

**To:** Navarre Oaks, Assistant Planner  
**Attn:** Planning Department, City of Emeryville  
**From:** Sara Erickson, RCD  
**Date:** May 4, 2020  
**Re:** Legislative Context and Draft SDBL Proposal for 3600 San Pablo Avenue, City of Emeryville

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Resources for Community Development (RCD) is pleased to present its initial proposal for a mixed-use development at 3600 San Pablo Avenue (3600 SPA) that will create a new space for Emeryville Citizens Assistant Program (ECAP) and approximately 90 deed-restricted, affordable apartments. The following memorandum first outlines the two California laws that this project will make use of during its entitlement process. Then, the memorandum lays out the current thoughts about what concessions and waivers will be needed under the State Density Bonus Law (SDBL).

Please note that this project may change due to input from the Emeryville Planning Commission, staff from the Emeryville Community Development Department, our partners at ECAP, and our future neighbors from the surrounding community.

### **Legislative Context**

Over the past several years, the State of California has enacted or strengthened several laws limiting local control over residential developments. SB35 created a pathway that certain kinds of residential development projects should be subject only to ministerial development approvals. The State Density Bonus Law was expanded to provide additional benefits for 100% affordable projects. The following summarizes these laws and their importance for RCD/ECAP's proposed project.

#### *SB35 – Government Code Section 65913.4*

The passage of SB35 in 2017 created a new mechanism for housing projects to avoid lengthy public review and CEQA requirements based on their adherence to subjective design review and other zoning requirements. The major criteria required to take advantage of this new ministerial process include the provision of affordable housing, certain labor provisions, and strict conformance with all of Emeryville's adopted "objective zoning standards" and "objective design standards". For 3600 SPA, the SB35 protections are important to ensure that once the project has been vetted by the City of Emeryville for consistency with objective standards, it will be protected against lengthy and expensive appeals or lawsuits.

The terms "objective zoning standards" and "objective design review standards" are narrowly defined to mean "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal" (Gov. Code § 65913.4(a)(5) emphasis added). Objective standards include those that include words such as 'must' or 'shall' and have a standard or criteria that can be measured: they include development standards such as "maximum rear yard setback of 15 feet" and "maximum of one unit per 600 square feet of lot area".

Objective design standards similarly include quantifiable requirements such as "minimum of 30% of the ground floor facade must be transparent" or "chain link, barbed wire, and razor wire fencing is

prohibited.”

Conversely, standards that are not objective and are unenforceable are those using words such as “should” or “subject to review” that lack a quantifiable criteria or metric. These include standards such as “should avoid using garish colors” or “should copy architectural features commonly found in neighboring buildings.” Similarly, standards that require discretionary review are unenforceable.

In addition, for an SB 35 application, a jurisdiction evaluates a project’s fidelity to objective standards “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915” (Gov. Code § 65913.4(a)(5)). State Density Bonus Law provisions can be applied to all SB 35 applications due to the overlapping affordability requirements.

Projects applying for entitlements under SB35’s provision are not subject to the requirements of CEQA as they are ministerial in nature (PRC Code § 21080(b)(1)).

Finally, SB35 allows for a project to avoid all parking requirements if the development site is within a half mile of public transit. (Gov. Code § 65913.4(d)) This project site is within a half mile of several bus lines that meet the definition of public transit. Further evidence of the project’s consistency with this standard will be provided to document the site’s eligibility for SB 35.

#### *State Density Bonus Law (SDBL)*

This project will also use the bonuses and protection provided by the State Density Bonus Law (Gov. Code § 65915). This law allows qualifying housing projects the ability to exceed densities and waive design standards by providing certain levels and percentages of dwelling unit affordability. These laws would require jurisdictions to make very specific findings when denying a project.

Since the project proposes to be 100% affordable (except for the manager’s unit) it can also take advantage of new provisions in SDBL stemming from the 2019 under AB 1763. This law created a new category of density bonus for 100% affordable projects under Gov Code Section 65915(b)(G) which provides:

- Four concessions or incentives and unlimited waivers or modifications to development standards;
- A three story of 33 ft. height bonus if the project is within a half mile of a major public transit stop;
- No density controls if the project is within a half mile of a major public transit stop.

