



## City Council AGENDA REPORT

**DATE:** 11/10/2021

**AGENDA OF:** 11/23/2021

**DEPARTMENT:** City Attorney

**SUBJECT:** Consider Motion to Rescind the City Council's October 12, 2021 Denial of the 831 Water Street Development Project (CA/PL)

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**RECOMMENDATION:** Motion to:

- 1) Consider rescinding the decision to deny the 831 Water Street project and direct staff to review the additional materials provided by the applicant to determine if the project can be brought into substantial compliance with the City's objective zoning, subdivision and design standards;
  - 2) Consider scheduling follow-up public oversight hearing at December 14, 2021 City Council meeting; and
  - 3) Direct staff to complete the Senate Bill 35 objective standards consistency review in light of new information.
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**BACKGROUND:** The proposed mixed-use application to develop a 50% affordable housing project at 831 Water Street ("Project") seeks streamlined ministerial review under Senate Bill 35 ("SB 35") found at Government Code section 65913.4. If approved as proposed, the project would receive ministerial permits not subject to environmental review in order to construct deed-restricted affordable housing in a four (4) story building and market rate housing and live/work commercial units in a five (5) story building.

Under Section 65913.4(c), the City Council is authorized to provide "public oversight" and review objective standards that apply to an SB 35 project. At a special meeting on September 7, 2021, the City Council directed "that applications involving requests for both Affordable Housing Streamlined Ministerial Approval and Density Bonus require City Council to make the determination of consistency with objective standards and to consider for approval any associated Density Bonus requests as part of a public oversight meeting to occur within 60 days of receipt of applications for a project with 150 or fewer units or 90 days of application receipt for a project with more than 150 units." At its regularly scheduled meeting on October 12, 2021, the City Council provided public oversight after its review of staff's agenda report and a voluminous table evaluating objective standards that apply to the Project. After much consideration, the City Council adopted a motion denying the project and finding that the Project did not comply with SB 35 because it failed to meet the City's objective standards, that the staff report indicated that the applicant had failed to submit all of the necessary materials to review

compliance (storm water management plan, drainage plan, traffic and noise studies), and that the segregation of affordable units into a single building violated state and federal anti-segregation laws.

Based on these findings, the City Council found that the Project did not qualify for streamlined ministerial review under SB 35 for failure to comply with the City's objective zoning, subdivision and design standards and did not qualify for a density bonus concession/incentive to segregate affordable units as a violation of state and federal law within the meaning of Government Code section 65915(d)(1)(C).

During oral communications at the regular meeting of October 26, 2021, Rafa Sonnenfeld, speaking on behalf of YIMBYLaw (a non-profit corporation that has filed multiple lawsuits under SB 35 and the Housing Accountability Act ("HAA")), alleged that the Council's action was illegal and stated YIMBYLaw's intent to file suit against the City under SB 35 and the HAA unless the Council changes course by its November 23, 2021 meeting.

Prior to October 14, 2021, the final date for the City to make a consistency determination under the 60-day timeframe provided for local governments under Gov Code 65913.4(b)(1)(A), the applicant provided additional materials that could bring the project into substantial compliance. Additional material has been submitted since October 14th, and the applicant and staff have been in communication as to a process for reevaluating the project in light of these additional submittals. Those materials are posted online at [www.cityofsantacruz.com/831Water](http://www.cityofsantacruz.com/831Water). In addition, on November 9, 2021, the City received a letter from Shannan West, Housing Accountability Unit Chief for the California Department of Housing and Community Development, which has promulgated regulations implemented SB 35, stating that the City Council's determination that locating the market rate units and the affordable units in separate buildings misconstrued the law.<sup>1</sup> The City Attorney received also received a letter from the applicant's attorney on November 9, 2021, taking the same position as HCD.<sup>2</sup>

**DISCUSSION:** A motion to rescind an action taken by the City Council can only be made at a subsequent meeting. In closed session on November 9th, 2021, given the credible threat of litigation by YIMBYLaw and further communications between the applicant and its counsel and staff and the City Attorney's office, the City Council has directed staff to place the item on the November 23, 2021 agenda to consider a motion to rescind and to discuss a process for re-examining the Project's conformance with objective standards in light of the additional materials provided by the applicant, including materials to address whether the integration of affordable units with the market-rate units is required given the conflict between state laws. In subsequent communications the applicant, through his attorney, has agreed to extend the 90 deadline specified by SB 35 to December 16, should the Council follow-through and rescind the October 12, 2021 motion denying the project. The additional time would enable City staff to complete the objective standards review in light of the subsequently produced material, and the Council to conduct the public oversight at its December 14th meeting.

Any Councilmember, with the exception of the presiding officer, may make a motion to rescind a prior City Council Action. A City Council action may not be rescinded on the same day the action was taken, but may be rescinded at any subsequent meeting of the City Council.

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<sup>1</sup> See Attachment 1.

<sup>2</sup> Attachment 2.

Nothing would prevent the City Council from again considering at a future Council meeting an item it had considered and acted upon at a prior Council meeting, including an item to rescind, and taking further action upon that item at variance with the prior Council action to supersede that prior action.

**FISCAL IMPACT:** The threat of litigation on these complicated and novel issues could result in an initial victory and the requirements to defend an appeal. Costs of the litigation alone would be substantial. If the City were to lose on appeal it would be responsible for costs and attorney fees. SB 35 losses in other jurisdictions have resulted in awards in the millions of dollars with courts directing local jurisdictions to approve the SB 35 project that was the subject of the litigation. Given the state of the housing crisis in California, most SB 35 project denials have been struck down or are currently on appeal.

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**ATTACHMENTS:**

1. LETTER FROM HCD DATED NOVEMBER 9, 2021.PDF
2. LETTER FROM AMARA MORRISON DATED NOVEMBER 9, 2021.PDF
3. LETTER FROM AMARA MORRISON DATED NOVEMBER 12, 2021.PDF
4. LETTER FROM AMARA MORRISON DATED NOVEMBER 17, 2021.PDF