



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: July 7, 2020

Subject

Study Session regarding General Plan Amendment Authorization Procedure adopted by the City Council in September 2015 by Resolution No. 15-078 (see Attachment A) ("GPA Authorization Procedure").

Recommended Action

That the City Council receive this report and provide direction on any next steps regarding the GPA Authorization Procedure.

Discussion

Background

Pursuant to the Council's policy of allowing two councilmembers to request items be added to a future meeting agenda, at the February 18, 2020 City Council meeting, councilmembers Chao and Paul directed staff to conduct a study session to review the existing GPA Authorization Procedure. This study session fulfills this request.

This staff report provides:

- a description of the procedures for processing GPAs that existed prior to adoption of the GPA Authorization Procedure;
- a history of the development and adoption of the GPA Authorization Procedure;
- a description of the GPA Authorization Procedure for processing GPAs;
- a list of concerns raised about the GPA Authorization Procedure;
- a discussion of projects that have been reviewed under the current procedures;
- a brief discussion of GPA screening procedures in other cities; and
- options for the Council on next steps.

Analysis

Procedures for Processing GPA Applications Prior to September 2015

Prior to the adoption of Resolution No. 15-085, City staff reviewed applications for proposed development projects concurrently with any proposed GPA application and environmental review for the project. Project review included review to ensure that the proposal was consistent with the General Plan or any proposed amendment to the General Plan and complied with zoning regulations. If an applicant sought a Development Agreement to immunize the project against future changes in land use regulations, staff also negotiated that agreement, including the community benefits the developer would provide in exchange for vested rights to proceed with the approved project. Public input about the project was solicited through neighborhood or citywide noticing (depending on the scope of the project), legal notices for meetings, site signage, and neighborhood meetings. On completion of environmental and project review and any negotiations for a Development Agreement, the public could provide input on the final decision in hearings before the Planning Commission and City Council.

While State Planning and Zoning Law limits the number of times a city may amend its general plan to four times in one year, the City did not limit the number of GPA applications that could be filed and processed in any given year.

Development and Adoption of GPA Authorization Procedure

In 2014, during the City's development of the General Plan – Community Vision 2015-2040, members of the community expressed concern about the City's processing of real estate development project applications requesting amendment of the general Plan because that process:

- did not provide the public with an understanding of the number of GPA applications in process during any year;
- did not allow a comparison of projects because applications could be filed at any time and were processed in the order in which they were filed;
- did not provide an opportunity for the City to require projects to compete with one another, which would incentivize developers to design higher quality projects that provide maximum community benefits;
- did not provide for a comprehensive view of multiple development applications processed at approximately the same time frame, resulting in significant development that failed to adequately address city-wide impacts on traffic, open space, affordable housing, public services, and schools;
- prevented the City from assessing the effect of aggregate GPAs on the goals of the City's General Plan;

- did not permit early public input; and
- did not allow the public a meaningful opportunity to influence the community benefits provided by projects because the benefits would be unknown until the applications were before the Planning Commission and City Council for final approval.

The City initially responded to these concerns by adding a policy in the General Plan to allow increased development in certain areas of the city only if project sponsors offered community benefits and provided ground floor retail. Following much deliberation and community input, the City Council adopted Community Vision 2015 – 2040 in December 2014 with placeholder language for Community Benefits in Policy LU-1.3, without adopting specifics about locations for increased development standards, and directed staff to revisit the Community Benefits policy in 2015 after receipt of additional community input.

In early 2015, staff conducted an online survey on community benefits and received 300 validated responses, of which 80 percent were from Cupertino residents.¹ The results of the survey were as follows:

- More than 65% of respondents supported a community benefits program but did not support that ground floor retail should be required as a part of the program.
- The General Plan should limit additional growth and building heights.
- Developers should provide community benefits/amenities to alleviate the adverse impacts of their projects, ranked as follows:
 - Parks/Recreation
 - Transportation enhancements (sidewalks, bikes lanes, etc.)
 - Community services (teen centers, library branches, etc.)
 - In-lieu fee to City (school improvements or affordable housing)
- The construction of approved development projects should be staggered instead of allowing projects to be developed at the same time.
- The public should receive details about projects seeking GPAs earlier in the approval process

City staff also researched how other communities were managing growth from real estate development and its impacts on quality of life. Staff prepared a white paper analyzing

¹ Presented at the City Council meeting dated May 19, 2015 and available online at: <https://cupertino.legistar.com/LegislationDetail.aspx?ID=2283966&GUID=42D62254-9990-464E-8C7A-EC5D0B8BA341&Options=&Search=> navigate to Attachment B5

programs to manage development in Berkeley, Santa Monica, San Diego, Mountain View, Morgan Hill, and other cities.²

At the May 19, 2015 City Council meeting, staff proposed a standalone Council policy providing an annual review by Council and the public for projects that wished to propose GPAs and associated community benefits.³ In response to staff's draft policy, the Council deferred a decision on a new GPA policy for 90 days to allow staff to provide additional details on programs that require community benefits, such as in the Cities of Mountain View and Morgan Hill. The Council further directed staff to place all new GPA applications on hold until a decision on the policy.

