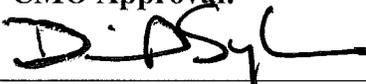




CITY COUNCIL ACTION REQUEST			
Department(s): Housing PBCE	Date: August 9, 2017	Coordination: City Attorney's Office City Manager's Office	Dept. Approval: /s/ Jacky Morales-Ferrand /s/ Rosalynn Hughey
			CMO Approval: 
SUBJECT: SB 35 - PLANNING AND ZONING: AFFORDABLE HOUSING: STREAMLINED APPROVAL PROCESS. (WIENER, ATKINS, ALLEN, VIDAK)			
RECOMMENDED POSITION: Support if amended			
RECOMMENDED ACTION:			
<ol style="list-style-type: none"> 1. Adopt a position of support for SB 35 (Wiener) if certain amendments are included in the final bill and direct staff to engage with the Author to introduce a clean-up bill in 2018. 2. Recommend this item be agendized for the <u>August 22, 2017</u> City Council Meeting to allow the full City Council to consider support if amended for SB 35 and to direct the City's Legislative Representative to advocate the City's position. 			
BILL SYNOPSIS:			
<p>Senate Bill 35 (SB 35) would create a ministerial streamlined approval process for new housing when cities are not meeting State mandated Regional Housing Needs Allocation (RHNA) goals. Under SB 35, if cities are not on track to meet their RHNA goals, then a developer may choose to pursue a streamlined approval process. The streamlined process will include ministerial review and approval of the development, which will be required to meet rigorous standards for construction labor and a set of objective criteria, including affordability, density, zoning, historic, and environmental standards.</p> <p>Streamlining would be triggered if a jurisdiction fails to complete and obtain HCD certification for a Housing Element or an Annual Production Report. Streamlining can also be triggered if a jurisdiction fails to achieve its RHNA goals as follows¹:</p> <ul style="list-style-type: none"> • If a jurisdiction has not met its <u>above moderate income</u> RHNA goals, streamlined projects would be required to make at least 10% of the new units affordable at 80% of Area Median Income (AMI) and of that 5% of AMI. This requirement would be higher if a local inclusionary ordinance requires a greater number of affordable housing units. • If a jurisdiction has not met its <u>low income</u> RHNA goals, streamlined projects would be required to make at least 50% of the new units affordable at 80% of Area Median Income (AMI). • Streamlining would <u>NOT</u> be triggered if a jurisdiction fails to meet its moderate-income RHNA goals. 			

¹ Market rate RHNA goals are for households earning above 120% of the Area Median Income (AMI). Moderate income RHNA goals are for households earning between 80-120% of AMI. Low Income RHNA goals are for households earning below 80% of AMI.

To be eligible for streamlining, a housing development would need to meet “Objective Planning Standards” as defined in the bill. These planning standards require that the development have at least two units, be located on an urban infill site, be zoned residential or residential mixed-use where at least two-thirds of the square footage is designated for residential use, and have minimum affordability durations for rentals (fifty-five years) and for-sale units (forty-five years). The Development would have to be consistent with locally defined “objective design review standards” that involve no personal or subjective judgment by a public official. Local government would have the following time periods to complete review:

1. For projects BELOW 150 units:
 - Planning Standards Review: Within 60 days of submittal of the completed development application.
 - Design Standards Review: Within 90 days of submittal of the completed development application.
2. For projects ABOVE 150 units:
 - Planning Standards Review: Within 90 days of submittal of the completed development application.
 - Design Standards Review: Within 180 days of submittal of the completed development application.

Parking standards would not be allowed if the site is within one-half mile of public transit, the site is in an architecturally and historically significant district, on-street parking permits are required but not offered to occupants of the development, or a car share vehicle is within one block of the development. Streamlined approvals for projects where less than 50% of the units are affordable would expire after three years.

Sites would NOT be eligible for streamlining if they are located on or within a coastal zone, prime farmland, wetlands, hazardous waste site, earthquake fault zone, flood plain, floodway, lands identified as conservation areas, occupied habitat, lands under conservation easement, land governed by the Mobilehome Residency Law, or land that would require demolition of housing that has been occupied within the last ten years.

