



**San Francisco
Planning**

This Bulletin is an overview of the ministerial approval process for mixed-income housing under SB 423 and AB 2011.

PLANNING DIRECTOR BULLETIN NO. 9 MINISTERIAL APPROVAL PROCESSES FOR MIXED-INCOME HOUSING

First Issued:

June 2023

Updated:

FEBRUARY 2024

References:

CA Govt. Code Section 65913.4 - SB 35/SB 423

CA Govt. Code Sections 65912.100 and 65912.120 - AB 2011

WHAT IS MINISTERIAL APPROVAL?

A ministerial decision involves only the use of fixed or objective standards, and government agencies cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Ministerial projects are not subject to environmental review under the California Environmental Quality Act (CEQA) or conditional use authorization or other similar discretionary review or entitlements under the Planning Code.

This bulletin includes the eligibility criteria for various ministerial programs as they apply to mixed-income housing projects, projects with some units offered at market rate rent or prices, and outlines how the Planning Department implements these programs. Housing projects in which 100% of units are affordable to lower-income households (independent of managers units) may also be eligible for ministerial approval and are described in [Planning Director Bulletin 5](#). The ministerial programs described in this Bulletin are mandated by the State of California.

WHAT IS THE PLANNING DEPARTMENT PROCESS FOR A MIXED INCOME PROJECT THAT IS ELIGIBLE FOR MINISTERIAL APPROVAL?

Projects seeking to use a ministerial program will have different submission requirements than discretionary Planning Department submissions. Projects seeking approval under a ministerial program must submit a complete application package to the Planning Department, including but not limited to:

- A supplemental application form for the applicable ministerial approval program (linked below),
- An [Individually Requested State Density Bonus Program Supplemental Application](#), if applicable,
-
- A [SB 330 Preliminary Application/Notice of Intent to Submit a Project Application Pursuant to SB 423](#) (also referred to as the “Notice of Intent” throughout this Bulletin), and
- A PDF set of 11” x 17” plans that comply with the Department’s [Plan Submittal Guidelines](#).

As of January 1, 2024, the Planning Department will no longer require projects seeking ministerial approval to submit a building or site permit as part of a complete application submittal.

The Planning Department must determine if an application is eligible for ministerial approval within a timeframe depending on the size of the project, as specified by the applicable state law. If the Department determines that a project is ineligible for ministerial review, state mandated timelines will restart upon resubmittal. After the Department has determined that the project is eligible for streamlining, it must also approve the application within a specified timeframe. Planning will toll time that the project is with the applicant between the date the project is determined to be eligible for ministerial approval and the date of approval.

Once deemed compliant, the Planning Department will issue a Planning Department Approval Letter. At this time, an applicant may apply to the Department of Building Inspection for any required post entitlement permits for review by DBI and other City agencies.

Certain ministerial approval programs require the project sponsor to submit a Phase 1 Environmental Assessment and supporting documentation for the project site. If the Phase 1 Environmental Assessment finds that hazardous materials are present, Planning staff will determine the application to be ineligible for ministerial approval until the Department of Public Health, in conjunction with the Planning Department develops conditions of approval that will successfully mitigate any hazards to insignificant levels as set forth in State Law.

Pre-Application Requirements

Certain programs require an applicant to complete tribal notification and/or hold an informational hearing at the Planning Commission prior to submitting an application for ministerial approval. These requirements are further described in the "Pre-Submittal" section of each ministerial program below. Applicants are required to submit a [Notice of Intent](#) to initiate any required pre-submittal requirements. The Planning Department will determine that an application for ministerial approval is incomplete if it is submitted prior to completion of these pre-submittal requirements.

Tribal Notification

Tribal Notification is required for certain streamlining programs. The Planning Department is required to engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area. Department staff will prepare a 30-day notification to these tribal groups. During that time, a representative of the tribal group may request a scoping consultation with the Department. The consultation may include discussion concerning the identification, presence, and significance of Tribal Cultural Resources (TCRs), the significance of the project's impacts on TCRs, and, as warranted, measures and alternatives to protect or reduce impacts on tribal cultural resources. If a scoping consultation is requested, Department staff will coordinate with the requestor to develop mitigation measures, which will be attached to the ministerial approval as conditions of approval. If the project sponsor does not agree to impose these measures, or the sponsor and requestor cannot agree on a set of measures, then the project may not be eligible for that ministerial approval program.

