



Architectural Review Board

Staff Report (ID # 10787)

Report Type: Study Session **Meeting Date:** 12/5/2019

Summary Title: Introduction of Objective Standards Project

Title: Receive an Introduction on the Objective Standards Project and Provide Feedback to Staff

From: Jonathan Lait

Recommendation

Staff recommends the Architectural Review Board (ARB):

1. Receive an Introduction on the Objective Standards Project and provide staff with feedback.

Executive Summary

Recently adopted state laws require local jurisdictions throughout California to provide objective standards for housing development projects and apply streamlined review processes to the entitlement of certain qualifying housing projects. Taken together as a package, these laws emphasize the need for the City of Palo Alto to clearly articulate objective development standards for housing projects.

To accomplish this, the City has entered into a contract with Lexington Planning to assist with this effort. Lexington and staff will identify subjective aspects of Title 18 of the Palo Alto Municipal Code and to propose changes to the code and/or changes to the development review process that allow the City of comply with state legislation.

As the Architectural Review Board reviews many new construction projects within the city, notably housing projects, a shift from subjective standards to objective standards will significantly impact the board. Therefore, staff wanted to begin the discussion of this project early to gain feedback and input from the ARB, and to ensure the ARB has a full understanding of the project, its origins, and potential impacts.

The staff report summarizes the state laws precipitating this project and describes the project in greater detail.

Background

In 2017, the California Legislature passed a robust package of 15 housing laws, often referred to as the “housing package” that intended to alleviate the state’s limited housing supply and affordability crisis. The laws became effective in 2018. The housing package goals were intended to lift barriers to housing production while creating critical funding for new affordable housing development. In addition to establishing permanent funding sources, the housing package included laws intended to accelerate housing development by creating transparent, expedited, and streamlined approval process. Since 2017, the Legislature has continued to pass laws aimed at increasing housing production, most notably SB 330, the Housing Crisis Act.

Senate Bill 35 (SB 35)

Senate Bill 35 (SB 35) requires any jurisdiction that has not met its Regional Housing Needs Allocation (RHNA) goals to approve qualifying multifamily projects in a streamlined process. The Regional Housing Needs Allocation is determined by the California Department of Housing and Community Development; the State will determine the housing needs of that region by determining the total number of new homes the Bay Area will need to build and at what affordability level. In the Bay Area, the Association of Bay Area Governments will distribute a share of the region’s housing need to each city. Each city then updates the Housing Element of its Comprehensive Plan to show sites where the new housing units can be built and the policies and strategies to meet the housing needs.

Certain eligibility criteria must be met for a jurisdiction to be required to apply the streamlined approval process outlined in SB 35. SB 35 applies to cities that have produced fewer units of housing approved than were required for the regional housing needs assessment cycle for that reporting period or did not submit required Housing Element Annual Progress Reports to the state Department of Housing and Community Development (HCD) for two consecutive years.

SB 35 will be applicable to cities who have not met its RHNA goals or have not submitted their annual progress report. If cities are unable to meet its permitting goals in both lower and above moderate RHNA and/or have not met their Annual Progress Report, the, jurisdictions are required to apply a streamlined ministerial approval process to housing development projects proposing at least 10% on-site low income units, meaning prices affordable to households making less than 80% area median income. While, jurisdictions that made insufficient progress only towards lower income RHNA numbers are subject to a streamlined approval process for proposed developments with at least 50% affordability, or 50% of the total units are affordable to low income households of 80% area median income or below. For reference, 80% of the Area Median Income for a family of four is \$103,900.

Currently, the City of Palo Alto is required to apply a streamlined process for projects that propose 50% of the units as affordable to low-income households.

SB 35 enables an expedited review and approval process for eligible projects. Within 60 days of a submittal application, local jurisdictions must confirm the project’s eligibility. In addition, the

jurisdiction must provide a list of all inconsistencies with objective zoning and objective design standards at the time the application is submitted. As defined by Government Code 65400, “objective zoning standards” and “objective design review standards” mean “standards that involve no personal 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 prior to submittal.” If the agency does not provide this list within the required timeframe, the project is deemed eligible for streamlined, ministerial approval.

Housing Accountability Act Updates (including SB 167)

The Housing Accountability Act, first adopted in 1982, prohibits jurisdictions from reducing the density, disapproving, or conditioning approvals of certain housing development projects if they are consistent with objective general plan and zoning standards as they existed on the date an application was complete.

The Housing Accountability Act applies to several types of housing developments:

- 1) 100% residential projects;
- 2) Transitional and supportive housing;
- 3) As of January 1, 2018, mixed used projects with at least 2/3 the square footage designated for residential use.

