



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

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CITY COUNCIL STAFF REPORT

Meeting: September 3, 2019

Subject

Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35 (Application No(s): CP-2019-04; Applicant(s): City of Cupertino; Location: Citywide)

Recommended Action

That the City Council find adoption of the proposed Resolution exempt from CEQA, adopt the Resolution for Application and Review Procedures for Projects proposed pursuant to Senate Bill 35 (Attachment A), and review and provide any input on the Draft Senate Bill 35 Application Package (Attachment B).

Discussion

I. Background

The Planning Commission considered a draft of the Resolution for Application and Review Procedures for Projects proposed pursuant to Senate Bill 35 (Review Procedures) and a draft of the Senate Bill 35 Application Package (Application Package) at a July 30, 2019 Study Session and provided comments to the City Council. The City Council considered a revised Draft Review Procedures and Application Package at an August 6, 2019 Study Session. The staff report and supplemental staff report for the City Council study session are attached as Attachments C and D. They include information on the background of SB 35, the Department of Housing and Community Development's SB 35 Guidelines, and recent amendments to the Government Code section enacting SB 35. The attached staff reports also summarize the draft Review Procedures to be used when the City processes SB 35 applications in the future and discuss the proposed Application Package, which will be maintained by the City's Department of Community Development. Attachments E and F contain the text of SB 35, as amended, and the Department of Housing and Community Development's Guidelines, respectively. The Planning Commission and the City Council's comments are summarized in Attachment G.

This staff report focuses on changes made to the Review Procedures and Application Package since the Council's study session. Changes made to the Review Procedures since the City Council Study Session are shown in redlines in Attachment H. Changes made to the Application Package since the City Council Study Session are shown in redlines in Attachment I. Direction from Council and edits as a result of comments from the public are incorporated in the proposed Resolution to the extent possible under current law.

II. Analysis:

The Review Procedures are proposed to be adopted by resolution. The Review Procedures include an eligibility checklist based on SB 35, the Guidelines, and the City's laws and policy, that specify the requirements for a project to be eligible for streamlined approval under SB 35. The Application Package is presented for Council's review and will be maintained by the Community Development Department.

- A. Changes Made to Resolution: Following direction from Council, the proposed resolution has been amended adding language that reflects the history and policy consequences of AB 101. Language has also been added to note that if in the future it becomes possible to calculate the two-thirds residential requirement excluding density bonus additions per the Guidelines prior to the amendments enacted by AB 101, the City intends to do so.
- B. Changes Made to Review Procedures and Eligibility Checklist: With input from Council, the proposed Procedures have been amended to allow a second meeting to be convened, if possible, given the timelines and review process to allow additional oversight regarding the 2/3 residential requirement prior to determining eligibility of a project for streamlining. Other minor changes have been made to ensure compatibility with the current law and in response to comments, including language making clear that requirements for an application will not be added to the checklist when an application has been submitted. Staff also amended language referring to the Application Checklist to clarify that the checklist in fact includes detailed requirements that ensure sufficient information will be provided to determine whether the development is consistent with the required objective planning standards.
- C. Changes Made to Application Package: With input from the Council, the Application Package has been updated to require items that may be required under the current General Plan and Municipal Code and applicable items that were requested in the City's 90-day letter regarding the Vallco SB 35 Project Application. It has also been updated to require that applicants provide additional information that allows the City to determine compliance with the eligibility criteria related to a project's location on certain sites that would otherwise

be ineligible for SB 35. Other minor changes have been made to ensure compatibility with current law and in response to comments from the public. One item requested by the Council related to exhibits demonstrating how to calculate square footage of projects. Draft exhibits will be provided to Council as desk items at the meeting on September 3rd. The final exhibits will be incorporated into the application package prior to uploading on the City's website and distribution to applicants.

D. Changes Made in Response to Comments from the Public

Two members of the public spoke at the City Council Study Session on August 6th. Planning Commissioner Kitty Moore spoke in her individual capacity and submitted written comments regarding the SB 35 Procedures and Application Package. Council directed staff to respond to her comments. Staff reviewed her comments and made changes to the Eligibility Checklist, specifically the Affordability and the Location sections. The Affordability Section reflects the City's BMR requirements and further explains how the BMR standards will apply to the project. The Location section has been amended to more closely match the language of the Guidelines. Ms. Moore's comments regarding the City's BMR standards in the Application Checklist have been included to the extent possible in the Eligibility Checklist's Affordability Section.

In addition, Ms. Moore suggested including references to specific plans and requiring completion of specific plans prior to accepting applications for sites where there is a pending specific plan. Recent Council actions have largely addressed this issue by removing the specific plan requirement for the residential portion of the Vallco site and adding residential development standards. There are no other properties in the City that are designated for residential or residential mixed use that require preparation of a Specific Plan. Moreover, SB 35 Guidelines section 300(b)(2) provide that general plan or zoning ordinance requirements for preparation of a specific plan or another discretionary permit do not necessarily constitute objective zoning standards. Ms. Moore made several additional suggestions in her written comments to the questions and standards related to hazardous waste sites and easements that staff have determined are not appropriate until the law has been further clarified by the courts. Once the law has been clarified, the Review Procedures may be updated by Council, and the Application Package can be updated by the Department of Community Development to reflect any changes.

Ms. Moore also suggested adding a section allowing appeals of CEQA exemption determinations, and referenced CEQA Guidelines sections 15061 and 15062. Both of these sections only apply to "projects" subject to CEQA. SB 35 expressly provides that "[t]he determination of whether an application for a development is subject to the streamlined ministerial approval process . . . is *not* a 'project' as defined in" CEQA. Gov. Code § 65913.4(k) (emphasis added). Therefore, the City's procedures do not

include an appeal procedure pursuant to CEQA Guidelines section 15061 for SB 35 determinations.

E. Environmental Impacts

The adoption of the Resolution is not a project under the requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. Even if the Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. In this instance, the City's Process for Applying for and Receiving Ministerial Approval Under Senate Bill 35 would have no effect on the environment because it only lays out the City's procedures for implementing state law and would not cause any physical change in the environment.

Next Steps

The City Council's decision will be in effect immediately upon adoption of the resolution. Upon the Council's decision, the application package will be updated to ensure consistency with the adopted Procedures and published on the City's website and will be available at the public counter for applicants.

Prepared by: Caitlin Brown, City Attorney's Office

Reviewed by: Benjamin Fu, Director of Community Development
Heather Minner, City Attorney

Approved by: Deborah Feng, City Manager

Attachments:

- A. Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35, clean copy
- B. Draft SB 35 Application Package, clean copy
- C. Staff Report re Study Session regarding Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35, August 6, 2019, without attachments
- D. Supplemental Staff Report re Study Session regarding Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35, August 6, 2019, without attachments
- E. SB 35 Statute, as Amended
- F. HCD Guidelines – Streamlined Ministerial Approval Process
- G. Comments from Planning Commission and City Council Study Sessions
- H. Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35 with redlines
- I. Draft SB 35 Application Package with redlines