



**COMMUNITY DEVELOPMENT DEPARTMENT**  
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## **CITY COUNCIL STAFF REPORT**

Meeting: June 30, 2015

### SUBJECT

Study Session on Policy for Processing General Plan Amendment Applications.

### RECOMMENDED ACTION

Recommend that the City Council conduct a study session and comment on the proposed procedures for processing General Plan amendment applications (Attachment A).

### DESCRIPTION

Application No.: CP-2015-02  
Applicant: City of Cupertino  
Property Location: City-wide

### BACKGROUND

On May 19, 2015, the City Council reviewed the Final 2014-2022 Housing Element, the General Plan for potential changes to development allocations for commercial, office and hotel uses, building heights and building planes, and the proposed policy for establishing procedures for processing General Plan Amendment (GPA) applications (Attachment B).

At that meeting the Council provided the following direction on the proposed policy to establish procedures for processing General Plan Amendment applications:

- Directed staff to present additional details on other programs that require community benefits such as the Cities of Mountain View and Morgan Hill.
- Deferred the decision on the policy for approximately 90 days.
- Placed new GPA applications on hold until a decision is made on the policy.

### DISCUSSION

This report focuses on the following issues:

- Comparison of incentive zoning, growth allocation and land use regulation models that allow for community benefits in various cities;
- A description of the recommended policy on processing GPAs; and
- A comparison of current GPA process vs the recommended process.

***Comparison and Conclusions from Study of Incentive Zoning, Growth Allocation and Land use Regulation Models that allow for Community Benefits***

A white paper prepared for the Council meeting on May 19, 2015, provided the pros and cons of various incentive zoning, growth allocation and land use regulation models and provided general guidance on developing a policy that addressed Cupertino's concerns and particular needs for managing growth (Attachment C). Upon reviewing the pros and cons for the different programs administered by the various cities, staff recommended a policy for processing applications for GPAs, which was presented at the May 19 City Council meeting (Attachment A).

Per further direction from the City Council at the May 19, 2015 meeting, a follow up white paper has been prepared that includes a more detailed discussion of programs implemented by the Cities of Berkeley, Santa Monica, San Diego, Mountain View and Morgan Hill (see Attachment D). Table 1 provides a comparison summary of the different types of models studied on different aspects of the programs including:

- Whether the growth is built in to the General Plan and the Zoning Code;
- Types of Community Benefits received/expected in exchange for incentives offered;
- Discretion in project review; and
- Challenges and ease of administration of the program.

**Table 1: Comparison of Programs that have Community Benefit component**

	<b>Growth Built in to General Plan and Zoning Code?</b>	<b>Community Benefits</b>	<b>Discretion in project review</b>	<b>Administration</b>
<b>Formulaic Zoning Incentive Programs (e.g. City of San Diego Downtown Community Plan)</b>	Yes	Predefined	Minimal	<ul style="list-style-type: none"> <li>▪ Minimal</li> </ul>
<b>Discretionary CBIZ Programs (e.g. City of Berkeley Downtown Area Plan)</b>	Yes	Negotiated	Moderate	<ul style="list-style-type: none"> <li>▪ Protracted negotiation</li> <li>▪ Lack of transparency</li> <li>▪ Lack of consistency</li> </ul>
<b>Growth Allocation Metering Programs (e.g. Cities of Morgan Hill, Brentwood, Livermore, Mountain View)</b>	Yes	Competition based	Moderate	<ul style="list-style-type: none"> <li>▪ Less flexible</li> <li>▪ Cumbersome involving detailed criteria, scoring and checklists</li> </ul>
<b>Land Use Regulation</b>	No	Could be structured to be competition based	Maximum except Housing Element projects	<ul style="list-style-type: none"> <li>▪ Transparent</li> <li>▪ Allows project preview</li> <li>▪ Applicant to offer appropriate voluntary community amenities.</li> </ul>

The following is a summary of conclusions based on the review of the various Community Benefit Incentive Zoning (CBIZ) models, Growth Allocation models and the consideration of land use regulation as a community benefit model:

1. Formulaic zoning incentive programs (e.g., City of San Diego Downtown Community Plan) provide less discretion since the development incentives and community benefits are predetermined and codified by zoning.
2. Discretionary zoning incentive programs (e.g., City of Berkeley Downtown Area Plan) require protracted negotiation and discussion before the City can determine that a project applicant's offer of "substantial community benefits" warrants granting of a bonus in height or floor area ratio. Also, the lack of specific criteria can lead to lack of transparency, difficulty in administering the program and lack of consistency between projects. A discretionary CBIZ program also would require updates to the zoning code.
3. Metering residential development annually (e.g., Morgan Hill, Brentwood, Livermore) would require changes to the recently adopted Housing Element and additional HCD review. The City also would need to ensure that any metering program would still allow its housing obligations to be met. Even if the process is implemented only for non-residential development, the program provides little flexibility and is cumbersome to administer. Such a program would require a process that involves detailed criteria, scoring, and a specific checklist of community benefits, as well as deadlines for processing and building of development.
4. A development cap or metering approach establishes a supply constraint which may support a competitive process. When market demand exceeds supply, projects may be required to showcase community benefits in order to be considered for processing. The Mountain View and Morgan Hill case studies offer good examples of this type of process. In both cities, competition for project entitlements has generated substantial public benefits from new development, but the programs are labor intensive for City Staff to implement and the success of the competition is highly dependent on market conditions. In addition, these processes introduce additional investment risk for development investors active in the community, due to increased uncertainty about project approval.
5. Growth allocation programs implement growth planned in the General Plan, and can achieve community benefits. However, while these programs work well in years in which there are projects competing for development, in years during which there are fewer projects competing community benefits offered are not as significant.
6. A process that provides procedures for General Plan Amendments can provide the most flexibility, because development assumptions are not already built in and cities have discretion to amend their General Plans, except with respect to legal requirements for Housing Elements. This approach would provide the ability for the City to review a

development proposal and determine if it meets the goals and quality of life standards of the City, such as through the provision of community amenities. If multiple proposals for general plan amendments are submitted, based on the case studies examined here, it seems likely to increase the community amenities offered by project proponents, particularly when economic conditions are strong.

In considering options to address growth, manage development, and respond to the community concerns, the following should be achieved by any program implemented:

- Ability to achieve goals of General Plan
- Ease of implementation
- Desire for flexibility versus specific requirements (as in a General Plan or zoning)
- Ensure a diverse and vital economic base
- Ensure the City can meet its housing obligations
- Ability to achieve orderly development of the City through a managed process
- Ensure that additional development can achieve/improve facility/service and quality of life standards for the community

The recommended procedures for processing of General Plan amendment applications achieves the above goals and also ensures a greater level of transparency and public input.

The discussion below provides a brief discussion of the current procedures and additional details on the recommended procedures. In addition, see Attachment E for a summary flowchart showing a comparison of the current and proposed procedure.

### ***Current Procedure for Processing General Plan Amendment Applications***

Currently, GPA applications are processed as they are received. Project review is completed concurrently to ensure that other aspects of the General Plan and zoning regulations are met by the project. If a Development Agreement is sought by the applicant, one is negotiated at this time, including any items that are offered by the applicant as community benefits. Environmental review for the proposed project is processed concurrent with project review. Upon completion of the environmental and project review, public hearings are scheduled with the Planning Commission and City Council for a final decision on the environmental review, project, proposed General Plan Amendments and Development Agreement, if any.

Public input notification is provided through neighborhood noticing, legal notices for meetings and site signage. Public input is sought through neighborhood meetings and at hearings at the Planning Commission and City Council. However, since each application is processed separately, neither the Council nor the public have a chance to get a preliminary look at the applications before they are processed.

Therefore, the current process is not as transparent, does not allow comparison of applications, received and being processed, in a given year, does not consider issues such as early public input, achievement of key City goals, and time and resource requirements, prior to processing these applications. Additionally, since each application is reviewed separately and applicants do not compete for authorization with other projects, there is no incentive for the applicant to offer community amenities.