Although Palo Alto has had relatively few applications for qualifying developments in recent years, the City’s focus on housing development and recent amendments to the Act highlight the importance of adopting objective standards.

Recent amendments to the Housing Accountability Act increased the burden of proof on jurisdictions to justify denial, or reduction of a housing development project and reduced the threshold that applicants must meet to have a project approved. Local jurisdictions must provide written findings supported by a “preponderance of the evidence” to substantiate disapproval. As defined by as defined by Government Code 65589.5, the local jurisdiction must find that both of the following conditions exist:

- “The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density.
 - A “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- “There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing

development project or the approval of the project upon the condition that it be developed at a lower density.”

On the other hand, a jurisdiction must conclude the project is consistent with the jurisdiction’s objective standards in its general plan and zoning code if there is “substantial evidence” that the project is consistent. In other words, an agency must find consistency with objective standards (and therefore approve a project) as long as there is relevant evidence to support that finding, even if the weight of the evidence is to the contrary.

Senate Bill 330 (SB 330) or the Housing Crisis Act

Senate Bill 330 (SB 330), the Housing Crisis Act, requires cities to create a preliminary application process that allows developers to freeze the applicable development standards by providing specific information regarding the proposed housing project. All jurisdictions must compile a preliminary application checklist that specifies what is required to complete a development application. The checklist must be made available in writing and on the jurisdiction’s website. Jurisdictions cannot request the applicant provide additional items not already on the checklist.

SB 330 also shortens the approval timeframe for housing projects from 120 days to 90 days following Council certification of an Environmental Impact Report, and only 60 days for low-income projects seeking tax credits or public funding. In addition, and most critically, as of January 1, 2020, jurisdictions will be prohibited from imposing new subjective design standards on housing developments where housing is an allowable use. The objective standards must be available for the public and must be used as the uniform benchmark.

Discussion

The City of Palo Alto was approved for funding in the maximum amount of \$310,000 under the state’s SB 2 Planning Grants Program. The one-time grant allows the city to update documents and processes that streamline housing approvals and accelerate housing production. The city was approved for funding for two projects:

- 1) the development of a homeowner toolkit to help facilitate more ADU production; and
- 2) prioritizing and identifying subjective standards in Title 18 that may need modification to become objective.

The City has retained a consultant, Lexington Planning (Lexington), to facilitate the implementation of the state laws described in this report. Lexington will review Palo Alto Municipal Code Title 18, which governs the permitting of housing projects. Lexington will identify subjective standards or criteria in Title 18 and recommend how the City can transform them into objective criteria that allow the City to meet the demands of state law while upholding local values. Lexington will focus on regulations addressing design and development standards, parking requirements, performance standards and context-based design criteria.

Along with staff, Lexington will receive preliminary feedback from city staff regarding subjective areas of the code and aspects of Title 18 that hinder the efficient review and entitlement of residential development applications. Lexington will present preliminary findings to the Architectural Review Board (ARB) in early 2020. The consultant will highlight areas of subjectivity in the current code and identify options and recommendations where existing language should be strengthened into objective standards.

Staff will include initial input from the ARB regarding areas in the city's standards and criteria that may need to be prioritized. Staff would like to receive ARB input on issues in the Zoning Ordinance with respect to ARB's review of multifamily residential and residential mixed-use projects. Staff will take initial comments, but staff and Lexington will follow up with ARB at three separate meetings with more details.

With recommendations and input from staff and the ARB, Lexington will prepare redlined changes to Title 18, and revise other existing subjective context-based design criteria.

ARB Roles

Currently, the ARB is charged with the design review of all new construction, including residential projects. As part of the ARB's review process, staff reviews the project for consistency with the City of Palo Alto Municipal Code, Zoning Ordinance, Architectural Review Board Ordinance and other regulations and guidelines. During the ARB's meeting and presentation, the ARB makes a motion to recommend approval of the project, recommend approval with conditions, continue the project to another hearing, or recommend denial of the project.

In light of the state legislation, the Director cannot deny or downsize a residential project on a subjective policy or design standards such as "compatibility" or "suitability." Instead, in order to deny or downsize a project that is consistent with all objective development standards, the City must find, based on a preponderance of the evidence, a "significant, quantifiable, direct, and unavoidable impact based on objective, identified written public health or safety standards, policies, or conditions as existed on the date the application was deemed complete."