Under, SDBL the City of Emeryville may only deny requests for waivers/modifications or incentives/concessions under the very specific conditions listed below.

Waivers/modifications are defined as the “reduction of development standards that will have the effect of physically precluding the construction of a development ... at the densities or with the concessions or incentives permitted”. A project requests the waiver and the jurisdiction may only deny its use if they can find that it:

- would have “a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.”
- “Would have an adverse impact on any real property that is listed in the California Register of Historical Resources”
- “Would be contrary to state or federal law.” (Gov. Code § 65915(e)(1)).

Concessions/incentives are defined as those regulatory exemptions that “result in identifiable and actual cost reductions ... to provide for affordable housing costs”, the City may only deny their use if they can find that it:

- Does not “result in identifiable and actual cost reductions ... to provide for affordable housing costs.”
- Would results in “a specific, adverse impact.... upon public health and safety ... for which there is no feasible method to satisfactorily mitigate or avoid.”
- “Would be contrary to state or federal law.” (Gov. Code § 65915(d)(1)(A-C)).

### Initial Proposal for Concessions and Waivers

The project in its current iteration will require several waivers and concessions. The following includes the initial evaluation of the project’s required waivers. The concessions for the project have not been identified. Please note that all of these are subject to change depending on the evolution of the project.

#### Waivers

Standard	Regulation	Proposed	Rationale for Waiver
9-4.201 Building Intensity (Floor Area Ratio).	1.5 FAR (base)	4.90	Required to physically fit all 90 units and the allowable height bonus around a very constrained development site.
9-4.202 Height and Bulk.	40 ft (base)	73ft	100% affordable buildings provided with 33ft height bonus per Gov Code 65915(d)(2)(D)
9-4.203 Residential Density	50 du/acre	240 du/acre	100% affordable buildings provided unlimited density per 65915(f)(3)(D)(ii)
9-4.302 Courts (subsection d)	Court shall extend 10 ft horizontally in both directions from centerline of window.	Interior units at courtyard corners and on eastern edge may not have the entire 10ft.	Required to physically fit all 90 units and the allowable height bonus around a very constrained development site.
9-4.303 Open Space (a)	40SF/unit private (3,600 SF total) 20SF/unit public (1,800SF total)	1,500 SF of common space	Required to physically fit all 90 units and the allowable height bonus around a very constrained development site.
9-4.409 Loading	1 small off-street	1 small on-street	Required to physically fit all 90

	loading space (multi-unit residential 50-149 units)	loading space.	units and the allowable height bonus around a very constrained development site.
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Waiver per SB35

Standard	Regulation	Proposed	Rationale
Parking	0.7 spaces per/unit (63 Spaces)	42 Spaces (max) but could may be less	SB35 removes local parking requirements for projects such as this that are within a ½ mile of a major public transit stop. (Gov. Code § 65913.4(d))

### Future Objective Standards Table

The final project application will include a lengthy and detailed 'Objective Standards Table' which will evaluate every standard that would normally be applied to this project to decide first if it meets the objective criteria of SB35 and second how the proposed project conforms with any applicable standard. This table will include standards from the Zoning Ordinance, the Design Review Guidelines, the General Plan, and the Water Efficient Landscape Ordinance.

The table will be organized by regulatory document and will be formatted as:

Table 1: Title 9 Planning Regulations		
Provision	Applicability	Compliance
<b>Chapter 3. Zoning Districts</b>		
9-3.303(b)(1)	Applicable objective criteria.	Compliant. Development does not propose motor vehicle sales and services.
9-3.303(b)(2)	Applicable objective criteria.	Compliant. The development site is less than an acre and so is permitted to be comprised of a single use. The development proposes two uses.
9-3.404(a)(1)	Applicable objective criteria.	Compliant. The development's proposed ground floor use meets the criteria listed: local serving, on the ground floor, less than 5,000 sf, oriented to the main pedestrian street, no alcohol sales, no check cashing services, will have hours of operation between 7am-11pm at the most, and will include bicycle parking
9-3.404(a)(5)	Applicable objective criteria.	See table below on design guidelines.
9-3.406	Not applicable.	The development will be taking advantage of either the parking reductions allowed by SB35 or by the legislative proposal on parking maximums under consideration by the Emeryville City Council.