



**CITY OF BELVEDERE PLANNING COMMISSION
STAFF REPORT**

REPORT DATE: 4/20/2021 **AGENDA ITEM: D1**
MEETING DATE: 4/28/2021
TO: City of Belvedere Planning Commission
FROM: Irene Borba, Director of Planning and Building
REVIEWED BY: Emily Longfellow, City Attorney
SUBJECT: Presentation and Discussion of Objective Design and Development Standards

RECOMMENDATION

Staff recommends that after consideration of the staff report, presentation by the consultants, and public comments that the Planning Commission raise any questions and comments or provide direction to staff and the subcommittee.

No formal action will be taken at this meeting. Based on the feedback received from the Planning Commission, staff will continue to work with the appointed subcommittee of the Commission (Mark, Carapiet and Hart) to discuss implementation of the toolkit and to conduct further review and customization of the *Belvedere* draft of the ODDS Toolkit and return to the Planning Commission at a future meeting for its recommendation to the City Council regarding a Municipal Code amendment to implement the ODDS toolkit.

BACKGROUND

As explained further below, several recent State housing laws prohibit local governments from imposing discretionary design standards on certain qualifying projects, while allowing a compliance with “objective” design and development standards. Here, the objective design and development standards before the Planning Commission are intended for use in situations where State law requires “objective” standards, and the City is prohibited from utilizing non-objective standards, for example, found in the Design Review Ordinance.

The City was awarded a \$160,000 grant in 2019 under SB Bill 2 (SB 2), the “Building Homes and Jobs Act” to work on a collaborative effort with other Marin County jurisdictions on projects, including the development of Objective Design and Development Standards (ODDS) for *multi-family* projects. The grant money received by the City has been utilized to jointly hire a consultant team for projects, including: 1) the creation of objective design and development standards; and 2) development of an accessory dwelling unit (ADU) workbook and website.

The City of Belvedere is working with Marin County and nine other Marin County cities/towns on the development of a “toolkit” for creating Objective Design and Development Standards for individual jurisdiction’s multi-family and mixed-use development projects. This effort is intended to result in new design standards that provide clear parameters for certain types of multi-family and mixed-use housing projects in Belvedere. In order to save costs and pool resources, the initial “toolkit” provided by the consultants was wide-ranging and developed for use in a variety of

jurisdictions. It was intended that each specific jurisdiction would tailor its own standards to suit its needs, based on the options presented in the “toolkit”.

PURPOSE

The purpose of developing the ODDS toolkit is three-fold; it addresses current and future State housing legislation intended to limit local jurisdiction’s discretion related to the approval or denial of *multi-family* housing, it provides the City with necessary tools for a successful Housing Element adoption process, and it furthers the City’s stated housing policies and goals as stated in its General Plan and Housing Element.

DISCUSSION

Housing Legislation

Several State laws have been adopted in recent years that allow for by right and streamlined approvals for qualifying multi-family and mixed-use projects based on satisfying “objective” development standards. Objective standards are defined in state legislation as “involving no personal or subjective judgement by a public official” and “standards that are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowledgeable by both the development applicant or proponent and the public official prior to submittal.”

The most notable bills that allow for by right and streamlined approvals for multi-family housing projects include Senate Bill (SB 35), SB 330 (Housing Crisis Act of 2019) and the Housing Accountability Act. Below for reference, please find brief descriptions.

Senate Bill 35

SB 35, which became law on January 1, 2018, created a streamlined and *ministerial* approval process for certain housing projects, at the request of a developer, in a jurisdiction that fails to issue building permits for its share of the regional housing need by income category during the eight-year Regional Housing Needs Allocation (RHNA) cycle.

SB 35 is intended to increase the supply of market rate and affordable housing in California by requiring local governments to promptly approve eligible projects. To qualify for a streamlined processing, the applicant must propose a multi-family project that deed restricts a specified percentage of the project’s units to be affordable. In addition to satisfying affordability requirements, the proposed housing development must satisfy numerous other standards established by SB 35, including that the project complies with objective zoning and design review standards.

The California Department of Housing and Community Development (HCD) determines if a jurisdiction is subject to SB 35 based on the number of building permits issued to satisfy its RHNA. The majority of jurisdictions in the Bay Area are currently subject to SB 35. The City of Belvedere is subject to SB 35 based on the number of building permits that have not been issued for affordable housing units during the current Housing element cycle.

