

MEMO

To: City of Cupertino
City Council Legislative Review Committee

From: Townsend Public Affairs, Inc.

Date: September 13, 2021

Subject: Consider adopting a position on AB 1174 (Grayson) Planning and zoning: housing: development application modifications, approvals, and subsequent permits

Bill Information

The official text of AB 1174 can be found [here](#)¹.

Summary

This bill makes several changes to the streamlined, ministerial approval process established by SB 35. Specifically, the bill would retroactively apply the following requirements to the Vallco project:

1. The project approval would remain valid for three years from the date of the final judgment (codifying HCD's incorrect interpretation of the present statute). The approval would thus remain valid until at least May 2023.
2. The project approval would then remain valid as long as construction activity, including demolition and grading activity, remains "in progress"—i.e., (i) construction has begun and has not ceased for more than 180 days, or (ii) for multi-phase projects, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase.
3. If the applicant requests a project modification, the time during which the approval remains valid would be extended for the number of days between the submittal of the modification request and the date of its final approval, plus an additional 180 days.
4. The definition of "affordable rent" would be amended for projects having at least 500 affordable units approved before Jan. 1, 2019 (i.e., the Vallco project), such that the rent for 70% of the units is likely to be somewhat higher (although still below market rate).
5. The bill would prohibit the application of new objective building standards adopted after the date of the first building permit application without the consent of the applicant.
6. The bill would prohibit the application of objective standards adopted after the date the original development application was submitted in reviewing any application for a "subsequent permit," including building permits, encroachment permits, and final maps.

¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20210220AB1174

7. For project modification requests, the bill would prohibit the application of new objective planning standards to “underground space” (i.e., the parking garage) without the consent of the applicant.

Committee Activity

During each of the policy committee hearings, Assemblymember Grayson provided a brief overview of the bill and the San Francisco Bay Area Planning and Research Association (SPUR) served as the only witness on behalf of the bill. There were no questions or comments raised by the members of either policy committees that considered the bill. Neither the author, nor the witness, referred to any specific SB 35 projects or examples of why the bill was necessary during the committee hearings.

However, the attached analysis on AB 1174 from the Senate Committee on Governance and Finance (Attachment B) includes a section on the Vallco Town Center, as well as a section on the City of Cupertino and Vallco in the comments section. In the comments section, there is a comment that “Sand Hill explains their intent with AB 1174 is to avoid litigation.”

While the City has met with the Chairs and staff of the Assembly Local Government Committee and the Senate Governance and Finance Committee, there was no known attempt by these committee members to reach out to the City (or its representatives) regarding further information for the background of this bill.

Status

AB 1174 was approved on the Senate Floor (37-0) on September 1st and received a concurrence vote on the Assembly Floor (74-0) on September 2nd. The measure is in the process of being sent to the Governor for his consideration. The Governor has until October 10th to act on all pending legislation.

Support

The author states, “The Legislature has made enormous efforts to dramatically increase our housing supply. However, ambiguities in the law have been exploited by anti-growth community groups to delay and derail desperately needed housing projects. For example, SB 35 streamlining approvals are currently valid three years after the project is approved. Some jurisdictions have used lawsuits to extend the project timeline beyond this window, and then revoke the streamlining provisions. Another issue arises when jurisdictions require a project to comply with objective standards that were not in place at the time of project approval. This can compel a project proponent to seek a modification, which can further delay or derail the project. To address these challenges, AB 1174 specifies that the “shot clock” for a development or modifications is paused when a project is sued, and clarifies that subsequent permit applications must only meet the objective standards that were in place when the project was initially approved. These changes are essential to facilitate the timely construction of housing at all income levels to meet California’s critical housing needs.”

Supporters of AB 1174 include: San Francisco Bay Area Planning and Research Association (co-sponsor); Bay Area Council (co-sponsor); California Apartment Association; California Association of Realtors; California Building Industry Association; California Community Builders; California YIMBY; Council of Infill Builders; Fieldstead and Company; Greenbelt Alliance; Habitat

for Humanity; Hello Housing; Housing Action Coalition; Sand Hill Property Company; Silicon Valley @ Home; The Two Hundred; and TMG Partners.

Opposition

There is no officially registered opposition to AB 1174.

Recommended Action

Adopt an oppose position on AB 1174 and authorize the Mayor to send a letter to the Governor.