



Planning Commission Agenda Report

March 28, 2018
Item 8.e.

SUBJECT: PRESENTATION OF NEW CALIFORNIA HOUSING LEGISLATION

EXHIBITS:

- A. [Executive Summary: California's Housing Future: Opportunities and Challenges](#)
- B. [HCD Table Showing Jurisdictions SB35 Status, January 31, 2018](#)

STAFF RECOMMENDATION

Receive the presentation on the 2017 California Housing Legislation.

EXECUTIVE SUMMARY

On September 29, 2017, Governor Brown signed into law 15 bills related to housing. Those 15 bills have collectively come to be known as the “housing package.” The majority of these new laws will have little to no impact on the City’s processes and procedures for reviewing housing development. However, there are three laws in particular that may impact the City more significantly than the others. This report provides a detailed summary of those laws that could have the most impact on Pleasanton (Senate Bills SB 35, SB 166, and Assembly Bill AB 1397) and offers an overview of the remaining legislation in the housing package.

BACKGROUND

The Governor’s approval of the 2017 housing package was a response to the ongoing and serious challenge of housing availability and affordability in the State. Findings of a recently published report titled, California’s Housing Future: Opportunities and Challenges (Executive Summary included as Exhibit A¹), include:

- Production averaged less than 80,000 new homes annually over the last 10 years, and ongoing production continues to fall far below the projected need of 180,000 additional homes annually.
- Lack of supply and rising costs are compounding growing inequality and limiting advancement opportunities for younger Californians. Without intervention much of the housing growth is expected to overlap significantly with disadvantaged communities and areas with less job availability.
- Continued sprawl will decrease affordability and quality of life while increasing transportation costs.

¹ Complete report available at: <http://www.hcd.ca.gov/policy-research/plans-reports/docs/California%27s-Housing-Future-Full-Public-Draft.pdf>

- The majority of California’s renters — more than 3 million households — pay more than 30 percent of their income toward rent, and nearly one-third — more than 1.5 million households — pay more than 50 percent of their income toward rent.
- Overall homeownership rates are at their lowest since the 1940s.
- California is home to 12 percent of the nation’s population, but a disproportionate 22 percent of the nation’s homeless population.
- For California’s vulnerable populations, discrimination and inadequate accommodations for people with disabilities are worsening housing cost and affordability challenges.

The State has consistently recognized the important role that local governments play in the production of housing. The State has deployed a range of strategies over recent years in an effort to address housing needs: these include the Regional Housing Needs Allocation (RHNA) allocated to each local jurisdiction through the regional Council of Government (COG)² as their “fair share” of the Statewide housing need; in legislation that requires local jurisdictions to accommodate housing through appropriate zoning and reducing barriers to the production of housing; in incentives such as density bonuses for affordable housing; and in streamlining provisions intended to remove regulatory constraints, particularly for housing in proximity to transit. The “housing package” builds upon and expands these existing measures.

The City of Pleasanton adopted its most recent Housing Element in 2015, covering a period from 2015 to 2023. The City’s next RHNA is anticipated in 2022, allowing the City to have an updated Housing Element adopted by January 31, 2023.

DISCUSSION

The Housing Package

The 15 bills generally fall into five categories, all of which seek to address the housing shortfall in some way by:

- directly financing affordable housing production;
- streamlining local review processes to facilitate housing;
- increasing local accountability and reporting requirements for accommodating a fair share of new housing development;
- allowing funding to pay for affordable housing development through inclusionary zoning; or
- preserving the affordability of existing subsidized housing.

The majority of these new laws will have little to no impact on the City’s processes and procedures for reviewing housing development. However, there are three laws in particular that may impact the City more significantly than the others. This memo provides a detailed summary of those laws that could have the most impact on Pleasanton (SB 35, SB 166, and AB 1397) and offers an overview of the remaining legislation in the housing package.

² In the Bay Area, the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG) serve as the regional COGs.

Because the Department of Housing and Community Development (HCD) is still in the process of creating new regulations and guidelines to address these changes, it is difficult to ascertain what the precise impacts will be.

Detailed Summary of Senate Bill (SB) 35, SB 166, and Assembly Bill (AB) 1397

SB 35 (Streamlined Approval Process)

This is one of two bills (SB 35 and SB 166, discussed below) approved by the State that could have the most impact on the City. SB 35 requires cities and counties to follow a streamlined local review process for some types of proposed housing projects if the city or county has failed to meet certain established goals for accommodating the Regional Housing Needs Allocation (RHNA). Specifically, if the defined number of units in any assigned RHNA income category has not been constructed in the city, projects within that jurisdiction are eligible for the streamlined development process. This bill essentially uses progress towards meeting RHNA targets as a key factor in determining whether or not a developer can choose the streamlined review process.