Some streamlining programs only require Tribal Notification on vacant sites. In San Francisco, a vacant site is:

1. Any undeveloped parcel containing no existing buildings;
2. Any parcel that contains only a surface parking lot and no existing buildings, except buildings that are accessory to a surface parking lot use, such as a guard station or kiosk, whether or not said surface parking lot was established with the benefit of a permit; or
3. Any parcel over 15,000 square feet in size that contains a surface parking lot use, structures that are accessory to a surface parking lot use, such as those supporting General Advertising Signs, and a building that does not exceed 800 square feet in building area.

Informational Hearing

SB 423 requires a public hearing for projects located in census tracts that are designated either as a moderate resource area, low resource area, or an area of high segregation and poverty on the most recent "CTCAC/HCD Opportunity Map" published by the California Tax Credit Allocation Committee and the Department of Housing and Community Development Projects. Projects located in these census tracts must present the project at a Planning Commission hearing (coordinated by Planning Staff) within 45 days of submittal of the Notice of Intent. SB 423 projects will be heard as informational items at the beginning of regularly scheduled Commission hearings. The applicant is required to confirm, in writing, that they attend the public meeting, and have reviewed oral and written testimony prior to submittal of their application for ministerial approval.

MINISTERIAL APPROVAL PROGRAMS + STATE DENSITY BONUS LAW

State Density Bonus Law allows for housing development projects constructing at least 5 net new units to receive additional density, waivers, incentives and concessions in exchange for providing on-site affordable units. Projects that receive additional density, waivers, incentives or concessions are still considered to be code compliant and therefore eligible for ministerial approval processes, such as those outlined in this bulletin. To find out more information about the State Density Bonus Program, please see [Planning Director Bulletin 6](#).

OTHER CONSIDERATIONS

Subsequent Permits and Post-Entitlement Permits

When the City receives an application for a subsequent permit for a project that was approved under a ministerial program, the City is required to process the permit without unreasonable delay. City agencies may not impose any new objective standards to the subsequent permit that were not in effect at the time of the ministerial project approval. City Agencies shall review subsequent permits to implement the approved development, and review of these permits shall not chill, inhibit, or preclude the development. If a subsequent permit may not be reviewed ministerially, the issuing agency shall review the permit in accordance with CA Govt. Section 65913.4(i).

Certain permits will be considered post-entitlement permits may be reviewed ministerially pursuant to the timelines set forth CA Govt. Code Section 65913.3.

Application of the Inclusionary Affordable Housing Program

Projects seeking ministerial approval must comply with any applicable Planning Code requirements, including the Inclusionary Affordable Housing Program. Units that comply with the Inclusionary Affordable Housing Program may also qualify as any affordable units required under the applicable state law program.

WHAT IF MY PROJECT IS NOT ELIGIBLE FOR MINISTERIAL APPROVAL?

If the Project is not eligible for ministerial approval, the project will be subject to the local discretionary process, which may require review by the Planning Department, Planning Commission, or other public hearings. For more information, please visit <https://sfplanning.org/permit/developers>.

MINISTERIAL APPROVAL PROGRAMS

SB 423 ([CA Govt. Code 65913.4](#))

Overview

Government Code Section 65913.4, commonly known as SB 35, applies in cities that are not meeting their Regional Housing Need Allocation (RHNA) goals for construction of very low, low, or above-moderate income housing. SB 35 requires local entities to streamline the approval of certain housing projects by providing a ministerial approval process.

Currently, the City does not meet its RHNA production goals for above-moderate housing ; therefore, under SB 35 the City must ministerially approve projects that restrict between 50-100% of units as affordable to households earning less than 80% of Area Median Income (AMI). But due to amendments to SB 35 found in SB 423 (effective January 1, 2024), San Francisco anticipates that in early 2024, it will need to ministerially approve eligible projects of two units or more; projects with more than 10 units must include at least 10% as on-site affordable (at 80% AMI if an ownership project, or 50% AMI if a rental project). SB 423 also adds a pre-submittal hearing requirement in certain areas and amends labor provisions.

This Bulletin references the program of set forth in CA Govt. Code 65913.4 as SB 423 and summarizes its application to mixed income projects in San Francisco. For 100% affordable projects, please refer to [Planning Director Bulletin 5](#). For complete details about SB 423's requirements, please refer to Government Code Section 65913.4.

