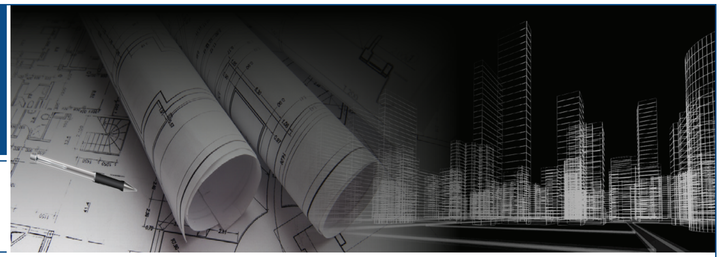
ALSTON & BIRD

WWW.ALSTON.COM



Land Use ADVISORY ▪

SEPTEMBER 29, 2017

New California Law Streamlines Local Approval Process for Affordable Housing Units

By *Ed Casey*, *Andrea Warren*, and *Kathleen Hill*

Today, California Governor Jerry Brown signed a package of new bills to facilitate the development of affordable housing units throughout the state, including a bill that will streamline local review and environmental review of certain development projects that include affordable housing units.

Specifically, Senate Bill 35 will require a ministerial review process for projects with affordable units in cities and counties that have not satisfied their regional housing needs by income category. Without the streamlined process, these projects would typically be subject to a discretionary approval by a local agency and subject to full environmental review under the California Environmental Quality Act (CEQA). However, as a ministerial approval, projects subject to the streamlined process would not be subject to CEQA review.

SB 35 amends relevant provisions of the California Government Code to require streamlined review if a proposed project meets the following conditions:

- The project is a multifamily housing project that contains at least two residential units.
- The project will be developed on a legal parcel or parcels that are in urbanized areas and already zoned for residential or residential mixed-use development under the applicable zoning code and general plan land use designation.
- At least two-thirds of the square footage of the project is designated for residential use.
- The project will include a certain percentage of affordable units that are designated as affordable for 55 years for rental units and 45 years for for-sale units.
- The project is consistent with the applicable zoning standards and design review standards.

The required percentage of affordable units depends on the locality's compliance with the state's regional housing needs. For example, in localities that reported fewer units of above moderate-income housing than were required under the regional housing needs assessment cycle for that year, the project will be required to include a minimum of 10% of its total units for tenants making below 80% of the median income.

The streamlined approval process will not apply to projects located in the coastal zone, on land designated as wetlands, on land that is habitat for sensitive species or is otherwise designated for conservation, on land that is a hazardous waste site, or on land that is within a fire, flood, or earthquake fault zone. The streamlined process will also not apply to developments that will require demolishing existing affordable or rent-controlled housing units, housing units that have been occupied by tenants within the past 10 years, or that would require demolishing a historic structure. The measure will also require developers to pay a minimum of prevailing wage for the construction of projects with nine or more residential units, and will require certain projects to be completed by a skilled and trained workforce as defined under the California Labor Code.

For projects that meet all the requirements for a streamlined approval, SB 35 allows a city or county planning commission or equivalent commission to conduct the design review or public oversight of the development. However, the design review or public oversight must be objective and cannot inhibit, chill, or preclude the ministerial approval provided under the new process.

The bill also requires cities and counties to provide the California Office of Planning and Research and California Department of Housing and Community Development with more information concerning the approvals issued for new rental and for-sale units for each income category each year. The new streamlining process will remain in effect until January 2026.

Other bills related to affordable housing that Governor Brown signed include a bill that imposes a fee of $75–$225 on certain real estate transactions, including the recording of documents (SB 2). Revenues generated from that fee will be spent on initiatives to combat homelessness and facilitate further development of affordable housing units. Another bill (SB 3) will place a $4 billion bond on the November 2018 ballot to pay for other housing development programs and help military veterans purchase homes.

City of Los Angeles Transit Oriented Communities Affordable Housing Incentive Program Guidelines

The Transit Oriented Communities Affordable Housing Incentive Program Guidelines (TOC Guidelines) went into effect on September 22, 2017. The TOC Guidelines were developed to implement Section 6 of voter-approved Measure JJJ by establishing incentives for building residential or mixed-use projects with affordable units located within a one-half mile radius of a major transit stop. A four-tier system (TOC Tier), based on the type of and proximity to a transit stop, is used determine the minimum percentage of on-site restricted affordable housing units that shall be provided in a housing development in order to receive development incentives.

A new line item showing the TOC Tier for all parcels within the city has been added to ZIMAS. All housing developments that meet the TOC Guidelines are eligible to receive the base incentives summarized in the chart below.