On February 1, 2018, HCD released a list of all cities in the State that are eligible for the streamlined development process (included as Attachment 2). In accordance with HCD's most recent update, in order for a developer/applicant to be eligible for this streamlined approval process in the City of Pleasanton (should the developer/applicant choose this process), their project must:

- be a multi-family development and cannot involve development/redevelopment of a site that has contained housing occupied by tenants within 10 years;
- be located in areas surrounded by development on 75 percent of its borders, and not be located in environmentally sensitive areas;
- pay prevailing wages to construction workers; and
- restrict at least 50 percent of its units to be affordable to households classified as having low income (e.g. less than 80 percent of the area median income).

At this time, it is not clear whether the requirements listed above would serve as a disincentive to developers to pursue this streamlining process. However, staff believes that the requirement to make at least 50 percent of the total units affordable to households classified as having low income would make many projects financially infeasible.

That said, a streamlined process for residential project review represents a significant change from past review processes in Pleasanton. Prior to this change to State law, all of the potential high-density housing sites were zoned Planned Unit Development (PUD) and are therefore subject to review by both the Planning Commission and the City Council. Currently, staff, the Planning Commission, and the City Council review the applications for conformance to the development standards and design guidelines adopted specifically for high density projects on the approved sites. If the projects meet these standards and guidelines, or approval of exceptions to these requirements has been granted, the projects are approved.

Under the new streamlined process (which is largely at the developer's option based on meeting the criteria referenced above) these projects would not be subject to the California Environmental Quality Act (CEQA), and would require staff-level design review only. As such, they would be subject to "objective" development and design standards and could not be

subject to referendum. Objective standards are typically those that can be measured, understood by all, and do not require interpretation or judgement. Staff would have 60 days to complete review for projects under 150 units and 90 days for projects containing 150 units or more. Projects would not be required to provide more than one parking space per unit and in some cases (e.g., if the project is within one half mile of public transit) no parking spaces may be required.

This law is not applicable to single-family development or properties not currently zoned for residential development. After review of the various eligibility requirements, staff believes the only sites likely to be eligible for the streamlined processing in the short-term, would be the remaining five high density housing sites listed within the Housing Element site inventory. Those sites include:

- East Dublin/Pleasanton BART parking lot site (Owens Drive);
- Roche Site (vacant property at 4300 Hacienda Drive);
- Kaiser Site (vacant property at 5600 Stoneridge Mall Road);
- Sheraton/Marriott hotel site near the West Dublin/Pleasanton BART station (5990 Stoneridge Mall Road); and
- Stoneridge Shopping Center

At this point, none of these sites are anticipated to be developed in the remaining time within this Housing Element cycle and all of these sites are governed by adopted development standards and design guidelines that still apply. If an existing high density housing site does move forward in this cycle, the developer would have to choose whether or not to pursue the streamlined process (along with all of the requirements listed above). However, in the next RHNA cycle, this option would be available to developers of new high density sites identified in the next inventory that meet the eligibility criteria previously stated. As part of the next RHNA process, staff anticipates further clarifications to development standards and design guidelines to ensure all standards are in fact “objective,” and achieve attractive, livable projects for Pleasanton. In the future, updating the high-density residential standards and guidelines will be suggested by staff as a City Council Work Plan priority.

SB 166 (Residential Density and Affordability)

Existing “no net loss” provisions in State law require cities to demonstrate that adequate housing sites remain within the local jurisdictions’ inventory prior to downzoning sites (re-zoning to a lower density or non-residential zoning district), or approving projects at less density than shown in the adopted Housing Element. In Pleasanton, this “no net loss” analysis and findings were required for the SummerHill Homes project on West Las Positas Boulevard, which was approved as a lower density project (fewer units per acre) than the maximum identified for the site in the General Plan. In that case, the City was able to make the required findings because the overall sites inventory included a “buffer” with slightly more high density housing sites (and related units) than were required to fulfill the City’s RHNA.

