



MAYOR DARCY PAUL
dpaul@cupertino.org

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3195 • FAX: (408) 777-3366
CUPERTINO.ORG

September 14, 2021

The Honorable Gavin Newsom
California State Governor
State Capitol, First Floor
Sacramento, CA 95814

AB 1174 (Grayson) – REQUEST FOR VETO

Dear Governor Newsom,

On behalf of the City of Cupertino, I am writing to request your veto of AB 1174, a measure that would make several retroactive changes to the streamlined, ministerial approval process established by SB 35 and would financially benefit the developer of the Vallco Town Center SB 35 project while delaying and reducing the needed production of affordable housing.

By way of background, the application for the Vallco project was among the first, and largest, SB 35 project applications submitted statewide and was ministerially approved by the City in September 2018. The Vallco project is a mixed-use development with 2,402 units of housing, approximately 1.81 million square feet of office space, and 400,000 square feet of retail uses. The project is comprised of 11 buildings, each between 7 to 22 stories in height with a green roof connecting the buildings. Fifty percent of the housing units are proposed to be affordable, as required by SB 35. The project encompasses approximately 51 acres of the former Vallco Mall property.

While the project was approved under the state's SB 35 process—*which was intended to increase housing supply and affordable housing*—this large-scale mixed-use project actually results in far greater housing demand than the number of housing units being provided within the project. The developer's own estimates predict the project would bring create over 8,700 new jobs, thereby creating a need for nearly 6,000 more housing units – even though it only provides 2,402 new housing units. As a result, the project increases housing demand by over 3,400 units, further exacerbating the Bay Area housing crisis and failing to achieve the goals of SB 35.

Even though approving a massive new commercial development without public input is contrary to the intent of SB 35, the City of Cupertino is complying with the letter of the law

and is spending significant effort and resources processing permit approvals required for the project to proceed. Yet while the City is following the rules, AB 1174 seeks to change them in the middle of the game, retroactively granting the developer new rights that it does not have under current law or the 2018 SB 35 project approval. Ultimately, these changes will result in less affordable housing for the residents of Cupertino, as well as delay the production of housing in the City.

First, AB 1174 contains provisions that redefine “affordable housing” for the purpose of the Vallco project, and the Vallco project alone (the provision applies only to projects of more than 500 units that were submitted prior to 2019). This revised definition would raise the “affordable” rents for 70% of the affordable units (over 800 units) by as much as \$732 per month (46%), setting rents at a higher level than is allowed in current law. This hurts affordable housing.

The legislation would retroactively confer this benefit on the developer, despite the significant entitlements and concessions that were awarded to the developer under SB 35 and State Density Bonus Law. The purpose of these laws is to encourage the production of affordable housing, at affordable rents. Raising the rents for “affordable” units for the financial benefit of a single developer undermines the purpose of laws intended to encourage affordable housing.

Second, AB 1174 will have the effect of retroactively extending the deadline for commencing construction on the Vallco project for almost three years and will broaden the definition of “construction activity” that allows the developer to retain its entitlement. Currently, the developer is required to begin “vertical construction” by September 21, 2021, subject to a one-year extension to September 21, 2022. As reported publicly, the City anticipates receiving and will likely grant that one-year extension. The developer has had three years to prepare the site for construction, and it is both reasonable and consistent with the promotion of affordable housing to require the developer to begin construction by September 2022.

AB 1174 would instead stretch the deadline for beginning construction to May 2023 and would weaken existing requirements to allow the developer to retain its entitlement without making meaningful progress toward project completion. Under current law, a project must begin vertical construction, and not have ceased for more than 180 days, in order to retain a valid approval. AB 1174 weakens this standard to allow even minimal site preparation activities such as demolition and grading to qualify as sufficient progress toward development. By signing AB 1174, you would be endorsing lengthy, unnecessary delays in affordable housing production, which, again, would retroactively impact projects that have already been approved.

It appears that the purpose of the provisions of AB 1174 discussed above is to retroactively improve the financial outlook for a project that was ministerially approved in

2018 and to provide relief to a developer that failed to timely undertake necessary site preparation work to meet existing statutory deadlines. Of particular concern is the developer's failure to investigate and begin any necessary remediation of environmental contamination at the site, despite risks posed by the site's historic uses and knowledge of contamination dating to at least 2016. Due to these delays, the extent of contamination at the site remains undefined even now—and it is likely to be widespread based on the results of a recent site investigation. Note that the cleanup of the contamination on site is now under the regulatory control of the Santa Clara County Department of Environmental Health, not the City of Cupertino.

While SB 35 was approved in an effort to expedite the construction of affordable housing in California, AB 1174 appears to be an effort to award a financial windfall to a single developer and excuse that developer's failure to move the project forward in a timely manner. The failures no doubt stem in part from the size and complexity of the project, including its large-scale commercial development that will only exacerbate the housing crisis in Silicon Valley and the state.

More importantly, AB 1174 is at odds with the intent of SB 35. The bill would result in delays in constructing housing, increase the cost of "affordable" housing, and create special rules to facilitate the development of a project that exacerbates the overall housing shortage in our region.

The City of Cupertino strongly supports the goal of increased production of affordable housing, and cannot support flawed, counterproductive legislation that would impede the state from achieving that goal.

For these reasons, the City of Cupertino requests that you veto AB 1174.

Sincerely,



Darcy Paul
Mayor
City of Cupertino

cc: Senator Dave Cortese
Assemblymember Evan Low
Assemblymember Marc Berman