Following the Council's direction, staff submitted to the Council a supplemental white paper identifying pros and cons of various incentive zoning, growth allocation, and land use regulation models and providing general guidance on managing growth.⁴

The Council held a study session on June 30, 2015 to review a proposed standalone policy for processing GPA applications. The standalone policy was developed upon consideration of the following issues identified in the outreach:

- ***Provide for more orderly development:*** The process would allow the City Council and the public to consider and comment on groups of proposed GPA projects simultaneously, thus allowing the City a greater understanding of the cumulative environmental and other impacts of the proposed projects.
- ***Ensure that additional development improves quality of life for the community:*** Development projects should volunteer community benefits to mitigate intangible impacts of the project on open space and other community facilities and services.
- ***Provide opportunity for early community input:*** The public and Council should preview projects during the pre-application design phase to allow the developer to incorporate changes to the project before the design is incorporated in a formal application and the developer becomes invested in the design.
- ***Avoid a process that is unnecessarily complex, costly, and time-consuming:*** A new process for review of GPAs should be easy for developers and the City to implement and should be transparent.
- ***Provide City Council direction early in the process:*** The City Council should provide direction to staff early in the process about which projects should be given priority

² Click link above and navigate to Attachment B7

³ Click link above and navigate to Attachment B1.

⁴ The study is available online at:

<https://cupertino.legistar.com/LegislationDetail.aspx?ID=2363022&GUID=E128642C-F8CB-4D1D-B7FE-BB044BD3E132&Options=&Search=> navigate to Attachment D

to minimize delays of those projects and to assist staff in efficient allocation of resources.

After considering the pros and cons of different approaches to manage development by other cities, input from the public, and the staff's draft policy, the City Council directed staff to draft a policy for amendments to the General Plan. On September 1, 2015, the City Council adopted Resolution 15-078 which established the City's standalone policy for processing GPA Authorization applications (see Attachment A).

Current GPA Authorization Procedure

Under the current GPA Authorization Procedure, proposed GPA applications are processed as follows:

1. Proposed GPA applications are considered twice annually – once in early winter (January/February) and again in late summer (August/September).
2. The City posts all documents related to the proposed project including conceptual plans, proposed community amenities, proposed General Plan amendments, and summary of fiscal impacts on the City's website.
3. A postcard is sent to all City residents when the project is scheduled for a hearing.
4. In deciding which projects are authorized to move forward with a GPA application, the Council considers the following:
 - a. General Plan goals achieved;
 - b. quality of architectural and site design and neighborhood compatibility;
 - c. fiscal impacts;
 - d. affordable housing provided;
 - e. sustainability;
 - f. merits of and the impact on the General Plan of variances sought;
 - g. voluntary community amenities provided (e.g., school resources, public open space, libraries, community centers, utility systems, public and transportation); and
 - h. the staff time and resources to process the application.
5. A Council decision to authorize submittal of a GPA and related project applications is not a guarantee of approval of a project; the City Council retains discretion to approve, disapprove, or conditionally approve each project and its proposed GPA. Before making a final decision on the project, the Council considers environmental review, the site and architectural design, community benefits, consistency with the General Plan, and public input.
6. Applicants may be allowed a "second chance" at presenting the proposed GPA authorization with direction from the City Council. These projects are re-considered

at a later hearing before the Council. Projects given a second chance must submit revisions and/or additional information within 30 days after the first Council hearing.

7. If a proposal is not authorized for processing after the initial review or second chance submittal, the project sponsor must wait until the next application round to resubmit an application for the same project.

Attachment B is a flowchart illustrating this process.

By allowing early public input, the GPA Authorization Procedure provides transparency. It also can lead to better-quality project by requiring developers to compete for the City's approval. The Council limited the number of public hearings on GPA Authorization applications so that staff could spend more time on other Council priorities. When the Council adopted the GPA Authorization Procedure, it determined that public outreach meetings should be conducted after the City Council authorizes a GPA project to proceed.

