



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

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PLANNING COMMISSION STAFF REPORT

Meeting: July 23, 2019

Subject

Study Session regarding Draft Review Procedures and Draft Application Package 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 Planning Commission hold a study session to review draft City Review Procedures (Attachment 1) and draft Application Package (Attachment 2) for Projects Proposed Pursuant to Senate Bill 35 and provide comments for staff to consider and forward to the City Council.

Discussion

Background:

Senate Bill 35 (SB 35) became effective on January 1, 2018. It enacted Government Code section 65913.4 which requires cities and counties to use a streamlined ministerial review process for qualifying multifamily housing developments that comply with the jurisdiction's objective planning standards, provide specified levels of affordable housing, and meet other specific requirements. Note that there were amendments made to SB 35 in 2018. (The text of SB 35, as amended is included as Attachment 3). In addition, the California Department of Housing and Community Development (HCD) issued Guidelines for implementing SB 35, Streamlined Ministerial Approval Process Guidelines ("Guidelines"), on November 29, 2018, which took effect on January 1, 2019. These Guidelines direct a local jurisdiction to provide information about its process for applying and receiving ministerial approval under SB 35. Guidelines § 300(a). (*Attachment 4.*) The Draft Resolution and draft application materials are being prepared to specify the City's procedures and requirements for processing and approving SB 35 applications.

It should be noted that the City received an SB 35 application for a multifamily housing development encompassing 50.82 acres within the Vallco Shopping

District Special Area on March 27, 2018. This was processed within the timelines allowed pursuant to SB 35 and approved on September 21, 2018. The project is currently the subject of a lawsuit. The Guidelines were not in effect at the time the City approved the project and, additionally, the Legislature has made amendments to SB 35 since that time. The proposed City Procedures would not apply to the approved Vallco SB 35 project.

Analysis:

Under SB 35, the City is required to review qualifying projects using a ministerial review process, which means that the City cannot require an applicant to obtain discretionary permits that would typically be required (e.g., development permit). Instead, the City is required to process applications within the timeframes specified in Government Code section 65913.4(c),¹ applying only those objective zoning and design review standards contained in the City's general plan, municipal code, and other adopted land use plans in effect at the time the project application was submitted and specific parking standards identified in SB 35. The review process must also be streamlined because the project is not subject to environmental review under the California Environmental Quality Act (CEQA).

Processing Procedures: SB 35 allows a City's Planning Commission or City Council to conduct public oversight of the development application. It requires oversight to be focused on assessing compliance with criteria required for streamlined projects, which includes a local government's objective land use standards, as well as any reasonable objective design standards published before submission of an application. The statute defines objective standards to mean "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal." Public oversight must be completed within the timelines specified in the statute for project approval (90 days for project of 150 units or fewer and 180 days for larger projects) and cannot inhibit, chill or preclude the ministerial approval provided for by SB 35.

The Draft Review Procedures are included in Attachment 1. The Draft Procedures require a Joint Planning Commission and City Council meeting for

¹ Once an application is submitted, within 60 days for a project with 150 or fewer units, and within 90 days for a project more than 150 units, the City must provide the development proponent with written documentation ("Consistency Letter") of any objective planning standard that the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard. If the City fails to provide that information within the time period, the development will be deemed consistent with the objective planning standards.

oversight and consistency review, prior to issuance of a Consistency Letter for that project. This would be an open meeting, noticed to the public and neighbors in advance, and there would be an opportunity for public and applicant comments. The oversight meeting is proposed to be held at least 5 business days prior to the consistency determination for the project. If a project is determined to be ineligible for streamlined and ministerial review, the application will be rejected and the applicant must make a new submittal which will be subject to the timelines for new applications specified in SB 35. If an application is determined to be eligible for SB 35 streamlined and ministerial review, the final approval documents and standard conditions of approval will be prepared and issued.

For projects that include a Tentative Map or Parcel Map application, this map application will be considered by the Planning Commission and City Council during the oversight and consistency review meeting.

The Draft Review Procedures also 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.

Application Package: HCD Guidelines also direct a local jurisdiction to provide information about the materials required for an application. Attachment 2 is a draft application package, that would be provided to an applicant interested in making an application for a streamlined project. This package would include:

1. An application form
2. A form certifying compliance with the eligibility requirements of SB 35 *(based on SB 35 requirements related to affordability, prevailing wages requirements, skilled and trained workforce requirements etc.)*
3. An application checklist indicating all the items required for a complete application *(based on information necessary to determine the application's compliance with objective General Plan and Municipal Code standards)*

Next Steps

The Planning Commission's recommendations will be considered by staff and presented to the City Council at a study session tentatively scheduled for August 6. City Council will then consider approving revised draft procedures via resolution at a subsequent meeting. The City Council's decision will be final and 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: Joseph Petta, Assistant City Attorney

Approved by: Benjamin Fu, Director of Community Development

Attachments:

1. Draft Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35
2. Draft SB 35 Application Package
3. SB 35 Statute, as Amended
4. HCD Guidelines – Streamlined Ministerial Approval Process