

HOUSING LEGISLATION

OVERVIEW



San Francisco
Planning

Board of Appeals
January 4th, 2023

OUTLINE

1. State Density Bonus Overview
2. Review Process
3. SB-35
4. Intersection with the Housing Accountability Act
5. Planning Commission Discretion
6. Future Legislative Efforts
7. Housing Crisis Act



San Francisco
Planning

State Density Bonus Law: Project Requirements



PROJECT REQUIREMENTS

5 units
or more

Residential or
mixed use



AFFORDABILITY REQUIREMENTS

Affordable units
on-site

Affordable for
55 years and if
inclusionary,
life of project

State Density Bonus Law: 3 Components



DENSITY BONUS

- Law specifies percentage bonus based on affordable units provided
-
- Maximum 50% density bonus

INCENTIVES & CONCESSIONS

- 1 to 4 based on % affordable
 - Reduce overall cost of project
-
- Can include height, open space
-
- City may DENY if incentives and concessions would not result in cost reductions or **would have a specific adverse impact upon public health or safety as defined by State law.**

WAIVERS

- Unlimited number if necessary to accommodate increased density (envelope issues)
-
- Can include height, bulk, or open space, rear yard
-
- City may DENY if waivers are not necessary or **would have a specific adverse impact upon public health or safety as defined by State law.**

Incentives and Concessions

- 1 to 4 that reduce the costs of development

Dependent on the affordable units

- Can include: open space, height, ground floor ceiling height

Could also be considered as waivers depending on each project

- City is limited in its discretion and can only deny an incentive or concession if it **would have a specific adverse impact upon public health or safety as defined by State law.**



Waivers of Local Development Standards



**Can include height,
bulk, or rear yard**



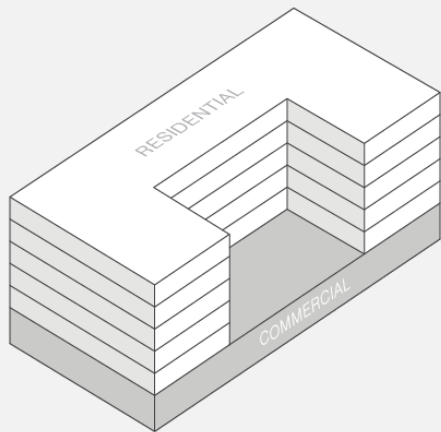
**Necessary to
accommodate increased
density**



**Volumetric
requirements**

Inclusionary Rate and Effective Rate: Example

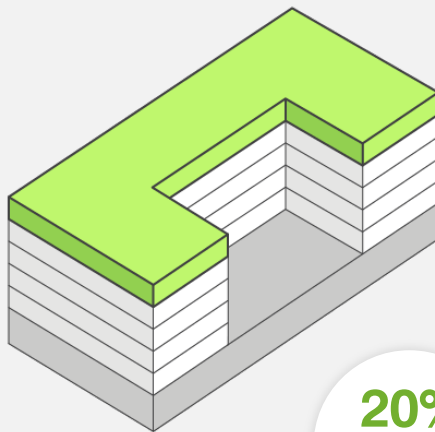
BASE PROJECT



100 Total Units

BASE PROJECT

+ INCLUSIONARY



100 Total Units
20 Inclusionary Units

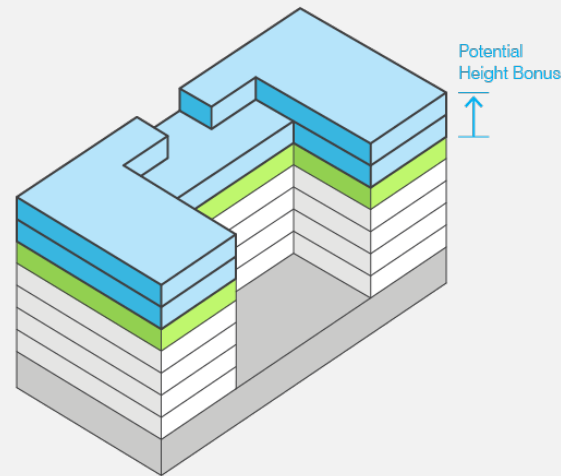
20%

Affordable
(Required)

+ DENSITY BONUS

BASE PROJECT

+ INCLUSIONARY



139 Total Units
20 Inclusionary Units + Affordable
Housing Fee on Bonus Units

Planning Director Bulletin 6

This bulletin is available to the public and contains our **interpretations** regarding State Density Bonus



This Bulletin is an overview of the State Density Bonus Law and describes the implementation procedures for projects seeking to use the program in San Francisco.

