**SB 4 Project Checklist**

Affordable Housing on Faith and Higher Education Land (Government Code § 65913.16)

**February 2024**

# Overview

Senate Bill 4 (SB 4, 2023) requires that, upon the request of an applicant, a housing development project be a “use by right” on land owned by an independent institution of higher education or a religious institution, if specified criteria are met. This checklist provides an overview of the requirements of SB 4 that provide a streamlined and ministerial approval process for eligible affordable housing development projects under Government Code Section 65913.16.

## **Purpose**

The purpose of this material is to provide guidance, which agencies and other entities may use at their discretion. This guidance does not alter lead agency discretion in decision-making, independent judgment and analysis, and preparing environmental documents for project or governmental action subject to CEQA requirements. This material is for general information only and should not be construed as legal advice or legal opinion.

## SENATE BILL 4 PROJECT CHECKLIST

## AFFORDABLE HOUSING ON RELIGIOUS INSTITUTION AND

## HIGHER EDUCATION INSTITUTION LAND

If any of these responses are “no,” then the project is not eligible. For any statement with a response of “yes,” the applicant must demonstrate through providing supplemental exhibits, as appropriate, how that determination was rendered.

[Note to cities: This checklist assumes SB4 provisions have been adopted in the Municipal Code, so that definitions/further explanations are not necessary here. For example, the term “urbanized area” should be defined in the Code. Consider referencing the specific Code section next to the item. If changes are not made to the Municipal Code to address SB4, further explanation/definitions should be provided here as necessary].