Senate Bill 330 (SB 330)

SB 330 (Housing Crisis Act of 2019) establishes regulations that sunset on January 1, 2025, as a means, to address the current housing conditions (“crisis”) in the state. SB 330 identifies objective development and design standards as a means, to streamline development projects. This bill

applies to residential development projects and mixed-use development projects with two-thirds of the project dedicated to residential development. This applies to a housing development defined as 2 or more units.

Housing Accountability Act

The Housing Accountability Act (HAA) (Govt Code Section 65589.5(j)) allows for a discretionary review process, however, it prohibits an agency from disapproving a housing project if it complies with the agency's "applicable, objective general plan, zoning, and subdivision standards and criteria" unless it finds that the project would have a "specific, adverse impact upon the public health and safety" that cannot be mitigated. The Housing Accountability Act was passed in 1982. It was rarely used until recently when developers and housing advocates began using the act in litigation challenges disapproving housing projects.

SB 1485

Applies only in the Bay Area for cities that have not met production requirements for above moderate income housing (120% Average Median Income). Adds a new class of projects that eligible for SB 35 streamlined approval, if project provides at least 20% Above-Moderate units, and project 10 or more units. It is unlikely that this applies to Belvedere at this time but gives indication of the State's recognition that the affordability requirements of SB 35 do not provide enough developer incentive.

The 2017 Housing Package included several bills that further strengthened the Housing Accountability Act (AB 678, AB 1515 and SB 167). These bills amended the act to, among other things, (a) increase the agency's burden of proof in litigation, (b) authorize housing organizations to enforce its provisions, (c) authorize a court to approve the project if the local agency refuses to comply with a court order compelling compliance with the act.

It is staff's understanding that almost every multi-family housing project consistent with the General Plan densities would be considered an eligible project under the Housing Accountability Act. However, the HAA does not preclude discretionary review, such as the review of a Design Review Permit application, of multi-family housing projects and therefore staff will need to consider whether to apply the toolkit to HAA eligible projects.

The last several legislative sessions have included an abundance of bills aimed at increasing the supply of housing in the state. It is anticipated that future housing bills will continue this trend of increasing "by-right" housing. For instance, in the 2019 State legislature session there were several housing bills proposed by State legislators that would permit duplexes in single-family districts "by-right" based on an "objective development standards." These bills were not adopted however, it is likely that there could be similar bills in the future.

Staff would recommend that the Commission review the League of California Cities website for upcoming Housing Bills that are being reviewed. <https://www.cacities.org/Policy-Advocacy/Bill-Search>

RHNA- Regional Housing Needs Allocation

The Regional Housing Needs Allocation (“RHNA”) is a State-mandated process that identifies the number of housing units by affordability level¹ that each California jurisdiction must accommodate in their Housing Element. Since 1969, State law requires that all jurisdictions must plan to meet their “fair share” of housing for the community.

The objectives of RHNA are:

- Increase housing supply and mix of housing types, tenure, and affordability in all cities and counties in an equitable manner.
- Promote infill development and socioeconomic equity, protect environmental and agricultural resources, encourage efficient development patterns and achieve GHG reduction targets.
- Promote intraregional jobs-housing relationships including balance between low-wage jobs and affordable housing.
- Balance disproportionate household income distributions (more high-income RHNA to lower- income areas and vice-versa).

California Housing and Community Development (“HCD”) identifies the total number of units, across all income groups for which the region must plan for during the eight (8) -year RHNA cycle. The next cycle is 2023- 2031.

The Association of Bay Area Governments (“ABAG”) is responsible for allocating RHNA numbers among the Bay Area jurisdictions. On June 9, 2020, HCD released its Regional Housing Needs Determination for the current Housing Element cycle to ABAG. A total of 441,175 housing units were allocated to the Bay Area for the 2023-2031 Housing Element cycle, almost doubling the needs determination from the most recent 2012 cycle. Marin County’s RHNA allocation increased from 2,298 units to 14,210 units.

Marin’s increased RHNA numbers reflect changes to State law and methodology changes in allocation calculations. For example, SB 828 adopted in 2018, allows the HCD to consider both existing and future housing need. Additionally, ABAG identified “high resource” and “high opportunity” areas, as a way to address racial equity concerns, and allotted increased units to these areas.² A high opportunity and resource area is one that is near public transit, contains amenities conducive to childhood development and economic mobility, including low poverty rates, high home values, high education values, high school test schools, and high employment rates. Belvedere, along with most of Marin County, qualifies as a high opportunity and resource area for purposes of RHNA allocation. Additionally, State law now prohibits stable population numbers or prior housing underproduction as justifications to reduce a jurisdictions RHNA allocation.