However, SB 166 requires local jurisdictions to demonstrate similar findings for developments not only based on total numbers, but also if a project is approved for *different income categories* than shown in the adopted Housing Element site inventory. This would mainly impact high density sites. This means when a high density residential project on an inventory site is presented, and the applicant does not provide the number or percentage of affordable units in the income categories identified for that site in the Housing Element, a new

replacement site (or sites) will have to be rezoned for high density residential to maintain the possibility of meeting the income requirements within 180 days of the inventory site approval.

As part of the next RHNA cycle, staff will consider and present options to Council. One approach will be to simply rezone sites to meet the RHNA number, which will likely lead to the need to continually update the Housing Element and General Plan, as new development permits for housing projects are issued and land uses change. Another approach might be to rezone additional property(ies) or to identify a secondary list of housing sites that can be added to the inventory if and when projects come forward that do not meet the income thresholds in the Housing Element. Other options and strategies are likely to be developed in the coming years.

In the meantime, SB166 is applicable to changes made to sites previously identified within the adopted housing site inventory that obtain entitlements after January 1, 2018. The majority of the high density sites identified within the currently adopted Housing Element have already obtained entitlements and are completed or under construction. There is a low likelihood that any of the remaining high density sites will be redeveloped in the near future. This pause in entitlement proposals should allow staff time to consider how best to proceed when an application comes forward. If there is development interest on the remaining high density housing sites, staff will work with the State (HCD) to ensure the City is navigating these changes in a prudent manner.

AB 1397 (Inventory of Land for Residential Development)

AB 1397 specifies that housing elements can only identify “potential sites” to accommodate new housing if that land has a realistic capacity to accommodate new housing development, and takes a more stringent approach to what is considered “realistic” in terms of development potential.

Staff believes AB 1397 is unlikely to have immediate impacts on the current City process and procedures. However, it may have a significant impact on the site inventory that will be prepared for the next housing element in 2023, particularly because the bill specifically prohibits use of housing sites in the new inventory if they have been included in the City’s inventory for two cycles and have not been developed with housing. In Pleasanton, this would potentially eliminate several sites from inclusion in the next Housing Element opportunity site list, including the previously mentioned remaining high density housing sites.

Other Housing Package Bills

The remaining bills described below do not appear to create significant policy or procedural issues for the City.

SB 167/AB 678 (Housing Accountability Act)

SB 167 and the identical AB 678 increase the burden of proof required for a local government to reject or require downsizing of a housing project that includes affordable units. These bills also require written documentation to justify decisions to reject this type of housing project, and impose fines on jurisdictions that improperly reject or require downsizing of housing projects or fail to comply with required timelines for making approval decisions. The City has not rejected any multifamily housing projects in recent history, and the minimum and maximum density requirements on the majority of the existing housing inventory sites have also prevented the reduction in density from being an issue. Staff does not anticipate the requirements of

SB167/AB 678 will be an issue for the City, provided properties are approved at densities that are within the range(s) specified by the applicable zoning.

AB 879 (Annual Reporting & Fees)

This bill adds more technical requirements to provide additional data for required annual reports, which document the City’s actual housing production each year, starting with the Annual Progress Report due April 1, 2019. It also directs HCD to evaluate the reasonableness of local government fees by June 30, 2019. These requirements will likely necessitate additional staff time to comply with the new requirements.

AB 72 (Compliance Review by HCD)

This bill authorizes HCD to find a city out of compliance with State housing law at any time, instead of the current practice where compliance is determined in conjunction with Housing Element certification by HCD; and to refer violations of State housing law to the Attorney General if deemed to be inconsistent with the City’s adopted housing element. This bill is primarily of concern as it relates to SB 166 above, since the City could be found to be out of compliance if it were determined that adequate sites were not available based on project approvals during the current Housing Element period.

SB 2 (Building Homes and Jobs Act – Recordation Fee)

This bill provides funding for affordable housing by imposing a \$75 fee on each recorded document up to a maximum of \$225 per transaction per parcel (payable by the property owner). These fees are not a concern.

SB 3 (Veterans and Affordable Housing Bond Act of 2018)

This bill places a bond on the November 2018 ballot. The bond measure would raise \$3 billion for existing state affordable housing programs and \$1 billion for CalVet, the home purchase assistance program for veterans. If the bond passes, it would provide significantly more resources for developers (most likely non-profit organizations) to build affordable permanent or transitional housing for veterans and others in the state, and possibly in Pleasanton.

