



CITY OF CUPERTINO

DRAFT MINUTES

LEGISLATIVE REVIEW COMMITTEE

Monday, September 13, 2021

10:30 AM

SPECIAL MEETING

ROLL CALL

The meeting was called to order at 10:30 a.m.

Present: Vice Mayor Chao, Councilmember Moore, Interim City Manager Greg Larson, Deputy City Manager Katy Nomura, Townsend Public Affairs (TPA)

POSTPONEMENTS

This item was not conducted.

ORAL COMMUNICATIONS

Jennifer Griffin expressed her concerns regarding SB 9 and SB 10.

PUBLIC COMMENT (including comments on all agenda items)

This item was not conducted as the Chair decided to take public comments on agenda items when the agenda items were discussed.

AGENDA REVIEW

This item was not conducted.

ACTION ITEMS

1. Subject: Consider adopting a position on AB 1174 (Grayson) Planning and zoning: housing: development application modifications, approvals, and subsequent permits. Recommended Action: Adopt an oppose position on AB 1174 and authorize the Mayor to send a letter to the Governor

TPA explained that this measure was approved by the Legislature in early September and is now being considered by the Governor, along with about 800 other bills that were approved during the last few weeks of the legislative session. The Governor has until October 10 to make a decision on all of the bills that were approved by the Legislature. This bill makes the following changes to the SB 35 approval process:

- 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 project approval would then remain valid as long as construction activity, including demolition and grading activity, remains "in progress".
- 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.
- 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).
- 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.
- 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.
- 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.

These provisions are retroactive to projects that were approved prior to 2019. This bill moved through the legislative process with no formally registered opposition. This bill was sponsored by SPUR as well as the Bay Area Council. During the legislative process SPUR was the lead witness during most of the committee hearings. During the committee hearings there was no mention of specific SB 35 projects or the City in particular, however the provisions of the bill would directly impact the City and the Vallco project.

TPA recommended that the LRC votes to authorize the Mayor to send a letter requesting a veto to the Governor. Additionally, TPA would like to schedule a meeting with the Governor's Office to discuss the direct impact this bill would have on Cupertino.

Councilmember Moore asked if this bill is constitutional. TPA explained that typically the Legislative Counsel evaluates the constitutionality on all bills and provides a confidential notice to the author and to the Governor's Office. Since these evaluations are confidential there has been no known issue of constitutionality, but if there were, usually the author attempts to resolve those issues prior to it arriving to the Governor's Office.

TPA explained that the changes to the definition of affordability are a major concern

because it would increase the rent for 70% of the units that were already marked to be affordable housing. Councilmember Moore explained that the City granted concessions to the Vallco project based on the affordability of the units and now that this bill changes the definition of affordability, she is concerned about how those concessions will be addressed.

Councilmember Moore asked if stalling the approval of a project could result in an attempt to clean up a hazardous site that otherwise would have never been approved. She mentions that the developer had the soils contamination report from 2016 showing there was an exceedance of residential screening levels, and that information was not given to the City. She continued to explain that the developer did not even apply for regulatory oversight until April 2021 when they had a September 2018 approval. TPA explained that the bill does extend the approval timeline, but it does not list hazardous waste site cleanup under the new definition of construction.

Public Comment:

Jennifer Griffin expressed her concerns on this bill.

Action Taken:

Councilmember Moore motioned to take an oppose position on AB 1174 and authorize the Mayor to send a letter requesting a veto to the Governor and request Townsend to contact the Governor's Office. Vice Mayor Chao seconded, and the motion carried unanimously.

FUTURE AGENDA SETTING

No future agenda items were discussed.

ADJOURNMENT

This meeting was adjourned at 11:13 a.m.