A city accommodates its RHNA numbers by identifying housing sites in its Housing Element. This does not indicate that development proposals are under review, or will necessarily be submitted; rather, the Housing Element indicates possible housing site availability. HCD must certify each jurisdiction’s Housing Element, and if unapproved, a city may challenge HCD’s determination. A city without a compliant Housing Element may face legal action from the State

¹ Affordable housing levels are defined as a percentage of Area Median Income (“AMI”), established by HCD and include very low income (30%-50% AMI), low income (50%-80% AMI), and moderate income (“80%-120% AMI).

Attorney General, which may result in fines between \$10,000 to \$600,000 per month until a legal element is adopted.

Currently, Belvedere was allocated a total of 161 units, up from 16 units in the last cycle. Belvedere's units include: 1) 49 units very low income (<50% AMI); 2) 28 units low income (50-80% AMI); 3) 23 units moderate income (80-120% AMI); 4) 61 units above moderate income (>120% AMI).

There is an appeal period where jurisdictions may challenge their RHNA allocations. Final RHNA numbers will be issued at the end of 2021. Belvedere intends to challenge its RHNA allocation, however, it is expected that the City will be required to accommodate a much higher RHNA number in its upcoming Housing Element than in the past. City staff will work with a Housing Element consultant to identify sites that satisfy Belvedere's allocation during the Housing Element process.

ODDS Previous Planning Commission Presentations

The Planning Commission has participated in two presentations for the ODDS project; one in June 2020 which was an introduction into the ODDS project and why this was beneficial for the City and the 2nd presentation was in November of 2020 where the consultants presented an overview of the toolkit for all the Marin jurisdictions. The website for each of these prior presentations are below:

June PC meeting (regular meeting):

<https://www.cityofbelvedere.org/AgendaCenter/ViewFile/Agenda/06162020-503>

November PC meeting (special meeting):

<https://www.cityofbelvedere.org/AgendaCenter/ViewFile/Agenda/11102020-531>

ODDS Planning Commission Subcommittee

The Planning Commission appointed an ad hoc subcommittee of the Planning Commission, (Chair Mark, Vice Chair Carapiet and Commissioner Hart) in November 2020. The subcommittee's primary goal so far has been to review and provide comments on the larger draft toolkit for all participating Marin jurisdictions and to begin the initial customization of the document for Belvedere.

As noted below, staff has had several discussions and meetings with the consultants and has been working directly with the consultants since February to begin to further customization of the toolkit for Belvedere; this is the document currently before you.

At this time staff and the subcommittee have not met to review and discuss the draft toolkit for Belvedere, and staff felt it beneficial to have the presentation from the consultants as well as receive comments from the commission and the public on this draft.

Objective Design and Development Standards Toolkit

The Objective Design and Development Standards Toolkit (the toolkit) is a kit of parts organized around the range of zoning districts and standards that address the range of sites and physical conditions throughout various jurisdictions in Marin County. Noted above, the toolkit was intended as a framework to be further customized by each jurisdiction.

Objective Design and Development Standards are standards that involve *no personal or subjective judgement* by a public official. Objective Design and Development Standards examples include:

- Building Height: “Any building with commercial uses on the ground floor shall have a ground-floor height of at least 14 feet, measured from floor to ceiling”.
- Parking: “Curb cuts and driveways providing access to parking facilities shall be from an alley or secondary street”.
- Building Mass: “Buildings shall not exceed a length of 100’ on any side”.

Design Guidelines in most cases are *not* objective, for example:

- “enhance the appearance and livability of the community”.
- “shall not require excessive grading”.
- “shall not substantially harm major views”.

Most of Belvedere’s design review ordinance provides subjective guidelines, not objective, and therefore could not apply to a qualifying project. Given the new housing laws, it was determined that the toolkit, the ODDS project would allow Belvedere to be positioned as strongly as possible to achieve high quality design for new multi-family and mixed-use buildings which could be utilized for those project that are by-right.