PLANNING DIRECTOR BULLETIN NO. 6

Implementing the State Density Bonus Program

First Issued:
DECEMBER 2018
Revised:
DECEMBER 2020

Reference:
Government Code Section 65915
Planning Code Section 206.6

BACKGROUND:

The California State Density Bonus Law ("State Law") offers development incentives to projects that provide on-site affordable housing. The State Law offers three categories of benefits to incentivize on-site affordable housing:

1. A project may seek up to 50% additional residential density or receive form-based density if the project is 100% affordable;
2. A project may receive up to four incentives or concessions (generally, defined as a reduction of development standards, modifications of zoning code requirements, or approval of mixed-use zoning) to offset the costs of providing affordable housing on-site; and
3. The City must waive any local development standard required to construct the on-site affordable housing and the incentives or concessions.

The amount of the density bonus and the number of incentives or concessions depends on the amount and level of affordability of the affordable units in the project.

The City adopted the Individually Requested State Density Bonus Program (Planning Code Section 206.6) in 2017 to implement the State Law.

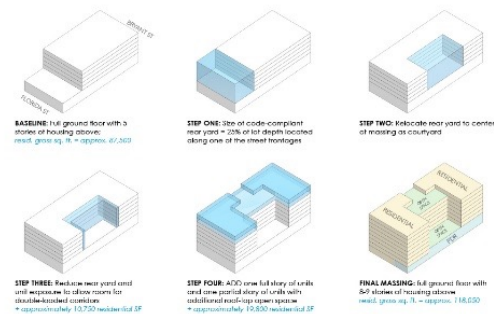
HOW DOES SAN FRANCISCO IMPLEMENT THE STATE DENSITY BONUS PROGRAM?

Calculating a Density Bonus

Base Density
State Law allows projects to receive up to 50% additional residential density. To determine the amount of additional density, Planning Department staff must calculate the principally permitted density under current controls ("base density"). This calculation is referred to as a base density study. The "base density" is the maximum allowable gross residential density principally permitted under the current zoning. Residential density regulations in San Francisco vary by zoning district. In some districts, residential density is regulated by a ratio of units to lot area, such as one unit per 600 square feet. In these districts, base density is the maximum number of units allowed by the zoning district. Other districts use form-based density, where residential density is regulated by the permitted building volume - either the maximum floor area ratio (FAR) or a maximum building volume controlled by height, bulk, and setback controls ("form-based zoning"). In areas with form-based zoning, the base density is interpreted to be the maximum residential gross floor area principally permitted on the site under the current zoning.

DIRECTOR'S
BULLETIN NO. 6

EXHIBIT A



MITHUN

Diagram provided by Mithun San Francisco



FOR MORE INFORMATION:
Contact the San Francisco Planning Department

Central Reception
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94108

TEL: 628.652.7600
WWW: www.sfpplanning.org

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

EMAIL: plc@sfgov.org
TEL: 628.652.7300

Process

- **State Density Bonus law does not affect process**; if there is an underlying entitlement, process to get that entitlement remains.
- The Planning Code requires the **Planning Commission** to make specific **State Density Bonus findings**.

Whether the project has a specific adverse impact upon public health or safety as defined by State law - not discretionary

- State Density Bonus law **does not affect CEQA review**.



SB-35 Background



- Effective January 2018
- Ministerial review for projects that provide a certain amount of affordable housing (50%-100%)
- Based upon RHNA production
- State-wide



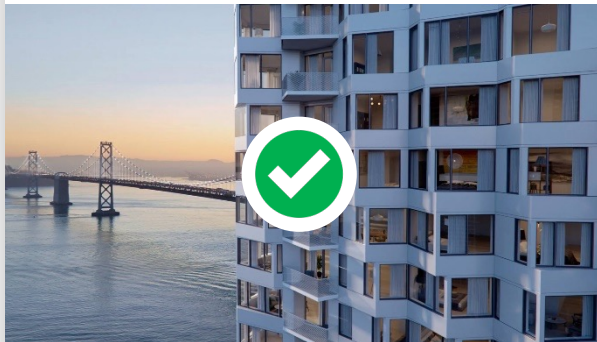
Overview

State Legislation mandating streamlined approval of housing projects in cities that are not meeting RHNA production goals.

