



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

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SUPPLEMENTAL CITY COUNCIL STAFF REPORT

Meeting: August 6, 2019

Subject

Study Session regarding 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 conduct the study session, receive these reports and provide direction regarding the proposed Application and Review Procedures (Attachment A) and draft Application Package (Attachment B) for Projects Proposed Pursuant to Senate Bill 35.

Discussion

This Supplemental Staff Report is posted in addition to the staff report made available on July 31 to reflect subsequent amendments to SB 35. The following attachments are also updated: the Draft Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35 and the Draft SB 35 Application Package. And a new attachment, Excerpts of AB 101 re SB 35, is added.

On July 31, the Governor signed AB 101 (Housing development and financing), a budget trailer bill that amended, among other laws, Government Code section 65913.4 (SB 35). AB 101 amended only two subdivisions of Government Code section 65913.4, but both changes are relevant to the Process and Application Package.

AB 101 modified the objective planning standards a proposed development must meet in order to be eligible for the SB 35 streamlined, ministerial approval process.

First, AB 101 amended the subdivision providing that an eligible mixed-use project must designate at least two-thirds of the square footage of the development for residential use, Gov. Code § 65913.4(a)(2)(C), by adding the following underlined sentence: "A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses,

with at least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation.” This change to how minimum residential square footage is calculated contradicts the guidance adopted by the Department of Housing and Community Development in November of 2018, which explicitly *excluded* additional density, floor area, or units granted under the Density Bonus Law from the two-thirds calculation. Guidelines § 400(b)(1).

Second, AB 101 amended the subdivision relating to hazardous waste sites by adding the following underlined text. A project located on a hazardous waste site may still be eligible for SB 35 streamlining if “the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.” Gov. Code § 65913.4(a)(6)(E).

Because of these statutory amendments, both the Draft Resolution’s Eligibility Checklist and the Draft Application Package have been updated to reflect the current law. Updates are shown in track changes in Attachments A and B.

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. Updated Draft Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35 with redlines
- B. Updated Draft SB 35 Application Package with redlines
- C. Excerpts of AB 101 re SB 35