The ODDS project consultant (Opticos Design) provided the participating agencies with an Administrative Draft of the *Marin County Objective Design and Development Standards Toolkit* in October 2020. As noted above, the commission heard a presentation from the consultants on this in November 2020. The draft toolkit was reviewed by all participating agencies. Belvedere planning staff along with the subcommittee provided comments on the draft toolkit. Opticos revised the draft toolkit to address the comments and questions received by the various agencies. Opticos distributed the final Objective Design and Development Standards Toolkit on February 17, 2021. Participating agencies have the opportunity to customize the toolkit for implementation for their respective communities.

Since February, Belvedere staff has been working directly with the consultants to further shape the toolkit for Belvedere. The subcommittee along with all the Commissioners are reviewing the document for Belvedere for the 1st time.

As noted above, the Objective Design and Development Standards Toolkit (the toolkit) is a kit of parts organized around the range of zoning districts and standards that address the range of sites and physical conditions throughout various jurisdictions in Marin County. The toolkit is quite large and it includes a preamble and 11 chapters. A summary of all the Chapters has been provided as **Attachment 3**. The toolkit document can be found at the following link: [Attachment 4: Belvedere ODDS](#)

The toolkit includes 3 zones for Belvedere. These zones focus on mixed-use, walkable environments and range in function and intensity from primarily residential areas with a mix of lower intensity building types (T3 Suburban neighborhood), to moderate intensity neighborhoods

(T4 Suburban Neighborhood, Small) and moderate-intensity centers (T4 Suburban Main Street, Small).



The zones are based on the location and context of the area. Chapter 3 provides an overview of each of the zones including allowable heights/stories, setbacks, and parking standards. The standards included in the toolkit are based on a review of existing conditions and standards associated including existing zoning as well as best practices to achieve the intended results.

Next Steps

Staff will continue to work with the subcommittee on further customization of the toolkit, taking in consideration comments from this Commission and public tonight. Additionally, staff will also be discussing with the subcommittee a strategy for implementation. Customization of the toolkit will only be effective if we understand how we intend it to be utilized.

The document could potentially be adopted all at once or a two-step process. A two-step process to implementation would be (1) requiring near term action to address existing and potential future State housing legislation that limits control over design and site planning of multi-family housing development and (2) to be undertaken along with the Housing Element implementation over the next two years.

Staff suggests that there is an immediate need for objective standards that would address potential projects that could be submitted to the City pursuant to State housing legislation. Secondly, there *may* be a need to carefully pursue additional site specific or area applications of the toolkit through additional public discussion and input in conjunction with those broader policy discussions for additional housing development as part of our upcoming Housing Element Update.

Also, by adopting the toolkit in the near term, staff will be able to meet the timing requirements of the SB 2 Planning Grant, through which the City received significant grant funds for the ODDS project.

If a phased approach is used in implementation, the objective standards in the toolkit (as modified) would only apply to *multi-family* housing applications submitted to the City pursuant to State legislation requiring streamlined and ministerial approval (a “by-right” approval process). This would not require rezoning or increasing the density of any property as part of this implementation process and would only apply to housing applications submitted under housing legislation mandating ministerial review or which requires the city to approve a project based solely on compliance with objective development standards.

A possible phasing of the toolkit could occur with the upcoming sixth cycle of the Housing Element, which is due to HCD by January 31, 2023. As part of the Housing Element the City will need to identify numerous housing opportunity sites and will likely need to increase the allowable

density ranges established in the General Plan and zoning to adequately meet Housing requirements. It will be important to use the toolkit to help inform and educate the community about the housing development and the selection of housing opportunity sites and ultimately the type of building forms that could be developed pursuant as part of the Housing Element plan. Staff believes that the toolkit will be a great visual tool that will help the community understand what density (units/acre) and FAR look like.

FISCAL IMPACT

The City of Belvedere was awarded \$160,000 through the SB 2 Planning Grant program for this and another project; the ADU website and handouts. The Marin County Housing Working group applied for the SB 32 Grant as a group effort. The majority of the SB 2 grant funds received by the City are being utilized for the Objective Design and Development Standards project. Staff time has been spent on the various projects, including the Objective Design and Development Standards. There has been a savings in staff time by collaborating on these projects due to the assistance of project management from the County and other participating jurisdictions and cost savings from sharing of consultant services, including administrative costs.

ENVIRONMENTAL IMPACT

This is a discussion item with no action being taken and therefore this is not a project pursuant to CEQA.

ATTACHMENTS

1. General Plan Land Use Map
2. Zoning Ordinance Map
3. Summary of Toolkit Chapters
4. Link to Belvedere Objective Design and Development Standards:
[Attachment 4: Belvedere ODDS](#)