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August 2, 2019

The Honorable Senator Jim Beall
State Capitol, Room 2082
Sacramento, CA 95814

The Honorable Assemblymember Marc Berman
State Capitol, Room 6011
Sacramento, CA 95814

The Honorable Assemblymember Evan Low
State Capitol, Room 4126
Sacramento, CA 95814

Re: Smaller Cities Feel Brunt of SB 35's Unintended Consequences

Dear Senator Beall, and Assemblymembers Berman and Low:

In 2017, the State Legislature altered more than a century of land use law when it passed SB 35. SB 35 requires all California cities to approve residential and mixed-use projects that propose a certain percentage of affordable housing units through an expedited, streamlined process. While the objective of SB 35 was laudable and was clearly a response to the affordable housing that communities throughout the state need, this legislation created a number of unintended consequences, particularly for smaller cities like Cupertino.

Cupertino was one of the first jurisdictions in the state to receive an SB 35 application. Our experience demonstrates the harm that can come from allowing corporate interests to build whatever they want, regardless of the consequences, as long as they provide some affordable housing, even if none of the affordable housing is suitable for families with children.

Shortly after the statute was adopted, a well-funded developer submitted an application for a high-rise mixed-use project in the heart of Cupertino. The Vallco project includes a staggering 1.81 million square feet of office space. Yet, this office-dominated project qualified for SB 35's streamlining benefits because SB 35 applies to "mixed-use" developments, not just housing projects.

Cupertino Wants to See More Affordable Housing Developed

Cupertino's elected leaders are painfully aware that we need more housing in our community, especially affordable housing. Cupertino has acted in good faith, consistent with state mandates designed to encourage housing development for all income levels. The City's Regional Housing Needs Allocation calls for 1,064 units in the current planning cycle, which runs through 2022. With more than three years to go we have currently entitled 1057 units, including three multi-family and one 100% affordable housing project prior to the passage of SB 35. Additionally, the City has approved Below Market Rate (BMR) Rental and Purchase Programs. Among the provisions in the housing mitigation manual is a requirement for BMR units to be comparable in size as market-rate units, so that there is adequate housing for low-income individuals and families alike. Cupertino is working to provide affordable housing for its residents, and it is concerned that SB 35 has unintended consequences that run counter to these efforts.

SB 35's Definition of Mixed Use is Too Broad

While most people think of mixed-use projects as housing above ground floor retail, SB 35 does not define it as such. The non-residential parts of the towering Vallco project will bring over 8,700 new jobs to Cupertino, but the project provides only 2,402 new housing units. According to LAFCO, Cupertino presently enjoys the second-best jobs/housing balance of job-rich cities in Santa Clara County. We have been extremely conservative in terms of approving new commercial office space without approving commensurate new housing. (The new Apple campus largely replaced or relocated existing jobs). Using targets recommended by planning experts, the ratio of jobs to housing units should be around 1.5 new jobs for every new housing unit constructed. By those guidelines, the Vallco project is about 3,400 housing units short of what is needed to maintain a sustainable jobs/housing balance.

By contributing to the jobs/housing imbalance in Cupertino (i.e., providing far more jobs than residences for workers), the project reduces the quality of life for residents and workers alike by increasing traffic congestion, which leads to increased air pollution and climate change impacts. Moreover, the developer provided only studios and one-bedrooms for its affordable housing units—which won't help Cupertino's low-income working families find housing.

SB 35 Allows Uses Other than Living Space to Count as "Residential"

While SB 35 requires a project to designate at least two-thirds of its square footage to residential use, the actual living space devoted to housing units for the Vallco project is less than one-third of its square footage (housing units comprise 2.24 million square feet of 6.86 million total square feet). The rest of the project's "residential" space consists of parking, walkways, utility spaces and other amenities. Overall, less than eight percent of the total project area is devoted to affordable housing units.

SB 35 Allows Developers to Play Fast and Loose with Required Public Amenities

The Vallco developer argued that a disparate patchwork of privately-owned greenspaces several stories in the air qualifies as a City park in its SB 35 project application. Vallco claimed that this definition of a park was allowed under SB 35 because the City's Code does not proscribe every conceivable deviation from a desirable public amenity as an "objective standard" with which parks must comply.

SB 35 Limits a City's Power to Mitigate Harm from Development

SB 35 eliminates essential tools cities have relied on for decades to ensure that negative impacts are mitigated by the businesses who stand to profit from development. Because the Vallco SB 35 project could not undergo any environmental review, Cupertino was unable to require project-specific mitigation for impacts it knew would be significant including: air quality, noise, traffic, cultural resources, climate change, and hazardous materials.

