SENATE COMMITTEE ON LOCAL GOVERNMENT
Senator María Elena Durazo, Chair
2025 - 2026 Regular

Bill No:	AB 2390	**Hearing Date:**	7/1/26
Author:	Schiavo	**Fiscal:**	Yes
Version:	6/15/26	**Consultant:**	Favorini-Csorba

STREAMLINED HOUSING APPROVALS: OBJECTIVE STANDARDS: REVIEW AND MODIFICATIONS

Makes minor clarifying changes to SB 35 (Wiener, 2017).

Background

Planning and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Planning and Zoning Law. State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory "elements," including a housing element that establishes the locations and densities of housing, among other requirements. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Cities and counties must provide a path to appeal a decision to the planning commission and/or the city council or county board of supervisors.

Zoning and approval processes. Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

Local governments have broad authority to define the specific approval processes needed to satisfy these considerations. Some housing projects can be permitted by city or county planning staff "ministerially" or without further approval from elected officials, but most large housing projects require "discretionary" approvals from local governments, such as a conditional use permit or a change in zoning laws. This process requires hearings by the local planning commission and public notice and may require additional approvals.

SB 35 (Wiener, 2017). In 2017, the Legislature enacted a substantial package of legislation aimed at addressing the state's housing crisis. Among others, the Legislature enacted SB 35 (Wiener) to provide for a streamlined, ministerial process for approving housing developments that are in compliance with the applicable objective local planning standards—including the general plan, zoning ordinances, and objective design review standards. SB 35 was intended to enable developments that face local opposition, but are consistent with local objective development standards, to be constructed. Last year, the Legislature updated SB 35 with numerous changes intended to increase the use of SB 35 by developers (SB 423, Wiener, 2023).

To be eligible for streamlining under SB 35, a specified percentage of the total housing units in the development must be affordable if the locality has not issued building permits for enough above moderate-income—greater than 120% of area median income (AMI)—units to meet their regional housing needs allocation (RHNA) requirement, as follows:

- For a rental project, 10% affordable to very low-income households (50% of the AMI or below;
- For a for-sale project, 10% affordable to lower-income households (80% of AMI); or
- If a project is located within the nine-county Bay Area, the project may instead include 20% of the units affordable to moderate income households making up to 100% AMI).

If the locality has not issued building permits for enough lower-income units to meet its RHNA requirement, the project must include 50% affordable to lower-income households, and the developer may choose the 10% requirement or 50% requirement if the locality has not met any of its RHNA targets. A project must also include the percentage in a local inclusionary zoning ordinance if it is higher than the requirements above.

All but 47 cities and counties in California are subject to some streamlining under SB 35 because they have not issued building permits to housing units sufficient to meet their RHNA at one or more income levels.

SB 35 includes certain requirements for labor standards. Specifically, prevailing wages must be paid, and for projects over 50 units, specified healthcare benefits must be paid. Projects that are taller than 85 feet above grade must use a skilled and trained workforce. However, SB 35 exempts projects of 10 housing units or less from the affordability requirements and labor standards.

SB 35 excludes a variety of types of lands from its provisions, on the basis that because SB 35 approvals are ministerial and therefore not subject to the California Environmental Quality Act (CEQA). These lands include:

- Specified parts of the Coastal Zone;
- Prime farmland or farmland of statewide importance;
- Wetlands;
- Very high fire hazard severity zones, unless the development complies with all state mitigation measures;
- Hazardous waste sites, unless the sites have been cleared by specified state agencies for residential or mixed uses;
- Fault zones;
- Certain flood hazard areas and floodways; and

- Certain types of habitat or land for conservation.

An entitlement for a project permitted under SB 35 is valid for three years after approval, and is tolled for any period of time the approval is litigated. The approval also remains valid while construction is ongoing on the project.

SB 35 sunsets on January 1, 2036.

Modifications under SB 35. Modifications to projects subject to SB 35's streamlined approval are subject to the same objective standards of the original approval provided the modification doesn't increase the square footage by 15% or more, or the number of residential units doesn't decrease by 15% or more. If the project changes by more than those thresholds, a local government may impose new objective standards on the project. Additionally, a local government can impose new standards to address a specific, adverse impact to health and safety if the project changes by 5% or more.

If the development proponent requests a modification, then the validity of the entitlement is extended for as long as it takes the city or county to approve the modification, plus an additional 180 days to allow time to obtain a building permit. If litigation is filed relating to the modification request, the clock stops while the litigation is pending. The extension only applies to the first modification request.