The City relies on its discretionary review process to maintain the community's aesthetic standards for residential development. As stated, going forward, projects will be reviewed based on objective design review standards with consultation of the ARB to comply to current state law. Staff will continue to be responsible for determining conformance with the objective standards as part of the zoning compliance review. It is ARB's role to be involved upfront to ensure that the objective standards are comprehensive, in particular if there are any modifications needed to the context-based design criteria to ensure they are objective standards.

Environmental Review

This agenda item will not result in any action other than direction to staff to provide additional information or prepare ordinances for future consideration and action. As a result, this agenda item is not a project subject to review under the California Environmental Quality Act (CEQA).

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Attachments:

- ARB - Lexington Scope and Schedule (PDF)

¹ Emails may be sent directly to the ARB using the following address: arb@cityofpaloalto.org



STRENGTHENING OBJECTIVE STANDARDS

This scope of work describes the project understanding, work plan, timeline, and estimated fee proposal for preparation of objective standards and design guidelines related to implementation of Senate Bill (SB) 35 and the Housing Accountability Act.

UNDERSTANDING OF THE ASSIGNMENT

This project proposes to clean up existing zoning standards and guidelines to facilitate implementation of State law, clarify and illustrate objective standards for staff and applicants, and in turn facilitate the development of housing.

SB35. Under SB35 (Government Code Section 65913.4), projects with at least 2/3 residential floor area, that meet certain affordability requirements, and which are consistent with the City’s zoning and other “objective standards”¹ are eligible for a streamlined review process (90 to 180 days depending on the project size). No CEQA review is required and no discretionary review (e.g., ARB, PTC or Council review) is permitted. Projects near transit may take advantage of zero parking requirements.

HAA. The Housing Accountability Act (HAA) (Government Code Section 65589.5) acknowledges the lack of housing as a critical problem in California. The HAA protects two types of housing development projects: (1) developments that comply with objective standards and (2) developments that contain a minimum amount of affordable housing (either 20 percent of units for lower-income households or 100 percent of units for moderate-income) even if projects do not comply with all objective standards.

Modifications made to the HAA in 2018 tightened the definition of “objective standards” to state that a project must be considered consistent with objective standards as long as "there is substantial evidence that would allow a reasonable person to conclude" that a project complies. The 2018 revisions also increase the jurisdiction’s burden of proof. A local

¹ The terms “objective zoning standards” and “objective design review standards” are narrowly defined to mean “standards that involve no personal 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 prior to submittal.”

government that disapproves or reduces the size of a housing project must now meet the higher "preponderance of the evidence" standard, rather than the "substantial evidence" standard.

Code Changes. Currently, Title 18 (Zoning) of the Palo Alto Municipal Code contains a range of objective standards (e.g., heights, FARs, parking standards, retail preservation requirements) as well as subjective guidelines (e.g., context-based design criteria). Working with City staff and the Architectural Review Board (ARB), the consultants will help:

- Prioritize and identify a selection of subjective guidelines in Title 18 that should be revised to become objective standards;
- Refine design guidelines by use/housing/district type;
- Add new objective standards to complement existing standards, guidelines, and adopted policy goals;
- Add zoning graphics and an architectural review checklist to clarify objective standards for staff and applicants; and
- Clarify the SB35 application process for applicants through preparation of forms and submittal requirements.

The project will prioritize review and possible modification of residential standards and guidelines. However, since SB35 and the HAA cover both residential-only and residential mixed use projects, consultants will also address commercial regulations within the residential mixed use context.

CEQA Review. The ordinance revisions are expected to be categorically exempt under CEQA and/or covered by the CEQA documents prepared for the Comprehensive Plan and SOFA Coordinated Area Plan. The project aims to facilitate implementation of State law. The project does not propose to increase development beyond what was analyzed in the Comprehensive Plan or the SOFA Coordinated Area Plan.

SCOPE OF WORK

Lexington Planning (LEX) and Raimi + Associates (R+A) will complete the following tasks. A draft timeline of activities is identified in the sequence and timeline section below.

1. **SB35 Checklists (LEX).** Review eligibility and submittal requirements checklists, already drafted by City staff. Revise as needed based on coordination with Planning and other department staff members and to ensure consistency with State law. The submittal requirements and any public notification requirements should be codified in the Zoning Ordinance, or cross-referenced if adopted by resolution.

