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Incompleteness Letters for Development Projects Under the Permit Streamlining Act

This article is part of a series of short reminders about current housing laws and requirements relating to the processing of applications for residential development.

Here we summarize the timelines currently applicable to incompleteness letters for development project applications to public agencies under the Permit Streamlining Act. The Permit Streamlining Act applies to all public agencies, defined as “any public agency other than a state agency[, including redevelopment/successor agencies].” Gov’t Code §§ 65928, 65930.

Current law requires public agencies to compile lists of what is required from any applicant for a development project, including a housing development project, and make the list available on the agency’s website; any changes to the list must be updated to the website within 30 days. Gov’t Code §§ 65940, 65940.1.

Once the application is submitted, the agency has **30 days** from submittal to determine incompleteness and provide a comprehensive list of items that are missing or incomplete – if the response is not provided within 30 days, the application is deemed complete. The applicant then has another 30 days for resubmittal. Any subsequent incompleteness letters cannot include any items that are not on the agency’s published list, or any items that were not included in the initial incompleteness letter.

After the second resubmittal, if the application is still incomplete, the agency must provide an **appeal right**, although the agency may elect to provide an appeal right after each submittal. Gov’t Code § 65943. The public agency must make a determination on the appeal no later than **60 days** after submittal of the appeal, even if the appeal must be heard by more than one reviewing body (e.g., planning commission and city council). Failure to make a timely determination on the appeal results in the application being deemed complete.

For housing development projects initiated through a preliminary application under Gov’t Code § 65914.1 (SB 330):

If the public agency determines that the application for the housing development project (defined in Gov’t Code § 65589.5(h)(2)) is not complete, the development proponent shall submit the specific

information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.

The California Department of Housing and Community Development has interpreted this provision to provide applicants with as many 90 day periods as they need to complete their application, based on two Los Angeles County Superior Court decisions by the same trial court.

To ensure that incompleteness letters are thorough and issued in a timely manner:

1. Ensure that all development project application submission checklists are thorough and available on your agency's website, and review and update the lists periodically.
2. As soon as a development project application is submitted, calendar the deadline for the incompleteness letter, with reminders. These letters can be time-consuming to draft, do not leave them to the last minute.
3. Consult legal counsel early and often; for larger developments, consider having counsel review incompleteness letters before they are issued.

Burke, Williams & Sorensen, LLP regularly advises clients on legal matters relating to housing and land use issues.

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