Developers note that the way that SB 35 is currently written, there is ambiguity regarding whether the litigation tolling applies only to the first modification request or all modification requests.

Proposed Law

Assembly Bill 2390 makes a variety of minor changes to SB 35 that:

- Clarify that the tolling of the validity of the approval during litigation applies to any modifications, not just the first modification; and
- Make other technical changes.

Comments

1. Purpose of the bill. According to the author, "California's housing crisis requires that existing tools operate efficiently, consistently, and as intended. State law provides a streamlined approval pathway for infill housing developments, but gaps in implementation have created uncertainty and delays that undermine its effectiveness. Additionally, ambiguities in current law have led to inconsistent interpretations, prolonged timelines, and opportunities for misuse. These challenges can slow housing production and create avoidable barriers for both local governments and developers. AB 2390 provides targeted clarifications to ensure that the streamlined housing approval process is applied predictably, allowing projects that meet objective standards to move forward without unnecessary disruption. In doing so, the bill supports the timely delivery of much-needed housing while maintaining appropriate environmental and local safeguards. This measure represents a practical, good-governance approach that strengthens implementation without altering the underlying policy framework."

2. <u>The never ending story</u>. The Legislature has enacted numerous measures in recent years to address challenges that various projects have encountered in gaining SB 35 approvals, including:

- SB 765 (Wiener, 2018), which changed the treatment of proposed subdivisions under SB 35, among other changes;
- AB 1485 (Wicks, 2019), which allowed housing projects in the Bay Area to qualify for SB 35 by including 20% moderate-income units, among other changes;
- AB 168 (Aguiar-Curry, 2020), which added a process to SB 35 for determining if a project would affect tribal cultural resources. This process includes a consultation between the California Native American Tribes traditionally affiliated with the project area and the relevant local government to identify tribal cultural resources and agree upon mitigation measures needed to preserve them;
- AB 831 (Grayson, 2020), which prohibited unreasonable delay by local governments in issuing subsequent permits for SB 35 projects, among other changes;
- AB 1174 (Grayson, 2021), which extended the validity of SB 35 approvals under certain conditions and made other changes;
- AB 2668 (Grayson, 2022), which made numerous changes to the SB 35 approval process;
- SB 423 (Wiener, 2023), which revised the labor standards under SB 35, modified some affordability requirements, expanded its application to parts of the Coastal Zone, and extended the sunset to January 1, 2036; and
- AB 3122 (Kalra, 2024), which loosened restrictions on the ability to request modifications to an SB 35 project and revised the CEQA exemption for subdivision maps that are associated with an SB 35 project.

3. <u>Let's get technical</u>. Committee staff recommend the following technical amendments:

- SB 35 vests the standards that apply to a project when the application is submitted, or the applicant submits a notice of intent to start SB 35's tribal consultation process, whichever is earlier. However, SB 35 requires the modifications to be consistent with only those standards that applied to the project when it was submitted, excluding the possibility that a notice of intention. AB 2390 makes technical changes to the process for modifications, but fails to fix the error in existing law. The Committee may wish to consider amending SB 35 to ensure that modifications can use the standards in effect when a notice of intent was submitted, if applicable.
- SB 35 excludes hazardous waste sites on a specified list developed by the Department of Toxic Substances Control (DTSC). The statutes that describe the DTSC listing process moved as a result of previous legislation, but the cross-reference in SB 35 was never fixed. The Committee may wish to consider amending AB 2390 to fix the cross reference.

4. <u>Mandate</u>. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because AB 2390 imposes new duties on local governments, Legislative Counsel says it imposes a new state mandate. AB 2390 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

5. <u>Charter city</u>. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic

is a municipal affair or whether it's an issue of statewide concern. AB 2390 says that it applies to all cities, including charter cities. To support this assertion, the bill includes a legislative finding and declaration that its provisions address a matter of statewide concern.

6. Incoming! The Senate Rules Committee has ordered a double referral of AB 2390: first to the Committee on Housing, which approved AB 2390 at its June 10th hearing on a vote of 9-0, and second to the Committee on Local Government.

Assembly Actions

Assembly Housing and Community Development Committee:	12-0
Assembly Local Government Committee:	13-0
Assembly Appropriations Committee:	14-0
Assembly Floor:	69-0

Support and Opposition (6/26/26)

Support: Abundant Housing Los Angeles
California Council for Affordable Housing
California Yimby
Circulate Planning & Policy
Fieldstead and Company, INC.
Leadingage California
Spur
Student Homes Coalition

Opposition: None Submitted

-- END --