*RHNA INCOME
CATEGORIES*

*SAN
FRANCISCO*

**Above-moderate income
(above 120% AMI)**



**Housing for households
below 80% AMI**



What a SB-35 project may expect

For qualifying projects, **requires streamlined approval** including:



Ministerial approval process

Removes requirement for CEQA analysis associated with Planning entitlements



Removes requirement for Conditional Use Authorizations

or other discretionary entitlements.



Codifies strict approval and review timelines

60-90 days for completeness depending on size.

90-180 days for design depending on project size.

Eligibility Criteria

- Consistent with Objective Standards
- Affordability
- Size (2 or more units)
- Zoning
- Location
- No Demolition – Residential rental unit 10 years
- No Demolition – Historic Structures: Article 10 or 11
- Prevailing Wages
- Skilled and Trained Workforce
- Subdivisions



Objective Standards

“Require no personal or subjective judgement by a public official”

“uniformly verifiable by reference to an external and uniform benchmark”

OBJECTIVE STANDARDS

Rear Yard Setback

**Dwelling Unit
Exposure**

Open Space

NON-OBJECTIVE STANDARDS

Design Guidelines

**Preservation Design
Comments**

SB-35 recognizes State Density Bonus Projects, including all necessary waivers, incentives, and concessions are meeting objective standards.

Project Types



100% Affordable Housing Projects

- Administrative approval (PC Section 315)
- 100% Affordable Housing Density Bonus Program (PC Section 206.4)



Mixed-income projects including at least 50% on-site affordable

- Projects conforming to existing zoning and meeting objective standards.

Review Process + Timelines

1

Sponsor Submittal

- Building Permit Application
- SB-35 Application
- Individually Requested State Density Bonus Application, if applicable
- CANAT Notification

2

Neighborhood Notification is not required.

No Discretionary Review.

3

Planning Staff must determine eligibility within

- 60 days of application submittal if project contains 150 units or fewer
- 90 days of application submittal if project contains more than 150 units

4

Planning Staff must complete any design review or other public oversight within

- 90 days for projects with 150 units or fewer
- 180 days for projects with more than 150 units

Implementation Strategy

- Issued Planning Director Bulletin 5 in December 2017
- Issued application and Information packet in January 2018
- Internal working group meetings to look at SF specific implications



This Bulletin outlines how the Planning Department administers streamlined approval for affordable and supportive housing.

PLANNING DIRECTOR BULLETIN NO. 5

Streamlined Approval Processes for Affordable and Supportive Housing

First Issued:
DECEMBER 2017
Updated:
JANUARY 2019

References:
Government Code Section 65650 (Assembly Bill 2162)
Government Code Section 65913.4 (Senate Bill 35)
Planning Code Section 290.4
Planning Code Section 315

INTRODUCTION:

The State of California has introduced various programs for streamlining housing production, including Senate Bill 35 which became effective January 1, 2018, and Assembly Bill 2162 which became effective January 1, 2019. These two programs require local jurisdictions to provide a ministerial approval process for affordable, mixed-income, and Supportive Housing projects that meet certain criteria. The ministerial approval process removes the requirement for CEQA analysis, and removes the requirement for Conditional Use Authorization or other similar discretionary entitlements granted by the Planning Commission. This bulletin includes the eligibility criteria for each program, and outlines how the Planning Department administers streamlined approval.

SB-35 (CA GOVT. CODE SECTION 65913.4)

Overview

California Senate Bill 35 (SB-35) was signed by Governor Jerry Brown on September 29, 2017 and became effective January 1, 2018. SB-35 applies in cities that are not meeting their Regional Housing Need Allocation (RHNA) goal for construction of above-moderate income housing and/or housing for households below 80% area median income (AMI). SB-35 amends Government Code Section 65913.4 to require local entities to streamline the approval of certain housing projects by providing a ministerial approval process, removing the requirement for CEQA analysis, and removing the requirement for Conditional Use Authorization or other similar discretionary entitlements granted by a Planning Commission. This bulletin outlines how the Planning Department administers streamlined approval set forth in Government Code Section 65913.4.