Eligibility Criteria

A project is eligible for streamlining under SB 423 if it meets the following criteria:

Site Requirements

- **Zoning.** The development must be located on a legal parcel or parcels that allow for residential uses.
- **Location.** The development must be located on a property that is not located on prime farmland, wetlands, a high fire hazard severity zone, a delineated earthquake fault zone, a flood plain, a floodway, a community conservation plan area, a habitat for protected species, or under a conservation easement.
- **Hazardous Waste Site.** The development is not located on a property that is classified as a hazardous waste site as defined under CA Gov't Code §§ 65912.111(e) (see 65913.4(a)(6)(E)), unless the project sponsor has secured a letter from the State Department of Public Health, State Water Resources Control Board, or the Department of Toxic Substance Control stating that the site is suitable for residential uses.
- **Coastal Zone.** Projects located in the Coastal Zone are prohibited until January 1, 2025. On or after January 1, 2025, the development may not be located on sites within the coastal zone that are not subject to a certified local coastal program or a certified land use plan; areas vulnerable to five feet of sea level rise; areas not zoned for multi-family housing; located within 100-feet of a wetland, or on prime agricultural land. For more information, please see the requirements in Government Code Section 65913.4(a)(6)(A).

If a project is located on a Coastal Zone site that is eligible for this program, the project sponsor shall submit a coastal zone permit, and the Department will review the project for compliance with any objective criteria of the Local Coastal Program.

- **Demolition of Residential Units.** SB 423 projects may not demolish any of the following types of housing:
 - o Units that have been occupied by tenants in the last 10 years;
 - o Units subject to any form of rent or price control, or units subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes.
 - o The project cannot be located on a site which was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent applies for approval under SB 423.
- **Historic Buildings.** SB 423 may not demolish historic structures that are on a national, state, or local historic register. A local historic register includes those properties listed within Article 10 or 11 of the San Francisco Planning Code. For Article 10 Buildings, Contributing and Contributing-Altered are considered historic while Non-contributing are not considered historic structures for the purposes of SB 423. For Article 11, Contributory and Significant buildings (I, II, III, IV) are considered historic structures while Unrated (V) buildings are not historic structures for the purposes of SB 423. The Article 10 definition of demolition will apply to both Article 10 and Article 11 properties.

Project Requirements

- **Residential Use.** The development must include the construction of at least two or more residential units. At least 2/3 of the floor area of the proposed building must be dedicated to residential uses.
- **Consistent with Objective Standards.** The project must meet all objective standards of the Planning Code at the time of SB 423 application submittal.
- **Labor Requirements.** If the development is not in its entirety a public work, as defined in Government Code Section 65913.4 (a)(8)(A), all construction workers employed in the execution of the development must be paid at least the general prevailing rate of per diem wages for the type of work and geographic area. The project sponsor shall certify to the City that it has met the requirements set forth in Govt. Code Section 65913.4(a)(8)(A). Projects with 10 or fewer units are exempt from the prevailing wage requirement. Project with 50 or more units must also make healthcare expenditures. A skilled and trained workforce, as defined in Government Code section 65913.4 (a)(8)(F), must complete the development if a project is over 85 feet in height above grade. Please see 65913.4(a)(8) and (9) for complete details about the labor requirements for SB 423 projects.
- **Subdivisions.** An application for a subdivision is considered ministerial so long as the project includes 10 or fewer units, is not entirely a public work, and is consistent with the objective standards of the City's Subdivision Ordinance.

Affordability Requirements

- Projects with 2-9 units : No affordability requirements
- 10 unit projects: Local inclusionary requirements apply
- 11+ Unit Projects: Local inclusionary requirements apply and SB 423 requirements apply (For rental projects, the inclusionary requirement is generally 15% at 55% AMI, while SB 423 requires at least 10% at 55%AMI)

Note: Projects located within certain areas of the City have different affordability requirements. Please see the [Inclusionary Affordable Housing Affidavit](#) for more information. Also, projects that are using State Density Bonus may collapse the income tiers without using an incentive.

Planning Department Review Process

Projects must submit an SB 423 Supplemental Application. For more information on the submittal requirements please see the SB 423 Supplemental Application.

Pre-submittal requirements

The project sponsor must complete the following prior to submittal of an SB 423 application.

- **Tribal notification**, as described above, is required for all SB 423 projects.
- Projects located within the CTCAC /HCD Opportunity Map shall present the project at an **informational hearing** at the Planning Commission. The Planning Department will schedule the informational item to occur within 45 days of the submittal of the Notice of Intent.

