

# Ministerial Review— Information and Application Requirements

## INTRODUCTION

A number of California laws require local governments to evaluate certain qualifying housing projects through *streamlined ministerial* review. These terms generally mean:

- **Streamlined:** Projects must be approved or denied within a specified time limit. The time limit for a streamlined project depends on the applicable state law.
- **Ministerial:** Projects must be approved if they meet objective standards, without any subjective judgment or interpretation by staff or other officials. State law may establish objective standards for certain types of projects, while local governments may have authority to establish their own objective standards for other types of projects.

Ministerial projects are not subject to environmental review under the California Environmental Quality Act (CEQA) because they do not involve the exercise of discretion (subjective judgment) on how the project should be carried out.

Examples of state laws that require ministerial review for housing projects include:

EXAMPLE OF CALIFORNIA LAWS PROVIDING FOR MINISTERIAL REVIEW		
Bill Number (year passed)	Type of Housing Project, Locations	Section of State Law
SB 35 (2017) / SB 423 (2023)	Multifamily projects or mixed-use projects in which at least 2/3 of the floor area is for residential use. Urban infill sites.	Government Code Section 65913.4
AB 2162 (2018)	Affordable housing projects with at least 25% or 12 units set aside for supportive housing. Zones permitting multifamily and mixed uses.	Government Code Section 65050 <i>et seq.</i>
AB 101 (2019)	Low-barrier navigation centers in mixed-use and nonresidential zones permitting multifamily uses.	Government Code Sections 65660 <i>et seq.</i>
SB 9 (2021)	Divisions of existing parcels into two parcels and/or creation of two primary dwelling units (plus ADUs) per parcel. Single-family residential zones.	Government Code Sections 66411.7, 66452.6, and 65852.21
AB 2011 (2022) / AB 2243 (2023)	Mixed-income and affordable multifamily housing projects in commercial zones.	Government Code Sections 65912.100 <i>et seq.</i>
SB 4 (2023)	Affordable housing projects (including qualifying ground-floor commercial, childcare center and community center uses) on land owned by religious organizations and higher education institutions.	Government Code Section 65913.16
SB 684 (2023)	Land divisions of up to 10 parcels and corresponding housing projects of up to 10 units. Ownership housing. Sites of up to 5 acres, surrounded by urban uses, in zones that allow multifamily housing.	Government Code Sections 65852.28, 65913.4.5, and 66499.41

This document describes the City of Alameda’s process for reviewing projects eligible for streamlined ministerial review under one (or more) of the above state laws. This is a general guide that gives an overview of the process and provides information and references related to project eligibility and applicable standards. While this information will usually apply to all streamlined ministerial projects, it is highly recommended to review the applicable law and consult with Planning Division staff early in the planning process to understand and verify the requirements applicable to a specific project.

Further, please note that the California Legislature often amends state housing laws. The Planning Division will update this document from time to time to reflect future amendments to state law, but it is highly recommended to review the relevant law(s) and consult with Planning Division staff to confirm the most up-to-date requirements applicable to a specific project. State law and the Alameda Municipal Code (AMC) will control in the event of any conflict with this document.

## WHAT IS MINISTERIAL REVIEW? (OR DISCRETIONARY VS. MINISTERIAL REVIEW)

Most development projects in the City of Alameda are subject to discretionary permits (e.g., design review, conditional use permits, etc.) that involve qualitative evaluation criteria. Such projects are reviewed, and approval findings are made, according to subjective criteria that require a certain degree of interpretation and professional judgment. These criteria can include neighborhood compatibility, appropriateness of scale, harmony of design, and other qualitative factors. This process is referred to as *discretionary* because city staff or the Planning Commission exercises a degree of discretion in judging how a project conforms with applicable development standards and policies.

In contrast to discretionary review, *ministerial* review and approval only requires conformance with fixed, objective standards, such as minimum setbacks or height maximums. Objective standards utilize little or no judgment by a public official as to the wisdom or manner of carrying out the project. Ministerial review only asks whether or not a project complies with each applicable objective standard, and the reviewing official must issue the permit if the project conforms with all of the objective standards.

Additionally, discretionary projects (most projects) are subject to the California Environmental Quality Act (CEQA) and require environmental review to inform the City how the exercise of its discretion could affect the environment. Ministerial projects, on the other hand, are not subject to CEQA and do not require environmental review because the City does not exercise discretion over them.

Overall, ministerial review streamlines housing projects by limiting the reviewing process and providing greater certainty with clear-cut, objective standards.

## OBJECTIVE STANDARDS APPLY

All developments must comply with the City’s zoning regulations, subdivision regulations, and building code requirements. This also applies to qualified streamlined ministerial review projects; however they need only comply with the *objective* standards found in such regulations (except in limited cases where state law establishes objective standards for a streamlined ministerial project).