Eligibility Criteria

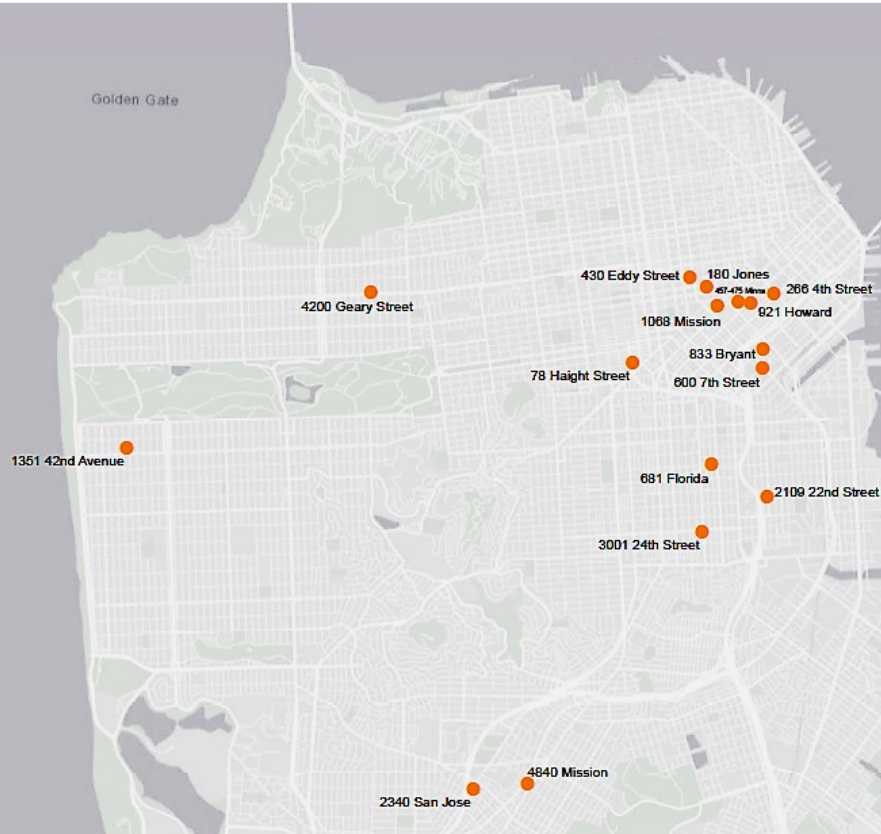
Currently, San Francisco meets its RHNA goal for construction of above-moderate income housing. However, the City is not meeting the RHNA goal for affordable housing below 80% AMI. Therefore, at this time, projects providing on-site affordable housing at 80% AMI are eligible for streamlining in San Francisco if they meet all of the following criteria:

- **Affordability.** At least 50% of the proposed residential units must be dedicated as affordable to households at 80% AMI for either rental or ownership projects. In order to assure that the affordable units remain so dedicated, they must comply with the San Francisco Inclusionary Affordable Housing Program Procedures Manual with regard to monitoring, enforcement, and procedures for eligibility, including the lottery.
- **Number of Units.** The development must contain at least two or more residential units.

Projects



Projects Map



What discretion is there?

DESIGN

Fenestration

Massing shifts

Materials



LIMITATIONS

No reduction in density

Project cannot become financially infeasible

No denial of incentives, concessions, or waivers without findings of specific adverse impacts on public health and safety as defined by State law

Future Legislative Efforts

- AB-2011: effective July 2023



Ministerial review similar to SB-35 but different eligibility criteria

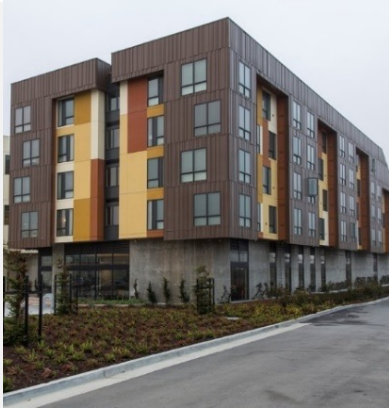
- Path for 100% Affordable Projects and Mixed Income