|  | **Eligibility Requirements** | | Yes | No |
| --- | --- | --- | --- | --- |
| 1. | **Multi-Family Housing**. The project is a multi-family housing development of 2 or more units. | |  |  |
| 2. | **Affordable Housing Units**. The applicant has dedicated 100% of the units as affordable to lower income households, OR has dedicated a minimum 80% of the total units as affordable to lower income, and a maximum of 20% of the total units as affordable to moderate income, households. Managers’ units are exempt from affordability requirements. (Note: a maximum of 5% of the total units may be for staff of the higher education or religious institution). [Govt. Code §65913.16(c)(9)]. | |  |  |
| 3. | **Deed Restricted.** All units, exclusive of managers’ units, are subject to a recorded deed restriction for at least the following time periods: 55 years for rental units, and 45 years for owner-occupied units. [Govt. Code §65913.16(c)(9)(A) and (B)]. | |  |  |
| 4. | **Urban**. The site is an “urbanized area” or “urban cluster.” [Govt. Code §65913.16(c)(2)]. | |  |  |
| 5. | **Urban Perimeter**. A minimum 75% of the site perimeter is developed with urban uses. [Govt. Code §65913.16(c)(2)]. | |  |  |
| 6. | **Religious or Higher Education Institution**. The project is located on a site that, as of January 1, 2024, was owned by either of the following: (1) an independent institution of higher education; or (2) a religious institution. (Note: the project may be located on the same site as an existing religious or higher education institution, or the same site as any use previously existing and legally permitted, provided all of the following are met: the total square footage of non-residential space on the site does not exceed the amount previously existing or permitted with a conditional use permit; and the total parking requirement for non-residential space on the site does not exceed the lesser of the amount existing or of the amount required by a conditional use permit; and the new uses abide by the same operational conditions as contained in the previous conditional use permit). [Govt. Code §65913.16(c)(1) and (b)(6) and (b)(10) and (i)]. | |  |  |
| 7. | **Light Industrial Use**. The development does not adjoin a site where more than 1/3 of the square footage on the site has a light industrial use; where light industry is the most recently permitted use; or the General Plan designates the property for light industrial use. (Note: Parcels separated by only a street or highway are considered to be adjoined). [Govt. Code §65913.16(c)(5)(A) and (B)]. | |  |  |
| 8. | **Heavy Industrial Use**. The housing units are not located within 1,200 feet of a site that is either currently used for heavy industry or where the most recent permitted use was heavy industry. [Govt. Code §65913.16(c)(A) and (B)]. | |  |  |
| 9. | **Title V Industrial Use**. The housing units are not located within 1,600 feet of a site that is currently a Title V industrial use, or where the most recent permitted use was a Title V industrial use. [Govt. Code §65913.16(b)(11) & (c)(7)(A) and (B)]. | |  |  |
| 10. | **Oil and Gas Facility**. For a site where multi-family housing is not an existing permitted use, the housing units are not within 3,200 feet of a facility that actively extracts or refines oil or natural gas. [Govt. Code §65913.16(c)(8)]. | |  |  |
| 11. | **Qualified Developer**. The project will be developed by a “qualified developer” consisting of any of the following: (1) a local public entity; (2) a non-profit corporation, a limited partnership where a managing general partner is a non-profit corporation, or a limited liability company where a managing general partner is a non-profit corporation; (3) a developer that at the time of submission of an application for development owns property or manages housing units on property exempt from taxation pursuant to the welfare exemption; (4) a developer that contracts with a non-profit corporation that has received a welfare exemption; or (5) a developer that the religious or higher education institution has contracted with before to construct housing or other improvements to real property. [Govt. Code §65913.16(b)(9)]. | |  |  |
| 12. | **Sensitive Areas**. The development is not located on a parcel that has any of the following. [Govt. Code §65913.16(c)(3) and (4)] | |  |  |
| * Prime farmland or farmland of statewide importance | * Protected species habitat |
| * Wetlands as defined under federal law | * Land under a conservation easement |
| * Earthquake fault zones | * Land designated for conservation in a habitat conservation plan |
| * High or very high hazard severity zones, except where sites are excluded by a local agency pursuant to Govt. Code §51179(b), or sites that have adopted fire hazard mitigation measures per existing building standards or state fire mitigation measures applicable to the development. [Govt. Code §65913.5(a)(6)(C)] | * A site that would require the demolition of (a) housing subject to recorded rent restrictions, (b) housing subject to rent control, (c) housing occupied by tenants within the past 10 years, or (d) an historic structure placed on a local, state or federal register |
| * Hazardous waste site * FEMA designated flood plain or floodway | * A site that previously contained housing occupied by tenants within the past 10 years |
| 13. | **Demolition of Housing.** If the project requires the demolition of existing residential units, or is located on a site where residential units have been demolished within the last 5 years, all of the following apply: (1) the project creates at least as many units as will be demolished; (2) the project includes at least as many units that existed on the site within the last 5 years; (3) any existing occupants will be allowed to occupy their units until 6 months before the start of construction activities with proper notice; (4) any existing occupants that are required to leave their units are allowed to return at their prior rental rate if the demolition does not proceed and the property is returned to the rental market; and (5) the developer agrees to provide relocation benefits to the existing occupants of any protected units that are lower income households, and a right of first refusal for a comparable unit available in the new housing development affordable to the household at an affordable rent or housing cost, except that the following are exempted from the right of first refusal: a project that consists of a single-family residential unit on a site where a single protected unit is being demolished; and units in a housing development where 100% of the units, exclusive of managers’ units, are reserved for lower-income household. [Govt. Code §65913.16(c)(11)]. | |  |  |
| 14. | **Objective Standards**. The project meets the objective design and development standards, and objective subdivision standards, established by the city. [Govt. Code §65913.16(c)(10)]. [Note to cities: Consider referencing Code section or other location where these standards can be found]. | |  |  |
| 15. | **Building Height.** For projects in a zone that allows residential uses, a height of no more than one story above the maximum height otherwise applicable to the site is provided. [Govt. Code §65913.16(j)(1)(A)]. | |  |  |
| 16. | **Parking.** No parking is required if the development parcel is located within ½-mile walking distance of public transit, either a high-quality transit corridor or a major transit stop, OR if there is a car share vehicle located within one block of the parcel. Otherwise, the development provides at least 1 parking space per unit. [Govt. Code §65913.16(k)]. [Note to cities: a city can adopt an ordinance to require less than 1 space – if your city does, adjust the text] | |  |  |
| 17. | **Public Work Project**. The housing development project is either entirely a public work project or the development contains more than 10 units and is not in its entirety a public work for the purposes of prevailing wage law. [Govt. Code §65913.16(c)(12)]. | |  |  |
| 18. | **Environmental Site Assessment**. The development proponent completes a Phase I and 2 environmental assessment. If a recognized environmental condition is found, the proponent undertakes an endangerment assessment and any hazardous release or exposure is mitigated to a level of insignificance. [Govt. Code §65913.16(c)(13)]. | |  |  |
| 19. | **Air Quality**. If the development is within 500 feet of a freeway, all regularly occupied areas of any buildings incorporate air filtration media for outside and return air that provides a minimum efficiency reporting value (MERV) of 13. [Govt. Code §65913.16(c)(14)]. | |  |  |
| 20. | **Tribal Cultural Resources**. For a vacant site, the site does not contain tribal cultural resources that could be affected by the development project that were found pursuant to a consultation, and the effects of which cannot be mitigated. [Govt. Code §65913.16(c)(15)]. | |  |  |
| 21. | **Ancillary Uses**. If the project is in a single-family residential zone, and if a childcare center and facility is provided, it is located on the ground floor of a residential building and is operated by a community-based organization for the recreational, social or educational services for use by the residents of the development and members of the local community. If the project is in a non-single-family residential zone, any commercial uses provided are located on the ground floor of a residential building. (Note: No other ancillary uses beyond those listed are permitted). [Govt. Code §65913.16(h)]. | |  |  |
| 22. | **Density.** The project density is no more than 40 units/acre if the site is located in a zone that does not allow residential uses, and no more than the density the city has deemed appropriate to accommodate housing for lower income households in the adopted Housing Element [Note to cities: best to identify that specific density here – e.g., 20 du/acre, etc.] if the site is located in a zone that allows residential uses, including single-family residential zones. (Note:a housing development project located in a zone that allows residential uses, including in a single-family residential zone, shall be eligible for a density bonus, incentives, concessions, and/or waivers of development standards and parking ratios pursuant to State Density Bonus Law). [Govt. Code §65913.16(j)]. [Note to cities: a city can adopt higher density allowances and more stories for these projects, and, if a city allows greater residential density or building heights on that parcel or an adjoining parcel than the defaults noted above, the greater density or building height shall apply – therefore, this provision may need adjusting.] | |  |  |

