposal is in conflict with one of the SB 35 planning standards must provide written documentation to the developer within a specified period of time. If the locality does not meet those deadlines, the development is deemed to satisfy the requirements for streamlined approval and must be approved by right.

- 3) *Modifications and objective standards.* Prior to submitting an application as described above, a developer must first submit to the local government a notice of intent to submit an application. According to the sponsors, 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. Additionally, the time between the initial application and the first building permit can take one to two years, sometimes longer, during which time market conditions, which drive project decisions can change.

For example, some potential changes may include: the cost of materials which may lead to a change in construction type or architecture; building codes; housing financing and securing of public subsidies; and the imposition of impact fees, which may impact the overall project.

Some jurisdictions use this opportunity to change the planning standards that are applied to a project as a means to invalidate a project. This bill clarifies that a local government cannot determine that a development, or its subsequent modification, is in conflict with the local government's objective planning standards based on the absence of application materials, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

- 4) *SB 35 site exception to an exemption.* SB 35 specifically prohibits the streamlined approval process from applying to specific environmentally sensitive sites, such as wetlands, prime farmland, and sites with protected habitats. Additionally, it exempts hazardous waste sites designated by the state, unless the state has cleared the site for residential use. According to the sponsors, this bill would provide clarity around underground storage tanks that have leaked. The State Water Board undertook a comprehensive evaluation of tank closure policy and criteria and concluded that petroleum hydrocarbons - unlike other chemicals - present low risks because petroleum hydrocarbons can naturally degrade quickly, depending on soil conditions. For that reason, this

bill would limit the exemption to underground storage tanks that leaked petroleum hydrocarbons.

5) *Double-Referral*. This bill is also referred to the Senate Governance and Finance Committee.

RELATED LEGISLATION:

AB 1174 (Grayson, Chapter 160, Statutes 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.

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.: No Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, June 8, 2022.)

SUPPORT:

Bay Area Council (Co-Sponsor)
San Francisco Bay Area Planning and Urban Research Association (SPUR) (Co-Sponsor)
California Apartment Association
California Association of Realtors
California Hispanic Chamber of Commerce
California YIMBY
CalRHA
Civicwell
Greenbelt Alliance
Housing Action Coalition
Midpen Housing Corporation
Sand Hill Property Company
Southern California Rental Housing Association
SV@home Action Fund

OPPOSITION:

None received.

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