Differences between SB-35 and AB-2011 for 100% Affordable projects

- Less labor provisions
- Can demolish housing
- Potential density and height increases depending on location
- No restriction on historic properties

Eligible Projects



**100%
Affordable**



**Mixed-
Income, w/
13% - 30%
BMR units**



**Minimum Workforce
Requirements**

- prevailing wages
- health care and apprenticeships for large projects



**Additional
Requirements**

- Relocation assistance
- Phase I environmental Remove hazards
- 500+ feet from freeway

FOR 100% AFFORDABLE

AB 2011 applies everywhere except:

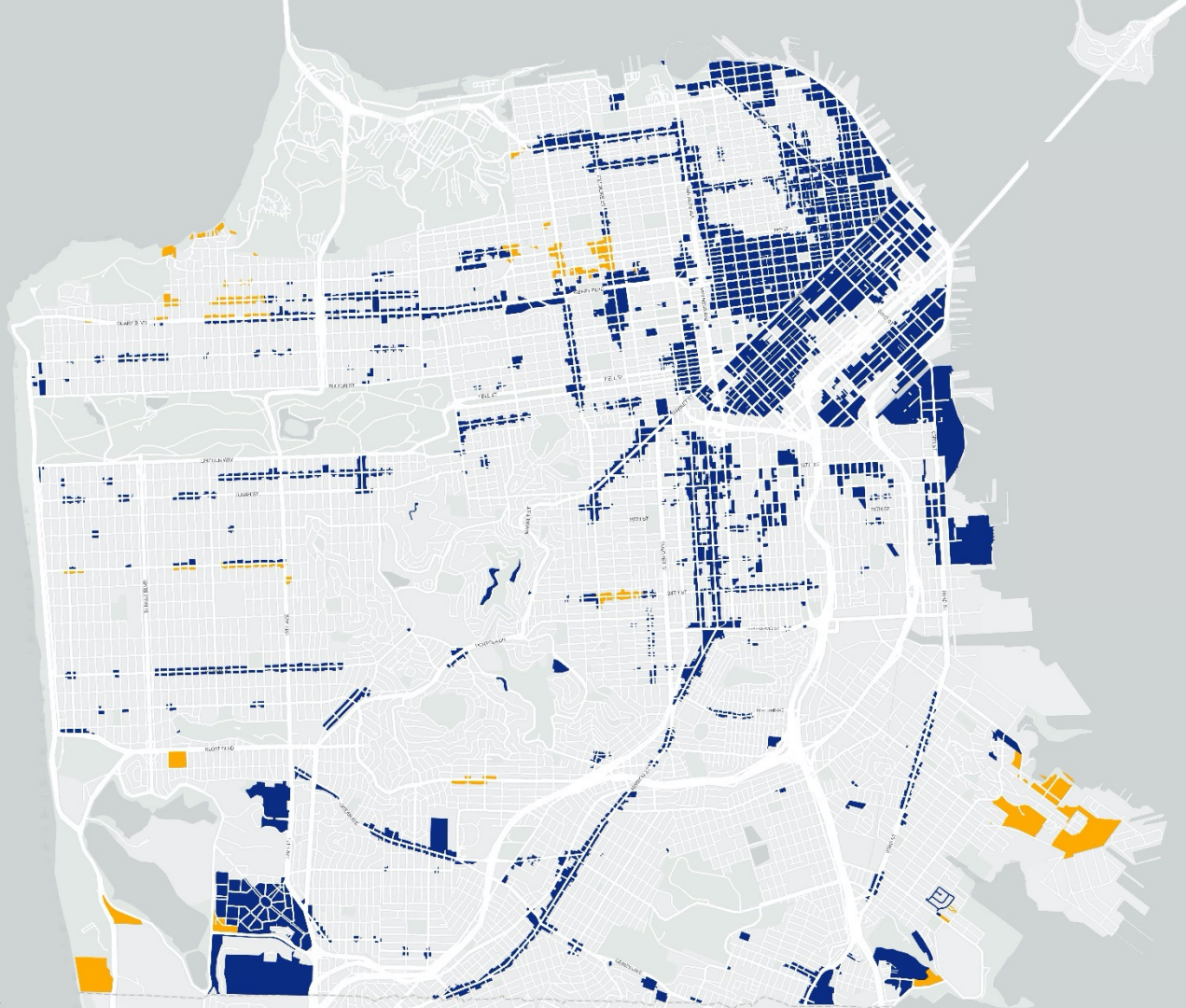
- RH, RM, RTO, DTR, PDR, M, SALI, MUR, WMUO
- Van Ness and VN & Market Residential SUDs



