

Ministerial (By-Right) Approval

Encourage community-serving housing development with ministerial approval of projects that meet preferred affordability thresholds or other criteria (e.g., proximity to transit). An effective policy will expedite the approval process and provide more certainty for developers, leading to lower development costs and faster construction of projects that meet local housing production goals.

Legal Context

What Does State Law Require?

[SB 35 \(2017\)](#) and [SB 423 \(2023\)](#):

SB 35 requires that jurisdictions that have not met RHNA targets must offer ministerial approval for multi-family developments. This applies to infill developments of 11 or more units that comply with existing residential and mixed-use zoning and objective design standards. Affordability requirements vary depending on RHNA targets and APR status (see [Article IV Section 402 of HCD’s Updated Streamlined Ministerial Approval Process Guidelines](#)). Jurisdictions cannot impose parking minimums on developments within 0.5 miles of transit. While SB 35 only applies to jurisdictions that have not met their RHNA targets and for infill projects, language from SB 35 may be helpful for jurisdictions to include in their adopted ministerial approval policy.

SB 423 (2023) extends SB 35’s provisions until January 1, 2036. SB 423 also expands some elements of SB 35, such as application to previously exempted coastal zone areas that are already zoned for housing.

[State Density Bonus Law](#):

Government Code Chapter 4.3 Density Bonuses and Other Incentives states that eligible developments are entitled to a density bonus, including up to a 50% increase in density depending on the amount of included affordable units, and an 80% increase for completely affordable projects. This law includes incentives such as reduced parking requirements, reduced setbacks and minimum square footage requirements. See MTC-ABAG’s [Density Bonus Model Ordinance & Program Guidelines](#).

At-A-Glance

RELEVANT STATE LAWS

- [SB 35 \(2017\)](#)
- [SB 423 \(2023\)](#)
- [State Density Bonus Law](#)

POTENTIAL FUNDING SOURCE

- General Funds
- Permit Review Fees

COST

Low

ADMINISTRATIVE BURDEN



Medium

Staff capacity needed for program design, leading public and legislative processes, training for new procedures.

WHICH P?

Production

POTENTIAL PARTNERS

- Affordable Housing Developers
- Community Development Corporations



[OPTION FOR TOC POLICY COMPLIANCE?](#)

Yes!



How Can Jurisdictions Implement Programs That Go Beyond State Law?

Adopt ministerial approval and associated incentives for projects that provide more affordable housing units or deeper affordability than would be required by SB 35, state density bonus rules, local inclusionary zoning, and

other existing state and local programs. Tailor incentives and ministerial approval criteria to encourage housing that meets local priorities. For example, jurisdictions may wish to provide ministerial approval to a broad range of projects, such as all multi-family housing near transit regardless of the project's affordability.

Program Design, Implementation and Evaluation Considerations

The callout box below labeled “TOC Policy Requirements” describes the policy features necessary for a jurisdiction to receive credit toward TOC Policy compliance. All other policy features discussed in this document represent details found in existing policies on the subject and a jurisdiction may want to consider them when adopting or implementing a policy, but nothing is required for TOC Policy compliance unless noted as a requirement in the “TOC Policy Requirements” callout box or the [TOC Policy Administrative Guidance](#).

Elements of the Program

- Streamlined ministerial approval process for eligible projects.
- Incentives encouraging affordability beyond existing local and state programs.
- Documented commitments to maintaining long term affordability of newly built units.

Program Design Considerations

Jurisdictions may want to consider the following:

ELIGIBILITY REQUIREMENTS: Defining categories of housing that meet local housing goals for streamlined approval, such as units affordable to extremely low-income households, onsite affordability, increased share of affordable housing, recently rezoned land, proximity to transit, or housing element sites.

AFFORDABILITY REQUIREMENTS: Setting affordability levels that meet local housing needs, generally set as below 80% AMI for rental housing and below 120% AMI for ownership housing. Ensure long term affordability of units approved through a ministerial process using recorded documentation such as deed restriction. For further guidance on setting

affordability requirements and documentation see MTC-ABAG's Inclusionary Zoning Policy Guide.

AFFORDABILITY INCENTIVES: Creating options for projects to deliver deeper affordability such as allowing projects to build fewer units in exchange for lower AMI, or requiring that inclusionary units prioritize Section 8 Housing Choice Vouchers.

PREVENTING DISPLACEMENT: Implement best practices for no net loss and tenant protections related to any demolition necessary for a new construction project.