### *Proposed Procedure for Processing General Plan Amendments Applications*

Under the proposed procedure, GPA applications would not be processed as they were received. Instead the following process would be applied:

- All GPA applications would have to be submitted by a certain date every year in order to be considered for processing that year.
- The GPA applications would be scheduled for a Council meeting once a year, at which the Council would authorize applications for processing.
- Public input would be sought by sending a city-wide postcard and providing project information on the City website.
- Project information would include conceptual plans, community amenities, General Plan amendments sought and other features proposed by applicants.
- The Council would consider the following criteria when deciding whether or not to authorize GPA applications:
  - General Plan goals achieved by the project;
  - Quality of architectural and site design;
  - Fiscal impacts of the project;
  - Affordable housing provided by the project;
  - General Plan amendments (and/or other variances) sought by the project; and
  - Voluntary community amenities provided by the project
- The Council decision would authorize the applicant to submit an application for the GPA. It would not guarantee approval of projects. Projects authorized to proceed, would then be processed as they are currently. Council's final decision on each project would be made after reviewing all aspects of the proposal including site and architectural design, environmental review, public input, etc.
- If multiple GPA projects were authorized for processing, each project would be reviewed and staff would ensure that they were brought for Council review in a manner that would not exceed four GPAs per calendar year. Projects could also be bundled together as needed so as not to exceed four per year.
- Projects not authorized in the current annual period would have to re-apply, potentially with changes, for consideration during a subsequent annual period.

An annual review and authorization process would ensure:

- *Transparency* – the public would get a chance to review the projects and provide input before the applications were authorized for processing. In addition, this would give the public notification on which projects would be processed and allow them to be informed on each project.
- *Early Input* – the Council meeting would enable the applicant and staff to consider comments from the Council and the public as the project was reviewed.
- *Voluntary Community Amenities* – the annual process would allow projects to compete. As noted in the review of programs in other cities including Morgan Hill and Mountain View, such a process would incentivize applicants to shape their applications and offer voluntary community amenities to increase their chances for being considered for processing.

Staff therefore recommends that the Council adopt the new procedures on processing of General Plan amendment applications either via resolution or by ordinance.

***Policy or Ordinance***

The procedures for processing General Plan amendments could either be adopted by resolution or by ordinance. Adopting it as a resolution would make it an official Council policy and could be amended through a subsequent resolution. Adopting the procedures as an ordinance would make it part of the City’s Municipal Code and could be amended via an ordinance amendment. Depending on direction provided by the City Council, staff can prepare either for presentation at a future public hearing.

**PUBLIC NOTICING, OUTREACH AND COMMENTS**

***City Council Study Session– June 30, 2015***

The following table summarizes the noticing for this meeting:

Notice	Agenda
<ul style="list-style-type: none"> <li>▪ Courtesy email sent to all interested parties signed up through the project website</li> <li>▪ Newspaper Display Ad (at least <i>10 days prior to hearing</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ City's official notice bulletin board (<i>6 days prior to the hearing</i>)</li> <li>▪ City of Cupertino’s website (<i>6 days prior to the hearing</i>)</li> <li>▪ Project website (<i>5 days prior to hearing</i>)</li> </ul>

**NEXT STEPS**

If the Council adopts the policy, a deadline for the first annual review of applications will be established and the policy will be implemented for all applications received thereafter. If

the Council prefers an ordinance approach, staff will follow the process for ordinance amendments.

If the Council decides not to adopt the policy for authorization of General Plan amendment applications, the City would continue with the current procedure of processing General Plan amendment applications as they are submitted.

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Reviewed by: Aarti Shrivastava, Assistant City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

- A - Proposed procedures for Processing General Plan Amendment applications
- B - May 19, 2015 City Council Staff Report
- C - White Paper on Development Management Programs dated May 8, 2015
- D - Supplemental White Paper on specific Development Management programs dated June 24, 2015
- E - Flowchart comparing the current and proposed procedure for processing General Plan amendment applications