When a GPA Authorization application is received, staff posts the request and site plans, preliminary landscape plans, elevations, cross sections, preliminary grading plans, offer of community benefits, and other supporting documents on the City's website, and sends an e-notification to members of the public who request notice of GPA applications. Following the City's preparation of a financial feasibility report for the project (or a peer review of the financial feasibility report provided by the applicant), staff schedules a hearing on the application for the City Council and sends a post-card notice of the hearing to every address in the City. Accordingly, every member of the public is notified of the application early in the process.

Concerns About the GPA Authorization Procedure

Since the City adopted the GPA Authorization Procedure in 2015, the public and members of the City Council have expressed several concerns about the Program:

- The public could misunderstand the City Council's authorization to apply for a GPA and related approvals as final approval of the project.
- The procedure does not provide guidance about the process for changing the project after GPA authorization. The current GPA Authorization Procedure, which provides that the GPA and other applications filed "should be in substantial compliance with the project authorized by Council," does not provide sufficient guidance about the degree of change in the project that would trigger re-authorization.
- The community benefits from project to project have been inconsistent.
- The community benefits offered may not provide the intended benefits.

- The number of public outreach meetings should be increased to solicit more public input.
- Public notice of the application for authorization to proceed with a GPA application should be given earlier in the process.
- The public notice of hearings and meetings has been cursory and uninformative. The GPA application materials do not provide sufficient details about the proposed projects to thoroughly evaluate them.
- City-wide public notice is conducted via bulk mail and not a more secure form of mailing.

General Plan Amendment Authorization Program

Attachment C lists the projects that the Council has reviewed under the GPA Authorization Program since the Program's adoption and the City Council's action on those projects. Of the eight projects applying for authorization (the De Anza Hotel three times), three projects obtained authorization: The Cupertino Village Hotel and the 2017 and 2018 versions of the De Anza Hotel.

In 2017, the De Anza Hotel was authorized to proceed as a five-story hotel with 156 rooms. The applicant subsequently modified the project, proposing a 155-room hotel of six stories, increasing the building height by ~15 feet. Staff determined that with this modification, the project was not "significantly in compliance with the project authorized by Council." Therefore, staff required the applicant to apply for another GPA Authorization in 2018, which the City Council authorized.

Cities with General Plan Amendment Initiation/Screening Procedures

Several Bay Area cities have GPA initiation, screening, or authorization procedures to manage development in their jurisdiction, including Sunnyvale, Mountain View, Campbell, Morgan Hill, Walnut Creek, and Fremont. In Southern California, Ventura County and the cities of Costa Mesa and Camarillo have GPA screening procedures. Redwood City will be conducting a one-time GPA Gatekeeper process in 2020. Attachment D includes a list of jurisdictions and links to the procedures for each city.

The GPA initiation/screening/authorization policies in these other cities do not mention voluntary community amenities in each case, but do not prevent a project proponent from volunteering community amenities. Cupertino's GPA Authorization Procedure appears to be unique in that it lists the community's priorities for voluntary community amenities (based on the prior community outreach) to inform developers about them.

Options for the General Plan Amendment Procedure

After receiving this report, Council could consider the following options for the City's GPA Authorization Procedure:

- Retain the existing Procedures as is.
- Refine the existing Procedure to address concerns, such as providing additional public outreach or requiring more detailed project submittals as part of the GPA Authorization application.
- Repeal the existing Procedure and revert to the process in effect before adoption of Resolution 15-078.
- Consider additional methods to manage development, including those discussed in the two 2015 white papers available online at:
 - <https://cupertino.legistar.com/LegislationDetail.aspx?ID=2283966&GUID=42D62254-9990-464E-8C7A-EC5D0B8BA341&Options=&Search=> navigate to Attachment B5
 - <https://cupertino.legistar.com/LegislationDetail.aspx?ID=2363022&GUID=E128642C-F8CB-4D1D-B7FE-BB044BD3E132&Options=&Search=> navigate to Attachment D

Sustainability Impacts

None.

Fiscal Impacts

None.

Next Steps

Future meetings on this issue would depend on whether Council decides to repeal, modify, or retain the existing Procedure.

Because amending or developing a new GPA Authorization Procedure would require staff time and potentially consultant and legal services, a change in GPA Authorization policy may require a future budget and FY20/21 City Work Program amendment to ensure that the Council's other priorities are not affected by this new item.

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Attachments:

- A. City Council Resolution 15-078
- B. Flowchart indicating GPA Authorization Process
- C. Table of GPA Authorization Projects 2016 – 2019
- D. List of cities with GPA initiation/screening/authorization procedures