OBJECTIVE STANDARDS: Establishing objective standards for zoning, subdivisions, and design review that require minimal review and streamline the approval process. See MTC-ABAG's Tools for Objective Design Standards.

CLEAR APPLICATION PROCESSING REQUIREMENTS: Outlining an easy to understand process and procedures for review and approval. Include specific review timelines and deadlines, defined review procedures, objective standards for review, and a straightforward application with clearly stated submittal requirements.

ALIGNMENT WITH EXISTING PROGRAMS:

Partnering with existing local affordability programs to streamline the process for documenting and monitoring affordability restrictions. For further guidance on the affordability reporting and monitoring process see MTC-ABAG's Inclusionary Zoning Policy Guide.

OUTREACH TO DEVELOPERS: Providing clear information that outlines local laws, program requirements and support services. Information can be made accessible through city websites, including a designated staff contact and links to application forms.

Program Implementation, Administration and Enforcement

Ministerial approval policies are generally implemented by ordinance. Jurisdictions can seek input on program criteria and incentives from members of the development community, such as real estate industry groups and affordable housing developers.

Combining ministerial approval processes with existing programs can reduce the time and energy needed for staff training and program administration. For example, jurisdictions may need to develop processes to document affordability requirements, verify tenant incomes and monitor properties over the long term. These functions can be implemented through an existing affordability monitoring system, such as a system for Inclusionary Zoning or for city-owned affordable housing. See [MTC-ABAG's Inclusionary Zoning Policy Guide](#) for further guidance.

Program Evaluation

Program evaluation can include tracking how many affordable units are added through ministerial approval and a comparison with how many units would likely have been made affordable without associated incentives. Jurisdictions may also track whether ministerial approval facilitates expedited development of

Housing Element sites, rezoned areas or other priority locations. Local housing developers should understand where to access information on the program and how to leverage the benefits of ministerial approval.



TOC Policy Requirements: To comply with the TOC Policy, jurisdictions must adopt all of the following:

- **Requirements apply** to projects with 11 or more units.
- **Grant ministerial approval** to projects that meet one of the following thresholds:
 - At least 15% of units are affordable by deed restriction OR
 - The share of affordable units exceeds existing local inclusionary zoning requirements and provides more affordable units or deeper affordability than would be required under state density bonus rules.
- **Define affordable units** as rental housing available to households earning 80% of AMI or less, and ownership housing available to households earning 120% of AMI or less. Require deeper affordability where feasible or through additional incentives.
- **Require recorded documents** that set maximum rent or price restrictions. Documented restrictions must limit rent and sale prices to affordable levels as defined by the rules of any applicable state or federal affordable housing program. Restrictions must apply for at least 55 years for rental housing and at least 45 years for ownership housing.
- **Restrict parking** to requirements outlined in Table 12 of MTC's [TOC Policy Administrative Guidance](#).
- **Consider expanding ministerial approval** to a broader range of projects, such as all multi-family housing regardless of affordability.

Complementary Policies

AFFORDABLE HOUSING OVERLAY ZONE: Affordable housing overlay zones allow increased density and relaxed zoning regulations, making it easier and more attractive to develop affordable units.

INCLUSIONARY ZONING: Inclusionary zoning mandates affordability requirements across broader geographic areas and is generally subject to detailed unit standards and program monitoring.

NO NET LOSS: Prevent displacement by requiring replacement of demolished units with units of equivalent size and affordability.

RIGHT TO RETURN: Prevent permanent displacement of residents who must leave their homes due to redevelopment or rehabilitation.

This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this document. Seek the advice of your jurisdiction's legal counsel before acting or relying upon this information. For specific questions regarding TOC compliance, please reach out to TOCpolicy@bayareametro.gov.

Other Resources

EXAMPLES*

Palo Alto - [Streamlined Design Review for Objective Design Standards and ODS Checklist](#)

OTHER RESOURCES

[MTC/ABAG - By-Right Housing Resources](#)

[MTC/ABAG - Objective Design Standards Resources](#)

[MTC/ABAG - Density Bonus Model Ordinance & Program Guidelines](#)

[MTC/ABAG - SB 35 Implementation Guidance](#)

[Meyers Nave - Guide to CA State Density Bonus Law](#)

[Grounded Solutions Network - Income Targeting](#)

[Grounded Solutions Network - Setting Affordable Rents](#)

[Caltrans - Chapter 34: Exemptions to CEQA](#)

[Metropolitan Transportation Commission - Production Policy 5: Ministerial Approval](#)

**Note that examples have not been vetted for full TOC Compliance.*