Eligible for Streamlining



Eligible for Streamlining
and height/density benefits
(up to 80 units/acre and 65' height)



FOR MIXED INCOME PROJECTS

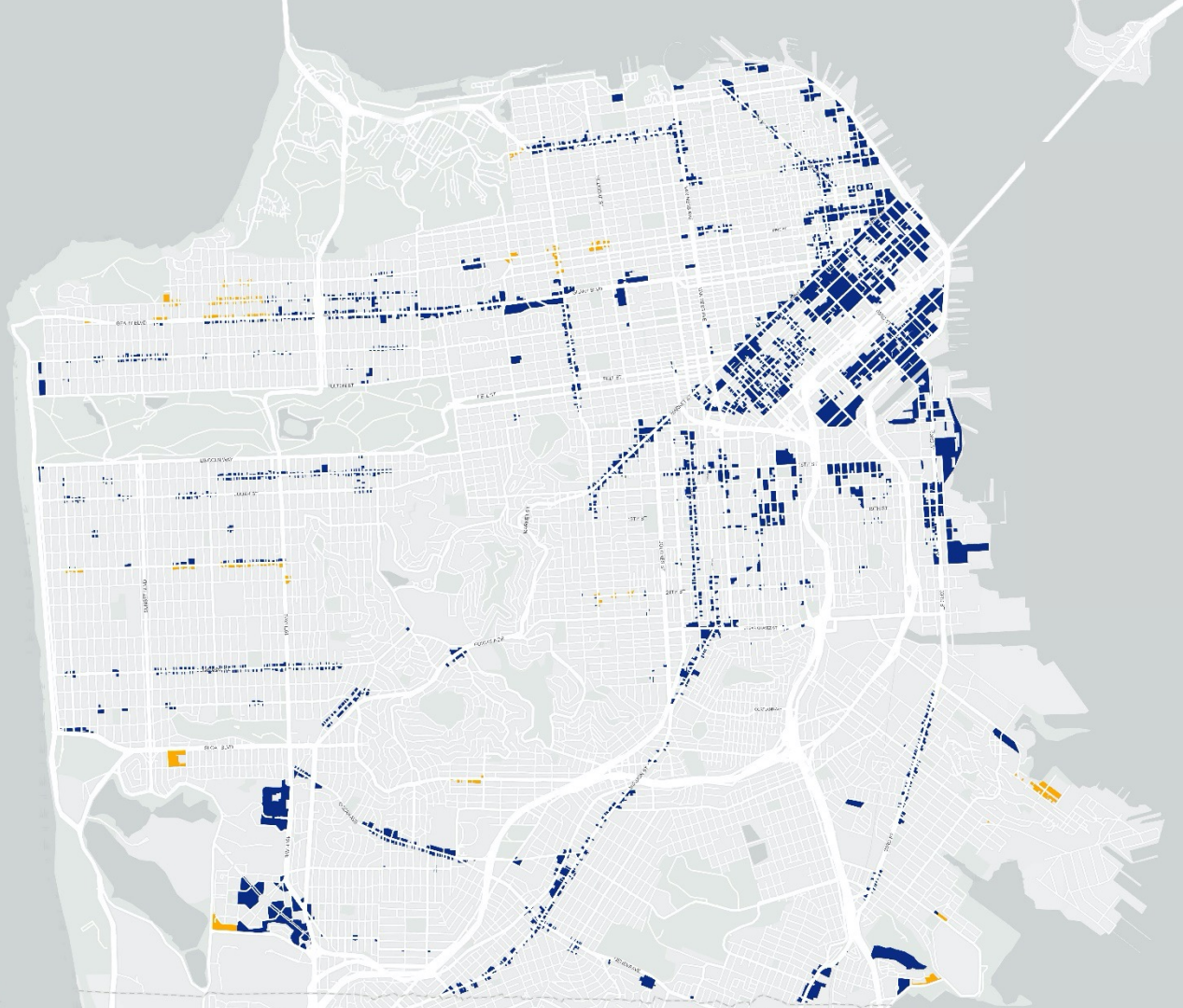
- Same zoning as 100% BMR
- Same height/density benefits as 100% BMR
- AND must have 50' frontage on streets that are 70 to 150-feet wide