	Tier 1 (Low)	**Tier 2 (Med)**	**Tier 3 (High)**	**Tier 4 (Regional)**
Affordable Housing Requirement	8% ELI 11% VL 20% Low	9% ELI 14% VL 21% Low	10% ELI 14% VL 23% Low	11% ELI 15% VL 25% Low
Density Exception	50% increase RD Zones = 35% increase	60% increase RD Zones = 35% increase	70% increase RD Zones = 40% increase	80% increase RD Zones = 45% increase
FAR (Residential Portion) Commercial Zones (including HI and CM) Exception	40% increase At least 2.75:1 See below	45% increase At least 3.25:1 See below	50% increase At least 3.75:1 See below	55% increase At least 4.25:1 See below
Residential Parking (allows for unbundled and tandem) **Ground Floor Commercial**	0.5 per bedroom 10% reduction	0.5 per bedroom; No more than 1 required per unit 10% reduction	0.5 per unit; 30% reduction	None 40% reduction

Exceptions to the FAR incentive:
1. In the RD Zone or a Specific Plan or overlay that regulates FAR, the maximum FAR increase is limited to 45%.
2. If the allowable base FAR is less than 1.25, then the maximum FAR allowed per this section is limited to 2.75.
3. In the Greater Housing Downtown Incentive Area, the maximum FAR increase is limited to 40%, with all floor area being calculated per the definition in LAMC 12.22 A.29(c)(1).

Up to three additional incentives may be granted for projects that provide a certain percentage of base units for extremely low-, very low-, or lower-income households as described in Section IV.5 of the TOC Guidelines. “Base units” are the maximum allowable density permitted in the zone, before any density increase provided through the TOC Guidelines. The affordable housing units required for the additional incentives may also count toward the on-site restricted affordable unit requirement in each TOC Tier. Additional incentives may include an increase in building height and the maximum lot coverage, a decrease in setbacks and open space, floor area averaging, and other development standards listed in Section VII.

The Los Angeles Department of City Planning has created a new TOC Application Form that must be reviewed and approved before submitting an application for a case or building permit. The TOC program will be in effect for 10 years unless the city council extends it for an additional five years.

If you would like to receive future *Environment, Land Use & Natural Resources Advisories* electronically, please forward your contact information to **environmental.advisory@alston.com.** Be sure to put "**subscribe**" in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Doug Arnold
404.881.7637
doug.arnold@alston.com

Paul Beard
916.498.3354
paul.beard@alston.com

Ward Benshoof
213.576.1108
ward.benshoof@alston.com

Meaghan Goodwin Boyd
404.881.7245
meaghan.boyd@alston.com

Nicki Carlsen
213.576.1128
nicki.carlsen@alston.com

Edward Casey
213.576.1005
ed.casey@alston.com

Roger Cerda
213.576.1156
roger.cerda@alston.com

Skip Fulton
404.881.7152
skip.fulton@alston.com

Maureen Gorsen
916.498.3305
maureen.gorsen@alston.com

Ronnie Gosselin
404.881.7965
ronnie.gosselin@alston.com

Maya Lopez Grasse
213.576.2526
maya.grasse@alston.com

Clay Massey
404.881.4969
clay.massey@alston.com

Clynton Namuo
213.576.2671
clynton.namuo@alston.com

Elise Paeffgen
202.239.3939
elise.paeffgen@alston.com

Bruce Pasfield
202.239.3585
bruce.pasfield@alston.com

Geoffrey Rathgeber
404.881.4974
geoff.rathgeber@alston.com

Max Rollens
213.576.1082
max.rollens@alston.com

Chris Roux
202.239.3113
213.576.1103
chris.roux@alston.com

Jocelyn Thompson
415.243.1017
jocelyn.thompson@alston.com

Andrea Warren
213.576.2518
andrea.warren@alston.com

Jonathan Wells
404.881.7472
jonathan.wells@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

ATLANTA: One Atlantic Center ▪ 1201 West Peachtree Street ▪ Atlanta, Georgia, USA, 30309-3424 ▪ 404.881.7000 ▪ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ▪ Suite 21B2 ▪ No. 7 Guanghua Road ▪ Chaoyang District ▪ Beijing, 100004 CN ▪ +86 10 8592 7500
BRUSSELS: Level 20 Bastion Tower ▪ Place du Champ de Mars ▪ B-1050 Brussels, BE ▪ +32 2 550 3700 ▪ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ▪ 101 South Tryon Street ▪ Suite 4000 ▪ Charlotte, North Carolina, USA, 28280-4000 ▪ 704.444.1000 ▪ Fax: 704.444.1111
DALLAS: 2828 North Harwood Street ▪ 18th Floor ▪ Dallas, Texas, USA, 75201 ▪ 214.922.3400 ▪ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ▪ 16th Floor ▪ Los Angeles, California, USA, 90071-3004 ▪ 213.576.1000 ▪ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ▪ 15th Floor ▪ New York, New York, USA, 10016-1387 ▪ 212.210.9400 ▪ Fax: 212.210.9444
RESEARCH TRIANGLE: 4721 Emperor Blvd. ▪ Suite 400 ▪ Durham, North Carolina, USA, 27703-85802 ▪ 919.862.2200 ▪ Fax: 919.862.2260
SAN FRANCISCO: 560 Mission Street ▪ Suite 2100 ▪ San Francisco, California, USA, 94105-0912 ▪ 415.243.1000 ▪ Fax: 415.243.1001
SILICON VALLEY: 1950 University Avenue ▪ 5th Floor ▪ East Palo Alto, California, USA, 94303-2282 ▪ 650-838-2000 ▪ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ▪ 950 F Street, NW ▪ Washington, DC, USA, 20004-1404 ▪ 202.239.3300 ▪ Fax: 202.239.3333