Similarly, SB 35 overrode the City's community planning process it had previously required for the site. Cupertino's General Plan requires a Specific Plan for the Vallco site. But under SB 35, there was no opportunity to shape the project to match the City's vision, address resident concerns, or avoid significant impacts. The City was in the middle of drafting a Specific Plan that would have set comprehensive development standards for the site when Vallco submitted its project application. But because SB 35 required processing the application based on standards in effect at the time of submittal, the developer was able to argue that *no* height limits could be applied to this project. The approved project includes seven 240-foot high towers that are twice as tall as any building the City ever envisioned permitting at this site. Large businesses adjacent to the site, as well as residents living near the site, are unhappy with the proposed heights.

The Vallco Project is a Cornerstone of Cupertino's Future

In 1976, the Vallco Fashion Park opened and since that time has served as the only shopping mall in the City of Cupertino. Over the year, the mall served as an integral part of the City, offering visitors and residents with recreational opportunities, including an ice rink, bowling alley, movie theaters and fitness clubs. In addition to serving as a local gathering spot, the mall provided the City with a steady stream of tax revenue, which was able to be reinvested into the community to provide continued benefit for residents.

As retail patterns changed, and with the growth of online retail options, traffic to Vallco slowed and ultimately the site was purchased. The City of Cupertino wanted to preserve the Vallco site as a community asset and ultimately amended the City's General Plan to allow for 389 units of housing and two million square feet of office space, provided that a site specific plan was approved by May 31, 2018. The City Council continued to work with the developer, and members of the community, to come up with an iconic project that would revitalize the Vallco site, knowing that it could fall back on the General Plan, if no site specific plan could be put into place. While the City was still working to collect input on the site specific plan, the current project was submitted under the provisions of SB 35.

The City Council, and residents of Cupertino, understand that the Vallco site will play a vital role in the community moving forward. The need to balance the site as a location for employment opportunities, recreational space, and housing for individuals and families is of great importance to the City.

SB 35 Should be Updated to Address Concerns

We respectfully request the Legislature consider amending SB 35 to address its unintended consequences. Ideally, amendments would:

- Rein in the amount of non-residential development allowed in SB 35 projects to avoid adding more jobs than housing to communities like Cupertino.
- Define Mixed Use developments in SB 35 projects to cap the amount of office space to a reasonable ratio to the number of housing units built.
- Clearly define the size and style of affordable housing units in SB 35 developments to ensure at least some below market rate units can accommodate families.
- Refine what uses count as “residential” when calculating square footage for SB 35 projects, including limiting the percentage of residential amenities, so that there is maximum space for living units.

Looking forward, we respectfully request that proposed housing bills such as SB 330 and SB 592 recognize that many jurisdictions require specific plans or other comprehensive plans for key sites, and allow local governments time to develop objective standards to apply to project approvals.

Lastly, rather than cutting local governments out of the planning process, I urge the Legislature to provide funding and other support to cities to build truly affordable housing close to job centers. Cities like Cupertino have no control over key factors in development patterns like labor and land costs. As a result, approved units do not always translate into the timely construction of housing, as only 19 units out of the 1057 approved are under construction and we have no means to force developers to use their RHNA entitlements. The Legislature should work to address the affordable housing crisis by introducing housing legislation that compels developers that ask for, and receive, RHNA entitlements to actually construct the housing they requested.

Rather than steamrolling over local governments, the Legislature should look for opportunities to collaborate with municipalities to address the affordable housing crisis.

Sincerely,



Steven Scharf
Mayor, City of Cupertino

CC: Hon. Toni G. Atkins, Senate President pro Tempore
Hon. Shannon Grove, Senate Republican Leader
Hon. Anthony Rendon, Speaker of the Assembly
Hon. Marie Waldron, Assembly Republican Leader
Hon. Scott D. Wiener, Chair, Senate Housing Committee
Hon. Mike Morrell, Vice Chair, Senate Housing Committee
Hon. Patricia C. Bates, Member, Senate Housing Committee
Hon. Anna M. Caballero, Member, Senate Housing Committee
Hon. Maria Elena Durazo, Member, Senate Housing Committee

Hon. Mike McGuire, Member, Senate Housing Committee
Hon. John M.W. Moorlach, Member, Senate Housing Committee
Hon. Richard D. Roth, Member, Senate Housing Committee
Hon. Nancy Skinner, Member, Senate Housing Committee
Hon. Thomas J. Umberg, Member, Senate Housing Committee
Hon. Bob Wieckowski, Member, Senate Housing Committee
Hon. David Chiu, Chair, Assembly Committee on Housing and Community
Development
Hon. Tyler Diep, Vice Chair, Assembly Committee on Housing and Community
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Hon. Jesse Gabriel, Member, Assembly Committee on Housing and Community
Development
Hon. Todd Gloria, Member, Assembly Committee on Housing and Community
Development
Hon. Kevin Kiley, Member, Assembly Committee on Housing and Community
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Hon. Monique Limón, Member, Assembly Committee on Housing and Community
Development
Hon. Brian Maienschein, Member, Assembly Committee on Housing and
Community Development
Hon. Sharon Quirk-Silva, Member, Assembly Committee on Housing and
Community Development