Provisions in this bill would sunset on January 1, 2026.

IMPACTS TO CITY OF SAN JOSE:

In the last 10 years, California has built less than half the new homes and apartments needed to keep pace with population growth. This lack of supply greatly impacts housing affordability, particularly in the Bay Area where rents and home prices are among the highest in the nation. The most significant impediments to meeting state-mandated RHNA goals are local opposition (often expressed as California Environmental Quality Act [CEQA] challenges), long and costly development review processes, and a lack of Federal and State funding to subsidize affordable housing.

As reported in San José’s 2016 Annual Housing Element Report, the City exceeded its market rate RHNA goals in 2016, but was far from meeting its below-market RHNA goals. This was due primarily to a lack of funding following the closure of Redevelopment Agencies in California, the exhaustion of state funding sources such as Proposition 1C, and reductions in Federal entitlement programs such as the HOME program. It is likely this downward trend will continue until additional funds or a new permanent source of affordable housing funds becomes available.

SB 35 is part of a “comprehensive housing package” announced on July 17, 2017, by Governor Jerry Brown, Senate President Pro Tempore Kevin De Leon, and Assembly Speaker Anthony Rendon. The package will include a general obligation bond, a permanent source for affordable housing, and other bills relating to streamlining and regulatory reform. SB 35 deals with “streamlining”. Governor Brown has signaled he will not sign housing funding bills unless they are accompanied by legislation that streamlines the housing development process.

The authors of SB 35 have accepted numerous amendments and the current bill has momentum and broader support than last year’s failed Budget Trailer Bill 707, an earlier legislative attempt to streamline approvals to build housing. If SB 35 passes, it could accelerate market rate housing production in the Bay Area, incentivize the inclusion of on-site affordable housing units, and help secure the Governor’s support for much needed affordable housing dollars.

Staff has been in contact with the Author’s office and has discussed numerous amendments which are being considered. Due to the uncertain schedule and momentum of this bill’s approval as part of the bigger Housing Package, it is likely that not all amendments will be made in this session. The Author’s office has indicated that they would like to continue working with the City and that a “clean-up bill” is likely to be introduced at the start of the next session. Staff recommends taking a support if amended position while still noting the following amendments and continuing to pursue amendments to SB 35 in the current legislation or a clean-up bill:

1. **Ability to collect impact fees:** The bill expressly indicates that a jurisdiction cannot create fees specifically for streamlined developments. The City of San José would like language added to the bill to clarify that cities can continue to collect mitigation or in-lieu fees under existing mitigation fee programs or future mitigation fee programs. As currently written, more costs to mitigate impacts to the City's infrastructure from market-rate housing would be borne directly by the City because the City would not get mitigation from the developer through CEQA.
2. **Land Use Designation vs. Zoning:** Ministerial approval under streamlining should default to General Plan land use designation if it differs from a site’s zoning. In Charter Cities, General Plan Land Use designation supersedes zoning. There are numerous parcels in San José that have residential zoning on nonresidential General Plan designated land and vice versa. There are concerns that if the City does not fund and complete a City-initiated rezoning effort, that there could be ministerial approval of housing development on employment lands.
3. **Definition of Submittal:** The approval timelines in the bill start at initial submittal of a project. Weak language and interpretation may allow cities to reject incomplete submissions, but strengthening language is necessary. A complete submittal should be determined by a jurisdictions published submission requirement.
4. **Inclusionary Policies and Ordinances:** Section 3: 65913.4(4)(B)(i) and (ii): The bill indicates that a local zoning ordinance would apply if the zoning ordinance requires a greater amount of affordable housing than SB 35. The bill should be amended to also include general plans, specific plans, ordinances, policies or guidelines since affordability requirements at the local level may be enacted in various manners.
5. **Site Progress** – Section 3: 65913.4(10)(e)(3) – Vertical construction: Needs additional refinement of language that 1) distinguishes grading and demolition from ‘vertical construction’, and 2) ensures “material and continual progress is made” on construction, so that bad actors do not circumvent the intent of the validity clause.

