



RELATED PRACTICES

Public Law
Education Law

RELATED PEOPLE

Denise S. Bazzano
Chad W. Herrington
Thomas D. Jex
Ephraim S. Margolin

SB 4: Housing on Religious or College Property

On October 11, 2023, Governor Gavin Newsom signed Senate Bill (“SB”) 4 into law. SB 4, effective January 1, 2024, adds Section 65913.16 to the Government Code, which limits the ability of cities and counties to regulate the development of new housing on property owned by religious institutions and colleges. An SB 4 project is permitted as a “use by right” and exempt from the California Environmental Quality Act if it meets SB 4’s criteria for:

- affordability requirements;
- locational requirements;
- development requirements; and
- labor requirements.

The full title of SB 4 is the Affordable Housing on Faith and Higher Education Lands Act of 2023. SB 4 sunsets on January 1, 2036.

Under SB 4, 100% affordable housing projects located on “religious institutions” or an “independent institution of higher education” are a “use by right,” and are eligible for density bonuses, incentives, concessions, waivers or reductions of development standards, except that SB 4 projects in non-residential zones cannot use the density bonus to increase the height of a project. All of the housing units in an SB 4 project must be affordable for lower income households, except for:

- the manager’s unit or units;
- 20% of the total housing units may be for moderate-income households; and
- 5% of the units may be reserved for staff members of the independent institution of higher education.

The land must have been owned by the religious institution or independent institution of higher education before January 1, 2024 for SB 4 to apply.

“Religious institution” is defined as an “institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization composed of multid denominational members of the same well-recognized religion,

lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110), or as a corporation sole pursuant to Part 6 (commencing with Section 10000), of Division 2 of Title 1 of the Corporations Code.”

“Independent institution of higher education” is defined as “nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education.”

“Use by right” is defined as a project which “does not require a conditional use permit, planned unit development permit, or other discretionary local government review[.]” and is not a “project” subject to the California Environmental Quality Act.

Affordability of SB 4 Projects

Housing units for rent must be deed-restricted as affordable for 55 years and housing units for sale must be deed-restricted as affordable for 45 years or the first purchaser must participate in an equity sharing agreement.

Location of SB 4 Projects

SB 4 projects must be located in infill areas and cannot be located on an environmentally sensitive site as defined by state law, such as prime farmland as defined by the United States Department of Agriculture, wetlands, within a very high fire hazard severity zone, hazardous waste site, within a delineated earthquake fault zone, within a special flood hazard area, or a habitat for protected species.

SB 4 projects must be located on a legal parcel wholly within the boundaries of a census defined urbanized area or urban cluster and where at least 75% of the perimeter of the parcel touches other parcels that are developed for “urban uses,” which means “any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.”

SB 4 projects cannot occur on a site that would require the demolition of housing that is deed-restricted affordable, subject to rent control, or has been occupied by tenants within the past 10 years or that was used for housing but was demolished within the past 10 years.

SB 4 projects also cannot be located:

- adjacent to a site where more than two-thirds of the square footage is dedicated to light industrial use;
- within 1,200 feet of a site permitted for heavy industrial use;

- within 1,600 feet of a site permitted for Title V industrial use; or
- within 3,200 feet of an oil or natural gas refinery.

Development Requirements for SB 4 Projects and Time for Review

SB 4 projects in residential zones are permitted to have a density of the greater of the following two options: (1) the permitted density on an adjoining parcel; or (2) the “Mullin densities” (generally, 30 units per acre in urban areas, 20 units per acre in suburban areas, and 10 units per acre in rural areas).

SB 4 projects in residential zones can be one story above the maximum height for the site or the height of any adjoining parcel, whichever is greater. SB 4 projects in residential zones are eligible for a density bonus and can use it to increase the height of a project.

SB 4 projects in non-residential zones are permitted to have 40 units per acre or the density that is applicable to the site or adjoining parcel, whichever is greater. SB 4 projects in non-residential zones can be one story above the maximum height for the site or the height of any adjoining parcel, whichever is greater. SB 4 projects in non-residential zones are eligible for a density bonus, but cannot use it to increase the height of a project.

SB 4 projects must have one off-street parking space per unit, unless a local ordinance provides for a lower standard. Local governments are prohibited from imposing parking requirements on SB 4 projects if the project is within ½ mile walking distance of a “high-quality transit corridor or a major transit stop as defined in subdivision (b) of Section 21155 of the Public Resources Code” or if there is a car share vehicle located within one block of the project.

SB 4 projects must comply with all objective development standards of the city or county they are located in that do not conflict with SB 4. A city or county has 60 days to determine that an SB 4 application is in conflict with objective development standards, which stretches to 90 days if the application is for a project with more than 150 housing units. If a city or county determines that the SB 4 application conflicts with its objective development standards, it must provide the applicant with written documentation of which standards the project conflicts with. If the city or county fails to comply with these timelines, then the SB 4 project is deemed to comply with the objective development standards.

Design review of SB 4 projects is permitted as long as it is objective and is completed within this timeline.

Labor Requirements for SB 4 Projects

SB 4 projects must abide by prevailing wage requirements. For an SB 4 project of over 50 units, contractors and subcontractors must participate in an apprenticeship program approved by the State of California Division of Apprenticeship Standards or request the dispatch of apprentices from a state-approved apprenticeship program.

Environmental Assessment

SB 4 projects must complete a Phase I environmental assessment, otherwise known as a preliminary assessment to determine if a hazardous substance has been released on the property and a Phase II environmental assessment if warranted. A Phase I environmental assessment does not include sampling or testing and mostly involves review of public records, surveys, and interviews with current and previous owners and operators.

If a hazardous substance is found, then the applicant must contract with an environmental assessor to determine if it poses any danger to future residents. If it does, then the hazard must be removed or mitigated to a level complying with state and federal requirements.

Ancillary Uses

SB 4 projects located in a single-family residential zone may also have the following uses on the ground floor of the development:

- childcare centers; and
- recreational, social, or educational facilities operated by community-based organizations.

SB 4 projects that are not located in a single-family residential zone may have commercial uses that do not require a conditional use permit or planned unit development permit.