After meeting pre-submittal requirements, the sponsor may submit application materials. Planning review is subject to following deadlines:

| Project Size | Determination of Complete Application Materials | Eligibility for Ministerial Program | Planning Project Approval |
|---------------------|--|--|----------------------------------|
| 150 units or fewer | 30 days from submittal | 60 days from submittal | 90 days from submittal |
| More than 150 units | 30 days from submittal | 90 days from submittal | 180 days from submittal |

Approval Expiration

The SB 423 approval shall expire after three years unless construction activity has commenced on the site (including grading and demolition) and the site permit for the project has been issued. The City may grant a one-time, one-year extension if there has been significant progress towards getting the development construction ready.

AB 2011 (CA Govt. Code [65912.100](#), [65912.110](#), and [65912.130](#))

Overview

Assembly Bill 2011 (AB 2011), the Affordable Housing and High Road Jobs Act of 2022, effective July 1, 2023, requires the ministerial approval of eligible 100% affordable and mixed-income housing developments located on sites where office, retail or parking are principally permitted. In addition, to be eligible, mixed-income projects must be located on commercial corridors. All AB 2011 eligible projects must meet specified on-site affordable housing obligations and certain workforce commitments. AB 2011 requires minimum densities, and for some projects, allows for increased height limits. For complete details on AB 2011, please see Government Code Section 65912.110.

This Bulletin describes the implementation of AB 2011 for mixed-income projects. For more information on how AB 2011 is implemented for 100% affordable housing projects, please refer to [Planning Director Bulletin 5](#) and the [AB 2011 Supplemental Application](#).

Eligibility Criteria

A project is eligible for streamlining under AB 2011 if it meets the following criteria:

Site Requirements

- **Zoning.** The development is located on a legal parcel in a zoning district where either office, retail, or parking is a principally permitted use. For purposes of an AB 2011 application, principally permitted means “a use that may occupy more than one-third of the square footage of designated use on the site and does not require a conditional use permit.” Projects in RH, RM, PDR, SALI, Van Ness Special Use District, Van Ness & Market SUD, and WSoMa Mixed Use Office (WMUO) district are ineligible for AB 2011 streamlining because they do not principally permit office, retail, or parking.
- **Industrial Uses.** The development is located on a legal parcel where less than 1/3 of the square footage on the site is dedicated to industrial uses, is not adjacent to a lot where more than 1/3 of the square footage on the site is dedicated to industrial uses. An adjacent lot includes a lot that is separated from the project site by a street or highway. Projects in PDR and SALI district are ineligible because they are zoned for industrial uses.

A project is ineligible for streamlined, ministerial approval under AB 2011 if it is on or adjacent to a site where more than 1/3 of uses were dedicated to Industrial Uses, which are defined as manufacturing, transportation maintenance and storage, and warehousing. Under Planning Code Section 102, an “Industrial Use” includes Agricultural and Beverage Processing, Automobile Wrecking, Automobile Assembly, Grain Elevator, Hazardous Waste Facility, Junkyard, Livestock Processing, Heavy Manufacturing, Light Manufacturing, Metal Working, Ship Yard, Storage Yard, Volatile Materials Storage, and Truck Terminal. Additionally the following Utility and Infrastructure uses under the Planning Code are considered to be industrial uses for the purposes of AB2011: Community Recycling Center, Internet Service Exchange, Power Plant, Public Transportation Facility, Public Utilities Yard, Utility Installation. “Dedicated to an industrial use” means that the site is currently or was most recently used for an industrial use, or designated for industrial use in a general plan adopted after January 1, 2022. Project sponsors will be required to submit an affidavit related to adjacent uses as part of the AB 2011 application.

- **Location.** The development is not on a property that contains prime farmland or wetlands, or that is classified as a high fire hazard severity zone, a delineated earthquake fault zone, a flood plain, a floodway, a community conservation plan area, a habitat for protected species, or that is under a conservation easement.

