



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

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**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 this report 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**

**I. 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 C). 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). (see Attachment D.) 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. This also implements an item on the City's Fiscal Year 2019/2020 Work Program to "develop procedures for mandated streamlined project approvals."

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.

### Planning Commission Study Session

The Planning Commission met at a special meeting on July 30, 2019 to consider the proposed procedures and application package to provide input. Four members of the public spoke at the meeting with comments ranging from concerns about the SB 35 statute, past approvals pursuant to SB 35, density bonus law, and concerns about Commissioner Moore's decision to recuse herself from discussions related to this subject. The Planning Commission discussed both the proposed resolution and the draft application package. Their comments are presented later in this report.

## **II. 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),<sup>1</sup> applying only those objective zoning and design review standards contained 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).

- A. Processing Procedures: SB 35 allows a City's Planning Commission or City Council to conduct public oversight of the development application. It requires oversight 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

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<sup>1</sup> 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.

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 projects 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 would be adopted by resolution and are included in Attachment A. 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. Initial changes made to the Draft Review Procedures since publication of the Planning Commission agenda packet and meeting are shown in redlines in Attachment A.

The Draft Procedures require a Joint Planning Commission and City Council meeting for oversight and consistency review, prior to issuance of a Consistency Letter<sup>2</sup> for that project. This would be an open meeting, noticed to the public and neighbors in advance, including an opportunity for public and applicant comments. The oversight meeting is proposed to be held at least five business days prior to the consistency determination for the project. 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.

If after the Oversight and Consistency Meeting, a project is determined to be ineligible for streamlined and ministerial review by the City Manager, 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 after the Oversight and Consistency Meeting, an application is determined to be eligible for SB 35 streamlined and ministerial review by the City Manager, the final approval documents and standard conditions of approval will be prepared and issued.

Planning Commission comments: The following is a summary of comments and concerns from Planning Commissioners regarding the proposed Draft Review Procedures :

- Concerns that the Joint Oversight meeting may be perceived as an “approval” meeting while the resolution is clear that the final determination is made by the City Manager.

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<sup>2</sup> See Footnote no. 1

- Concerns about disapproving an incomplete application without an opportunity for the applicant to correct minor deficiencies.
- Concerns about whether five business days would be adequate time to determine whether a project is complete.
- Consider whether it would be possible to disallow applicants from applying for concurrent review of a streamlined, ministerial project and a discretionary project.
- Concerns that one joint Planning Commission and City Council meeting, prior to determination of SB 35 eligibility of a project, would not be enough public oversight.
- Requiring plans that indicate density bonus baseline for the site when a density bonus application is submitted – suggestion for a future update to the Municipal Code.

B. Application Package: HCD Guidelines also direct local jurisdictions to provide information about the materials required for an application. Attachment B, is a draft application package, that would be provided to an applicant interested in making an application for a streamlined project. Initial changes to the draft application package since publication of the Planning Commission agenda packet and meeting are indicated in redlines.

This package includes:

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.); and
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)

Planning Commission comments: The following is a summary of comments and concerns from Planning Commissioners regarding the draft application package:

- Prefer not to use the word “listed” contaminants in item #13 of the Project Checklist in the Application Form.
- Recommend that plans include design specifications for density bonus units in addition to BMR units to address item #20 of the Project Checklist in the Application Form.

- Recommending that specifications for density bonus units not be required to be included in the initial application and a request to research law to determine whether this is lawful.
- Two commissioners recommended that a public hearing be required on Density Bonus incentives/benefits while another suggested that this could be done as part of the Oversight and Consistency meeting if it is done objectively.

### **Next Steps**

Staff and the City Attorney's Office are still reviewing the Planning Commission's comments and expect additional changes to address those and the City Council's study session comments. The final draft resolution will be presented to Council to be considered and adopted at a subsequent meeting. 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.

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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. Draft Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35 with redlines
- B. Draft SB 35 Application Package with redlines
- C. SB 35 Statute, as Amended
- D. HCD Guidelines – Streamlined Ministerial Approval Process