2. **Title 18 Code Review (LEX, R+A).** Review Title 18 sections where residential is permitted or conditionally permitted and subsections affecting residential or residential mixed use projects. Focus on district regulations addressing design and development standards, parking requirements, performance standards, and context-based design criteria. LEX will review all code sections listed below with a focus on development regulations, parking, and performance standards; R+A will focus on design standards and context-based design criteria. The deliverable will be an informal redline annotated version of the existing code to be discussed with staff. This review will include the following code subsections:

- 18.10 Low Density Residential (R-E, R-2 and RMD) Districts
- 18.12 R-1 Single-Family Residence District
- 18.13 Multiple Family Residential (RM-20, RM-30 and RM-40) Districts
- 18.16 Neighborhood, Community, and Service Commercial (CN, CC and CS) Districts
- 18.18 Downtown Commercial (CD) District
- 18.20 Office, Research and Manufacturing (MOR, ROLM, RP and GM) Districts
- 18.23 Performance Criteria for Multiple Family, Commercial, Manufacturing and Planned Community Districts
- 18.30 Combining Districts:
 - 18.30(A) Retail Shopping (R) Combining District Regulations
 - 18.30(B) Pedestrian Shopping (P) Combining District Regulations
 - 18.30(C) Ground Floor (GF) Combining District Regulations
 - 18.30(J) Affordable Housing (AH) Combining District Regulations
 - 18.30(K) Workforce Housing (WH) Combining District Regulations
- 18.34 Pedestrian and Transit Oriented Development (PTOD) Combining District Regulations
- 18.40 General Standards and Exceptions:
 - 18.40.130 Landscaping
 - 18.40.180 Retail Preservation
- 18.52 Parking and Loading Requirements
- South of Forest Area (SOFA) design guidelines and development standards (Chapters 4 and 5)

3. **Coordination with City Staff (LEX, R+A).** Regularly check in with long-range and current planning staff, through phone calls and in-person meetings, to identify issues

and options for developing objective standards and to review draft ordinance changes.

4. **Issues & Options Memo (LEX, R+A).** Based on review of Title 18 in Task 2 and preliminary feedback from City staff in Task 3, prepare a memo outlining the key issues and options. The memo will highlight areas of subjectivity in the existing code and identify options and recommendations where existing language should be strengthened into standards and clarified with graphics, and/or where new standards may be warranted. R+A will address issues and options related to the context-based design criteria, reorganizing design guidelines, and graphic communication. This memo will be discussed and revised with City staff as part of Task 3 and then presented to the ARB in Task 5 to help prioritize and draft the ordinance.
5. **Architectural Review Board Meetings (3) (LEX, R+A).** Work with the ARB over three meetings to confirm key issues, prioritize standards and design guidelines for modifications, and review the draft ordinance changes. LEX will prepare staff reports, attachments, and presentations for each meeting.
 - Meeting 1: Project overview; review Issues & Options Memo; listen to feedback ARB: what is working, what is not working, priorities for standards
 - Meeting 2: Review and feedback on preliminary draft ordinance components and preliminary graphics
 - Meeting 3: Review and feedback on draft of Ordinance, graphics and Architectural Checklist
6. **Draft Ordinance (LEX, R+A).** Prepare redline changes and new or modified standards for Title 18, including development regulations, parking, design, and performance standards. Revise existing and develop new objective standards from the subjective context-based design criteria. This scope assumes that the City Attorney's office will be responsible for preparation of the draft and final ordinance, with significant input from consultants.
7. **Objective Standards and Guidelines Graphics and Architectural Checklist (R+A).** Consolidate and revise context-based design criteria to identify design standards and design guidelines by district and/or housing type. Prepare zoning graphics to complement existing and/or new text standards in the Ordinance. Develop a Design Standards and Guidelines Architectural Checklist for development proposals and staff review. The budget estimates the hours needed to prepare and revise graphics in response to staff and decision-maker feedback. However, a

contingency budget is identified for additional rounds of review or graphics preparation beyond the base scope.

8. **Planning & Transportation Commission Meetings (2) (LEX).** Present ARB recommendation to the PTC over two meetings. LEX will prepare staff reports, attachments, and presentations for each meeting.
9. **City Council Meetings (2) (LEX).** Present ARB/PTC recommendation to the City Council over two meetings (first and second reading). LEX will prepare staff reports, attachments, and presentations for each meeting.

SEQUENCE & TIMELINE

A 13-month timeline for completion is outlined below, based on an August 1, 2019 notice to proceed.

Timeline, By Task

Key Tasks/ Dates	Code Review	Coordination with Staff	Issues & Options/Draft Ordinance Prep	Ordinance Revisions
Aug 2019				
Sept 2019				
Oct 2019				
Nov 2019				
Dec 2019				
Jan 2020				ARB Meetings
Feb 2020				
Mar 2020				ARB Recommendation
Apr 2020				PTC Meeting
May 2020				
Jun 2020				PTC Recommendation
July 2020				First Reading
Aug 2020				Second Reading