SB 540 (Workforce Housing Opportunity Zone)

This bill allows cities, at their option, to create Workforce Housing Opportunity Zones, or areas within the city or county that are designated for expedited housing development, with at least half of the homes required to be affordable to households with low or moderate incomes. Jurisdictions that opt in to this program would be eligible to apply for State grants or zero-interest loans to cover the costs of completing the needed planning and environmental review processes.

AB 73 (Housing Sustainability Districts)

This bill allows cities and counties to create Housing Sustainability Districts, which function similarly to SB 540’s housing zones. Housing and Sustainability Districts require at least 20 percent of the homes required to be affordable and would allow streamlined environmental and planning review. Jurisdictions that opt-in to this program would be eligible to apply for State grants or other financial incentives.

AB 1515 (Reasonable Person Standard)

This bill provides a “reasonable person standard” when a developer legally challenges a local jurisdiction’s decision to reject a proposed housing project. It requires courts to give less

deference to evidence presented by local governments, and more consideration of alternative reasonable evidence that would allow a reasonable person to reach that conclusion. This bill is primarily of concern as it relates to SB 35 and determining compliance of a proposed project with adopted City development standards and design guidelines. It emphasizes the need for those standards and guidelines to be clear, objective, and easily interpreted by all.

AB 1505 (The Palmer Fix)

This bill is known as the “the Palmer Fix.” Since the Court of Appeals 2009 decision in Palmer/Sixth Street Properties v. City of Los Angeles, most local agencies have not been able to require affordable housing in rental projects. This bill provides authorization for these requirements, so long as an alternate means of compliance, such as in lieu fees, is also provided. The restrictions imposed by the Palmer case has not been an issue for Pleasanton as the City has been able to satisfactorily negotiate affordable components of all proposed rental projects.

AB 1521 (Enhanced Preservation Notice Law)

This bill strengthens the existing Preservation Notice Law by requiring sellers of a subsidized housing development to accept an offer from a qualified buyer if specified requirements are met. This law also provides HCD with additional tracking and enforcement responsibilities. This bill could assist the City in maintaining affordable units at such time as below market rent restrictions are about to expire on older affordable housing projects.

AB 571 (Farmworker Housing)

This bill allows individual farmworker housing projects to qualify for more public funding and allows projects with 50 percent of units for farmworkers (instead of 100 percent) to qualify, making these types of projects more financially viable. This is not likely to occur in Pleasanton.

Future Legislation

As the State continues to navigate through the future housing challenges and opportunities, their will continue to be further discussion and pending legislation. Currently Senate Bill 827, proposed earlier this year by Senator Scott Wiener, is working its way through the legislature and would impose statewide standards for the height, density, and required parking for new residential projects close to public transportation. In the current proposal, projects within a half-mile of a major transit stop (BART and ACE Train stations) - or within one-quarter-mile of a “high quality transit corridor” which has a bus line that comes at least once every 15 minutes during rush hour (LAVTA Bus Route 10 - Stanley Boulevard/Santa Rita Road/Owens Drive BART Station) - could rise four to eight stories tall (between 55 and 85 feet), and developers would no longer be required to build parking. The bill has the potential to allow private for-profit housing developers to take advantage of relaxed standards for housing, which could conflict with the City’s General Plan and other land use regulations and guidelines, and substantially reduce the City’s ability to regulate new housing development. Cities could still regulate the design of projects and establish their own zoning standards for properties close to transit, but those standards would not be allowed to conflict with the minimum standards established under the State law.

Although the proposal would support high density housing production and provide much-needed housing opportunities, many cities, including Pleasanton, have significant concerns including the reduction of local control over land use decisions; compatibility of very dense and tall projects with existing lower-density development; and with the impacts on transportation,

schools and public services, which aren't addressed in the current draft legislation. For these reasons, the City Mayor, in collaboration with other Tri-Valley's mayors are opposed to the proposed bill.

CONCLUSION

There continues to be significant interest at the State level in addressing the statewide housing issue, and a high likelihood that additional legislation will be forthcoming. Staff is currently monitoring SB 827 and will continue to monitor this item in coming months, as well as other future legislative changes.

Staff anticipates starting discussions and holding informational public outreach regarding the next housing element and RHNA cycle in the 2020/2021 timeframe, during which this (and any other changes to housing law) will be discussed.

Primary Authors: Jennifer Hagen, Associate Planner, 925-931-5607 or jhagen@cityofpleasantonca.gov.

Reviewed/Approved By:

Steve Otto, Senior Planner

Ellen Clark, Planning Manager

Gerry Beaudin, Director of Community Development