- **Hazardous Waste Site.** The development is not located on a property that is classified as a hazardous waste site as defined under CA Gov't Code §§ 65912.111(e) (65913.4(a)(6)(E)), unless the project sponsor has secured a letter from the State Department of Public Health, State Water Resources Control Board, or the Department of Toxic Substance Control stating that the site is suitable for residential uses.
- **Proximity to Freeways and Refineries.** The development site is located more than 500 feet from a freeway, defined in California Vehicle Code section 332, and more than 3200 feet from a facility that actively extracts or refines oil or natural gas.
- **Historic Buildings.** AB 2011 mixed-income projects may not demolish historic structures that are on a national, state, or local historic register. A local historic register includes those properties listed within Article 10 or 11 of the San Francisco Planning Code. For Article 10 Buildings, Contributing and Contributing-Altered are considered historic while Non-contributing are not considered historic structures for the purposes of AB 2011. For Article 11, Contributory and Significant buildings (I, II, III, IV) are considered historic structures while Unrated (V) buildings are not historic structures for the purposes of AB 2011. The Article 10 definition of demolition will apply to both Article 10 and Article 11 properties.
- **Demolition of Residential Units.** AB 2011 projects may not demolish any of the following types of housing:
 - o Units that have been occupied by tenants in the last 10 years;
 - o Units subject to any form of rent or price control, or units subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes.
 - o The project cannot be located on a site which was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent applies for approval under AB 2011.

Project Requirements

- **Consistent with Objective Standards.** The project must meet all objective standards of the Planning Code at the time of AB 2011 application submittal. AB 2011 projects may also use the State Density Bonus Law. State Density bonus projects, including all requested waivers, incentives, and concessions, are considered code-complying. The setbacks required by CA Govt. Code 65912.123 may not be waived or modified by using an incentive.
- **Affordability.** Projects must comply with the highest inclusionary requirement between local requirements and those listed in AB 2011.
 - o For projects where the inclusionary requirement is 15%, 15% of the units must be restricted at 50% AMI if rental or 80% AMI if ownership.
 - o For projects where the inclusionary requirement is greater than 15%, please consult Planning staff for the proper calculation. Generally speaking, ownership projects may choose between 30% of the units @120% AMI or 15% @ 80% AMI. For rental projects where the inclusionary requirement is over 15%, 8% of the units must be restricted at 50% AMI and 5% at 30% AMI. The remaining inclusionary requirement must be met in addition to these affordability requirements. Please consult the [Inclusionary Affordable Housing Compliance Affidavit](#) for the most up to date requirements.
 - o Projects in certain zoning districts may have different Inclusionary rates. Please consult with Department staff to determine the applicable Inclusionary rate.

- o Deed Restrictions. Affordability shall be restricted for a minimum of 55 years unless the units count toward San Francisco’s inclusionary program which requires a restriction for life of the project.
- o Affordable units shall meet the designation standards outlined in [Zoning Administrator Bulletin 10](#) and the Procedures Manual.
- **Prevailing Wages.** If a project is not in its entirety a public work, it shall comply with the prevailing wage requirements set forth in CA Govt. Code Section 65912.130.
- **Craft Construction Employees.** In addition to the Labor Standards set forth in CA Govt. Code Section 65912.130, a project with 50 or more units shall employ construction craft employees as set forth in CA Govt. Code Section 65913.16(g).

Planning Review Process

More information on the submittal requirements for an AB 2011 project may be found in the [AB 2011 Supplemental Application](#).

A complete AB 2011 application must include a Phase 1 Environmental Assessment and supporting documentation for the project site. If hazardous materials are found, Planning staff will consult with the Department of Public Health to determine if the mitigation is adequate. The Department will pause the state mandated timelines during consultation with the Department of Public Health.

Pre-submittal Requirements

- **Tribal notification**, as described above, is required for AB 2011 projects on vacant sites only.

Planning Review Timelines

After meeting pre-submittal requirements, the sponsor may submit application materials. Planning review is subject to following deadlines:

| Project Size | Determination of Complete Application Materials | Eligibility for Ministerial Program | Planning Project Approval |
|---------------------|---|-------------------------------------|---------------------------|
| 150 units or fewer | 30 days from submittal | 60 days from submittal | 90 days from submittal |
| More than 150 units | 30 days from submittal | 90 days from submittal | 180 days from submittal |

Approval Expiration

If a project includes public investment beyond tax credits, then the AB 2011 approval will not expire. If the project does not include public investment, then the approval shall remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. The project must begin construction activity, including demolition, grading, or other site preparation activities, within three years of approval.



**San Francisco
Planning**

**FOR MORE INFORMATION:
Contact the San Francisco Planning Department**

Central Reception
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

TEL: **628.652.7600**
WEB: **www.sfplanning.org**

Planning counter at the Permit Center
49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103

EMAIL: **pic@sfgov.org**
TEL: **628.652.7300**