# REQUIRED APPLICATION ITEMS:

[Note to cities: list here the application form(s) needing to be completed, and the application submittal requirements (plans, reports, other materials), and reference any application fees. Also, consider requiring applicants to submit an affidavit declaring the owner or authorized agent signature, information is true and accurate, etc.]

# APPLICATION REVIEW PROCESS:

1. Ministerial Review. Projects complying with SB4 are reviewed on a ministerial basis.
2. CEQA Exemption. Development projects complying with SB4 are exempt from the California Environmental Quality Act (CEQA). If the project is consistent with all objective standards in the Subdivision Ordinance, an application for a subdivision pursuant to the Subdivision Map Act is also exempt from CEQA.
3. Application Review Timing: Depending on the project size, the following deadlines shall be observed:

* **Small projects** (150 units or less) – the City shall provide the applicant with a list of all inconsistencies with objective planning standards and an explanation for the reason(s) the project conflicts with the standard(s) within 60 days of the application submittal to the City.
* **Large projects** (over 150 units) – the City shall provide the applicant with a list of all inconsistencies with objective planning standards and an explanation for the reason(s) the project conflicts with the standard(s) within 90 days of the application submittal to the City.

1. Design Review Timing: The City may conduct design review of the proposed project. The design review shall be objective and focused on assessing compliance with criteria required for streamlined, ministerial review of projects, and adopted objective design standards. The following deadlines shall be observed:

* **Small projects** (150 or less units) – the City shall complete design review within 90 days of the application submittal to the City.
* **Large projects** (over 150 units) – the City shall complete design review within 180 days of the application submittal to the City

*[A. Cook, 11-14-23]*