## Zoning Regulations

[Alameda Municipal Code \(AMC\), Chapter XXX \(Development Regulations\)](#) encompasses the City's zoning, subdivision, and other development regulations. Qualified streamlined ministerial projects must conform with the *objective* standards found in these regulations that are applicable to the project type and zoning.

While a qualified streamlined ministerial project will generally be subject to the City's zoning regulations, some state laws provide their own objective standards for projects pursued under them. Where applicable, these state law standards override the standards found in the City's ordinances. Apart from such specific state law standards, the standards of AMC Chapter XXX will continue to apply.

For example, SB 684 mandates that SB 684 projects cannot be subject to setback requirements greater than four feet between buildings and rear property lines, while the City's zoning regulations normally require a 20-foot rear setback in its R-6 residential zone. If an SB 684 project qualified in an R-6 zone, the reduced four-foot setback would apply instead of the 20-foot setback.

Please note: the regulations for certain zoning districts are established by separate planning documents, such as the [Town Center and Waterfront Precise Plan](#) for AP-TC zoning district and the [Main Street Neighborhood Specific Plan](#) for the AP-MS zoning district. Developments standards in the Mixed-Use (M-X) districts are generally governed by an adopted master plan.

## Objective Design Review Standards

Several of the state laws allow the City to impose objective design review standards in addition to the more general standards of the zoning code. The City has adopted the [City of Alameda's Objective Design Review Standards](#) that serve as the standards for objective design review.

These standards provide objective criteria for various elements of project design, such as building massing and articulation, site layout and building orientation, and parking, among several others. Often times, a particular standard will give several options for a project to choose from. For example, "Façade Articulation" requires a project to comply with two of nine available options. These standards provide a degree of design flexibility while still allowing a project to qualify for streamlined ministerial review.

Please note: if an applicant does not wish to comply with one or more of the Objective Design Review Standards for a project that would otherwise be eligible for streamlined ministerial review, the applicant may elect to go through the City's discretionary Design Review process ([AMC Chapter XXX, Article II](#)). The project would no longer be a streamlined ministerial project.

## PRE-SUBMITTAL REQUIREMENTS

### Informational City Council Hearing (SB 35/SB 423)

A public informational hearing before City Council is required for SB 35/SB 423 projects that are located within census tracts designated as "low resource", "moderate resource", or "an area of high segregation and poverty" by the most recent [CTCAC/HCD Opportunity Map](#) published by the California Tax Credit Allocation Committee. This hearing requirement must be satisfied before a full application is accepted, and the applicable streamlining review deadlines will not start until then.

To initiate the public hearing process, an applicant must file a preliminary/SB330 application, which is also referred to as a Notice of Intent. Within 45 days of receiving the Notice of Intent, the City will schedule an informational hearing for the project at a regularly scheduled City Council meeting. The applicant must

attend the hearing and attest that the applicant considered the public's testimony and written comments. If the City fails to hold a hearing within 45 days, the applicant may hold their own public meeting to satisfy this requirement.

The Notice of Intent for the Informational City Council Hearing is the same as the one required for the Tribal Notification and Consultation process described below. Only one Notice of Intent is required per project, and the City will conduct both processes concurrently to the greatest extent possible.

### **Tribal Notification and Consultation (SB 35/SB 423, AB 2011, SB 4)**

Certain streamlined ministerial housing projects are required to go through a "pre-submittal" tribal notification and consultation process. This requirement applies to all SB 35/SB 423<sup>1</sup> projects. For AB 2011<sup>2</sup> and SB 4<sup>3</sup> projects, this requirement only applies on vacant sites.

Where applicable, the tribal notification and consultation process must be completed before a full project application can be accepted and the project deemed eligible for streamlined ministerial review. The applicable streamlining deadlines do not start until this process is complete.

To initiate this process, an applicant must submit a preliminary/SB330 application, known as a Notice of Intent. Once the City receives a Notice of Intent, it will provide a formal notice of the project to each California Native American tribe that is "traditionally and culturally affiliated with the geographic area of the proposed development". The City must issue this formal notice within 30 days for SB 35/SB 423 projects and within 14 days for AB 2011 or SB 4 projects.

After the City provides the formal notice, a tribe may request a consultation within 30 days of receipt of the notice. If a consultation is requested, the City must initiate the consultation between the parties within 30 days of the consultation request.

During the consultation, the parties will identify if there are any tribal cultural resources that could be affected by the proposed project. If tribal cultural resources would be affected, the parties must develop and agree to methods and measures to mitigate those effects. These mitigation measures will become binding conditions of approval on the project in order to qualify for streamlined ministerial approval.