6. **Design review:** The bill sets forth a confusing process for design review guidelines. Design review is allowed, but the approval process is ministerial, which by definition means “no discretion.” The bill needs to explicitly indicate that a project can be denied if “reasonable objective design standards” are not followed. The bill should also clarify what constitutes a “reasonable objective design standard.”
7. **Staff review timing requirements in 65913.4(10):** The turnaround times for streamlined project review should be lengthened by 30 days. This is especially true for large cities with more development conditions and the need for multiple departments to coordinate on development review. Staffing levels would need to be increased and turnaround times will need to increase to meet the intent of the bill.
8. **Threshold for streamlining:** The bill stipulates that if the City does not perform on its annual RHNA goals, it would trigger a four year streamlining period. Staff recommends:
 - a. Change from a four-year streamlining period to two-year period to allow for better responsiveness to the City’s ability to subsidize affordable developments or to approve market rate developments in the intervening years.
 - b. Change the threshold for streamlining from a flat-rate to a percentage that matches the progress through the Housing Element cycle. Example: Year 2 of 8 – 25% of goal would be met, Year 4 – 50% of goal, etc. This would better account for the uneven nature of the development cycle.
 - c. Change the “release valve” – so that streamlining does not stay in place longer than four years if HCD is unable to complete its review of RHNA progress in a timely manner.
9. **RHNA determination:** If the four-year determination period is kept, and given that production can vary with large projects swinging the numbers significantly from year to year, the bill should create a ‘safe harbor’ with regards to the determination of whether streamlining applies:
 - One concept is a ‘safe harbor’ of 2% - if a jurisdiction is within 2% of its goal appropriate for that time during the RHNA cycle, it would not be deemed out of compliance.
 - Alternatively, the ‘safe harbor’ could be a matter of additional time (6 months) to meet the goal.
 - The bill should establish that the jurisdiction has the right to appeal the determination that it is not RHNA-compliant if it can show evidence to HCD staff’s satisfaction that would deem it in compliance when including the ‘safe harbor.’

While there are concerns with this bill, these must be weighed against the benefit of enacting billions of dollars of much needed State funding for affordable housing including a permanent source bill (SB 2 - Atkins) and a housing bond (SB 3 - Beall). If the Governor vetos these funding bills because a viable streamlining bill has not been advanced, we will not be any closer to addressing California’s severe housing crisis. Finally, in the past San José has done well in meeting its market rate RHNA goals and streamlining would likely only apply to below market rate housing in San José. The scale of San José’s below market rate housing pipeline is small and will continue to be limited by the small amount of subsidies that are available through Federal, State and local sources.

POLICY ALIGNMENT:

This bill aligns with the Council-approved *2017 Legislative Guiding Principles and Priorities* to “Create New Financing Tools for Local Government to ...Build Affordable Housing” and to “Pursue or Retain Federal and State Funding for Key Efforts.” This bill is not consistent with the City’s priority to “protect local control.”

SUPPORTERS/OPPONENTS:

This bill is supported by: California Association of Realtors, California Apartment Association, California Building Industry Association, Housing California, Non-Profit Housing Association of Northern California, SV @ Home, SPUR, Wester Center on Law & Poverty, Mayor Edwin M. Lee (City & County of San Francisco), Mayor Libby Schaaf (City of Oakland) and more.

This bill is opposed by: League of California Cities, the City of Fremont and four small or mid- sized cities, environmental and labor groups, and community based anti-displacement groups among others.

STATUS OF BILL:

This bill passed out of the Senate and is currently with the Assembly Rules Committee. This bill is part of a package of housing bills focused on funding and regulatory reforms. It is anticipated the legislature will take action on this “housing package” soon after the summer recess ends on August 21, 2017.

FOR QUESTIONS CONTACT: Jacky Morales-Ferrand, Housing Director (408) 535-3851