Eligible for Streamlining



Eligible for Streamlining
and height/density benefits
(up to 80 units/acre and 65' height)



Projects do not qualify if

- On Cortese list or protected species habitat
- Contains or is adjacent to (including across the street from) industrial use

Mixed projects do not qualify if

- Demolishing:
 1. housing that has been tenant-occupied in the prior 10 years,
 2. housing subject to rent control, or
 3. historic buildings individually listed on any register of historic places
- On sites that have:
 - a. Demolished housing in prior 10 years,
 - b. Four or fewer dwelling units, or
 - c. More than 20 acres.

Affordability Requirements for Mixed Projects

- Rental projects: 13%-15% BMR, depending on AMI
- Ownership: 15%-30% BMR, depending on AMI
- **City requirements are mostly higher and must still be met:**
 - Rental: 15-25%
 - Ownership: 15-27%



Design Requirements on mixed projects

- Parking setbacks
- Setbacks from adjacent buildings along side streets & interior property lines
- Some setbacks may be reduced by the Board of Supervisors.
- Projects must meet all objective design standards in the underlying zoning.



Streamlining Benefits

- Reviewed on a ministerial basis
- Timeline standards for review and approval:

PROJECT SIZE	CODE COMPLIANCE	APPROVAL
<= 150 units	60 days	90 days
> 150 units	90 days	180 days



Housing Crisis Act



- Adopted in 2019 and effective January 1, 2020. Senate Bill 330 established the Housing Crisis Act.
- Senate Bill 8, effective on January 1, 2022, further clarified the requirements and extended the housing emergency until 2030.
- The Housing Crisis Act suspends certain restrictions on the development of new housing and expedites the permitting of housing.

THREE MAIN AREAS INCLUDE

**Imposition of new
development standards**

**Changes to the project
review process**

**Replacement and
relocation requirements**

Imposition of Development Standards



During the housing emergency, we can only create objective design standards.



Must tie a reduction of zoned capacity to an increase in zoned capacity.



Limits imposition standards that would reduce zoned capacity:

- Reduce the maximum allowable height, density, or floor area ratio (FAR)
- Impose new or increased open space, lot size, setback or maximum lot coverage requirements
- Adopt or enforce a moratorium or cap on housing approvals.

Project Review Process

1

Changes timelines in Permit Streamlining Act when an EIR is required.



2

Established Preliminary Application to freeze Planning Code requirements.

- Must submit complete development application within 180 days
- Allows for a 20% change in square footage
- Must start construction in 30 months from site permit issuance

3

Limit of 5 hearings for code-compliance project.



4

Determinations that the site of a proposed housing development is a historic site must be made at the time the development application is deemed complete, and that determination remains valid for the duration of the project review process.



Replacement and Relocation

- The Housing Crisis Act requires housing projects that will demolish existing residential units to create at least as many units as demolished.
- If the project demolishes “protected” units, special provisions apply including deed restrictions. A protected unit includes the following:



Affordable units deed-restricted to households earning below 80 percent of Area Median Income (AMI)



Rented by low-income households earning below 80 percent of AMI



Subject to a local rent control program



Withdrawn from the rental market under the Ellis Act within 10 years prior to development application

Implementation of Replacement Provisions

REPLACE

Deed restricted units with deed restricted units at the same AMI level



REPLACE

Units that were occupied with low-income tenants at the same AMI level



REPLACE

Rent controlled units with one of the following:

Rental building:
rent controlled units

Ownership building:
deed restricted units
at 80% AMI



Right of First Refusal and Right of Return

- For lower income households, a right of first refusal to a comparable unit in the replacement project that shall be provided at a rent or sale price affordable to households of the same or lower income category

Except when the replacement project is a single residential unit, a single-family home, or a 100% affordable project.

- For lower income households, relocation benefits pursuant to state or local law, whichever requires greater assistance
- For all households, right to remain in the unit until six months before the start of construction





THANK YOU



San Francisco
Planning

Kate Conner
Manager, Housing
Implementation Program