This process will end and the project may pursue streamlined ministerial review once any of the following happen: (1) no tribe requests consultation within 30 days of receipt of the formal notice; (2) a consultation does not identify any tribal cultural resource that will be affected; or (3) the parties agree to binding mitigation measures. A project will not be eligible for streamlined ministerial review if the parties cannot agree to mitigation measures after a consultation identifies potential effects to tribal cultural resources.

## **APPLICATION AND REVIEW PROCESS**

A streamlined ministerial review application must include all necessary documentation to demonstrate that the project qualifies under the requirements of the applicable state law. If the City determines an application does not sufficiently demonstrate that a project qualifies, the City will return written comments on what additional information needs to be provided.

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<sup>1</sup> California Government Code § 65913.4(b).

<sup>2</sup> California Government Code §§ 65912.111(h)(1) and 65912.121(j)(1).

<sup>3</sup> California Government Code § 65913.16(c)(16).

## Applying for Ministerial Review

- Submit an application via the [Accela Citizen Access Portal](#). Select “Ministerial Review Application” as the application type.
- Pay the application fee (you will be sent an invoice by e-mail).
- Include the following in the application:
  - A project description narrative.
  - Plans/drawings. See the [Planning Application Submittal Checklist](#) for a list of plans that should be included.
  - A written explanation of how the project meets the criteria for ministerial review stating:
    - Which state law applies to the project. Include the California Government Code section.
    - Each eligibility criterion in the applicable state law. (Eligibility checklist templates are linked at the end of this document.)
    - Whether and how the proposed project meets each eligibility criterion.

See examples of complete application letters here and here.

- A written and graphic description of how the project complies with applicable objective zoning and subdivision standards (or state law standards if applicable). See examples here and here.
- A completed Objective Design Review Standards checklist to demonstrate that the project meets the applicable Objective Design Review Standards.

## Review Process

The City will process your request according to the time limits established in state law as follows:

- Staff will review the application to determine if it is complete (contains all the information necessary for review) and to determine if the proposed project is:
  - Qualified for streamlined, ministerial, or streamlined ministerial review under the criteria of the applicable state law;
  - Consistent with objective standards of the zoning and subdivision ordinances;
  - Consistent with the applicable Objective Design Review Standards.
- In general, staff will simultaneously review streamlined ministerial applications for completeness, streamlined ministerial eligibility, and consistency with objective standards.
- Staff will issue a written comment letter if an application is determined to be incomplete, and/or if the proposed project does not satisfy the criteria for streamlined ministerial review and/or is inconsistent with any objective standards. The comment letter will identify the relevant information, criteria, and/or objective standards and explain how the project does not comply. In most cases, staff will issue a single comment letter covering all deficiencies.

- If staff issues a written comment letter, the applicant should timely re-submit the requested information and/or revised application materials and plans, along with a written response addressing the items in the comment letter. Generally, streamlining deadlines will be paused until the applicant submits a response to the comment letter.
- Once a project is determined to satisfy the criteria for streamlined ministerial review and is compliant with all applicable objective standards, staff will issue an approval determination letter. This letter serves as the project's planning approval.
  - The approval determination letter will include the City's Standard Objective Conditions of Approval, subject to minor modification as appropriate for the project. These will serve as the project's conditions of approval.
  - Once an approval determination letter is issued, the applicant can apply for the project's building permits and other necessary subsequent permits. All subsequent permits for the approved project will be reviewed according to applicable objective standards.
- If staff determines that a project cannot qualify for streamlined ministerial review on the basis that it would be impossible for the project to qualify under the applicable law, staff will issue a written determination explaining why the project cannot qualify. The applicant may respond to this determination explaining why it believes the project complies, and staff will reconsider the determination and issue a final decision.
- If an applicant does not wish to modify a project that does not meet the criteria for streamlined ministerial approval or does not comply with one or more applicable objective standard, the applicant may pursue the project through the City's discretionary Design Review process.

## APPENDICES AND LINKS TO ADDITIONAL RESOURCES

- Further information on specific State laws:
  - SB 35: text of law, SB 35 guidelines, eligibility checklist template
  - AB 2162: text of law, eligibility checklist template
  - AB 101: text of law, eligibility checklist template
  - SB 9: text of law, eligibility checklist template
  - AB 2011: text of law, eligibility checklist template
  - SB 4: text of law, eligibility checklist template
  - SB 684: text of law, eligibility checklist
- Examples: Application letter demonstrating how eligibility criteria are met
  - Example 1: AB 2011 Project
  - Example 2: SB 35 Project
- Example: Description of how objective development standards are met
  - Example 1: AB 2011 Project
  - Example 2: SB 9 Project
- [Objective Design Review Standards](#) (information and checklist)
- Standard Objective Conditions of Approval