SB 35 Application Process
(Gov. Code 65913.4)

1) City receives complete notice of intent (i.e. preliminary application described in Gov. Code section 65941.1) to submit an SB 35 application.

2) Prior to accepting an SB 35 application, the City must consult with Native American tribes about the project based on the submitted notice of intent.
   a) Within 30 days of receiving the applicant's notice of intent, City provides formal scoping consultation invitation to Native American tribes (City to contact Native American Heritage Commission to identify tribes traditionally and culturally affiliated with the area prior to sending invitation) that includes the following information:
      i) Description of the proposed development
      ii) Location of the proposed development
      iii) Invitation to engage in scoping consultation
   b) Within 30 days of receipt of the invitation, the tribe(s) can accept the City's invitation.
   c) If the tribe(s) accepts the invitation, tribes have 30 days to begin scoping consultation from receipt of acceptance. Parties to scoping consultation are City and tribe(s). Upon request, tribe can approve or deny participation of development proponent and consultants.
   d) If no tribe accepts the invitation to a scoping consultation within 30 days of receipt, applicant may submit SB35 application.
   e) Result of scoping consultation:
      i) Project is eligible for SB 35 application process:
         (1) If no potential tribal cultural resource would be affected; or
         (2) If a potential tribal cultural resource could be affected and if an enforceable agreement is documented between tribe and City on methods, measures, and conditions for tribal cultural resource treatment, project is eligible for SB 35 application process
      ii) Project is not eligible for SB 35 application process if a potential tribal cultural resource could be affected and the tribes and City do not document an enforceable agreement; or if there is disagreement about whether a tribal cultural resource exists; or there is a tribal cultural resource on a federal, state, tribal, or local register.
   f) If the project is not eligible for SB 35 review, City must notify the applicant and any tribe that is party to the consultation in writing, explaining the reasons, and explaining how the applicant can request a discretionary approval.

3) If after the consultation with the Native American tribes the project qualifies for SB 35 application process, the applicant may submit an SB 35 application. The City must determine if the project is eligible for SB 35 processing and if all City objective standards are met.

a) City review for completeness must be completed within 30 days of submittal. If City does not respond within 30 days, application is “deemed complete.”
b) City review for consistency with SB 35 requirements and City objective standards (as defined in SB 35) must be completed:
    i) 150 or fewer units: within 60 days of **submittal**
    ii) more than 150 units: within 90 days of **submittal**
    iii) City cannot apply any additional standards because the project is subject to SB 35 approval. CEQA does not apply.
c) City must inform applicant which SB 35 requirements and which City objective standards are not met. City must provide written documentation to applicant detailing which objective standards are not met by the project and how the project conflicts with the standards. (Applicants may not submit a complete application. The City then may indicate that it cannot determine if the project meets an objective standard because insufficient information has been submitted.) If an application is resubmitted to address previous comments, the City has 30 days after the application is resubmitted to provide written notice of any remaining conflicts with objective standards. If the City does not respond within the timelines, the project is "deemed consistent" with objective standards.
d) A project is considered to be consistent with objective standards even if the City approves a density bonus, concessions, waivers, or parking reductions. During the initial 60 to 90-day review period, the City will review the applicant's density bonus application and determine if the bonus, concessions, waivers, and parking reductions can be granted or if more information is required.
e) If application is not consistent with objective standards or other SB 35 requirements, or if there is insufficient information to make the determination, City will deny the application but allow applicant to either reapply or apply under ordinary discretionary review, as applicable.
f) Design review or public oversight of the project may be undertaken, so long as it is completed:
    i) 150 or fewer units: within 90 days of **submittal**
    ii) more than 150 units: within 180 days of **submittal**

    Design review approval cannot "inhibit, chill, or preclude" ministerial SB 35 approval. This step is usually undertaken after project has been found to be consistent with all objective standards and other SB 35 requirements. Since a determination has already been made regarding the project’s consistency with objective standards, public review is not expected to change the conclusions. Alternatively, this additional time can be used to develop conditions of approval.

4) If the project is approved under SB 35:
    a) The approval shall not expire if at least 50% of the units are affordable to households making 80% AMI or less and includes a public investment beyond tax credits.
    b) If at least 50% of the units are not affordable to households earning 80% AMI or less, then the approval will remain valid for three years from the final action establishing approval (construction must start within 3 years and not cease before completion for more than 180 days; or if multiple building permits required,

an initial phase has been completed, and the project proponent is diligently pursuing a building permit for a subsequent phase). City may grant a one-year extension if owner has made “significant progress” toward getting construction ready.

5) After project has been approved, applicant may request modification to project before the issuance of the final building permit required for construction.
   a) If modification is consistent with the objective planning standards in effect when the original application was submitted, City shall approve modification unless one of the exceptions in (c) below applies.
   b) Review of modification request must be completed within 60 days of submission of modification or within 90 days if design review is required
   c) Objective standards adopted after project approval are applied if at least one of the following is true:
      i) the modification would increase the number of units or square footage of construction by at least 15%, not including underground space;
      ii) the total number of residential units or total square footage of construction changes by 5 percent or more and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact; or
      iii) the objective building standard is contained in the California Building Standards Code (Title 24 of the California Code of Regulations) prior to submittal of the first building permit application. Later standards may be applied if agreed to by the applicant.