20-242 **Agenda Date: 2/26/2020**

REPORT TO PLANNING COMMISSION

SUBJECT

Consent: Responses to Questions from the January 29, 2020 Housing Presentation

EXECUTIVE SUMMARY

At the January 29, 2020 Planning Commission meeting, Assistant City Attorney Alexander Abbe gave a presentation to the Commission on 2019 housing legislation. This report responds to the specific questions raised by the Commissioners at the January 29 meeting. This memorandum is not intended to be a complete summary of all of the legislation discussed.

Topic	Commissioner	Question	Short Answer
ADUs	Jain	Can the City still limit ADU size based on the size of the main house?	Yes, but only if it is still possible to build an ADU ≥ 800 sf
ADUs	Ikezi	Can HOAs prohibit ADUs?	In single-family zones, no. In multi-family zones, yes.
SB 330 Streamlining	Cherukuru	Does SB 330 apply to all housing developments, or just affordable housing?	With a few minor exceptions, SB 330 applies to all housing developments
SB 330 Streamlining	Jain	Can the City still create ECR "activity zones," given SB 330's prohibition on down-zoning of residential land?	Yes, the City can still down-zone a site if it concurrently up-zones another site by the same amount.
Density Bonuses	Jain	For student housing density bonuses, what qualifies as "student" housing?	All housing units must be used exclusively by full-time university students. An operating agreement or lease with a university is required.
Supportive Housing & Low Barrier Nav. Centers	Jain	Would the legislation on supportive housing & LBNCs allow for "tiny homes" by right?	Yes, potentially; especially for LBNCs. For supportive housing, some City Code revisions may be necessary
Surplus Lands Act	Ikezi	Under the Surplus Lands Act, can the City ever sell surplus land for non-residential development?	Only in limited cases. The City must first negotiate in good faith with housing developers.
Rent Limits, AB 1482 & 1110	Biagini	Could a landlord avoid the rent limits of AB 1482 by changing a lease to month-to-month status?	No, AB 1482 applies whenever a tenant has been in a unit for ≥ 12 months, even if month-to-month.

Safe Parking, AB 881	Ikezi	What is the status of the proposed "safe parking" legislation?	Governor Newsom vetoed the bill on October 12, 2019.

DISCUSSION

Accessory Dwelling Units - AB 881

Much of the January 29 presentation concerned new restrictions on local authority to regulate Accessory Dwelling Units (ADUs), the bulk of which appeared in Assembly Bill (AB) 881. Among other things, the new law requires the City to allow for two ADUs per lot, depending on the size of the ADUs; requires the City to permit 4-foot setbacks and at least a 16 foot height for ADUs; and prohibits the City from requiring replacement parking when an existing residence eliminates parking spaces to create an ADU.

Commissioner Jain recalled that in our existing ordinance, there is a requirement that the ADU be related to the main house size. (Specifically, SCCC §§ 18.10.030(d)(6) and 18.12.030(d)(6) provide that an attached ADU may not exceed 50% of the existing living area of the main dwelling, with a maximum of 1200 square feet.) **Commissioner Jain asked whether this regulation was still permissible.**

Under the revised state statute, the City can impose a maximum size of not less than 850 square feet for zero- and one-bedroom ADUs, and 1000 square feet for ADUs with at least two bedrooms. In addition, the City cannot impose development standards that, when considered together, would make it infeasible to develop an ADU of at least 800 square feet:

> "[A] local agency shall not establish by ordinance any of the following: . . .
> ". . .
> "(C) Any other minimum or maximum size for an accessory dwelling unit, ***size based upon a percentage of the proposed or existing primary dwelling***, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings ***that does not permit at least an 800 square foot accessory dwelling unit*** that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards."

Gov't Code § 65852.2(c)(2)(2020) (emphasis added). Accordingly, the City could potentially still have a 50% limitation for attached ADUs, but only if they would still allow for an ADU of at least 800 square feet, when considering the impact of all development standards.

Commissioner Ikezi then asked whether Homeowners Associations (HOAs) could prohibit construction of ADUs.

The answer is no, for property that is zoned single-family residential. Under AB 670, a new section was added to the Davis-Stirling Act, that expressly provides that "[a]ny covenant, restriction, or condition . . . that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use . . . is void and unenforceable." Civ. Code § 4751. Accordingly, a homeowner's association that

governs a single-family neighborhood would not be able to prohibit ADUs.

A condominium association, however, is not currently limited in this way, and could continue to prohibit ADUs in a condo or townhouse development. The statute does not apply in the case of multi-family zoning. If, however, a condo or townhouse development decides to allow ADUs, note that the City no longer has discretion to disallow such ADUs. A new provision in the law provides that cities must allow at least one ADU within existing multifamily dwellings, and must allow up to 25% of the existing multifamily dwelling units. § 65852.2(e)(1)(C). So for a townhouse development, the City would potentially have to allow up to 25% of the garages to be filled with ADUs. But again, this only applies if the condo association consents to such development.

Housing Crisis Act - SB 330

Senate Bill (SB) 330 introduced a significant number of new "streamlining" provisions that will affect how residential development applications are processed. Much of the bill concerned a new "pre-application" process for development projects, pursuant to which a housing developer can submit a limited amount of information about a proposed project, and restricts the City's authority to request additional data. Once a housing developer has submitted all of the required information for a "pre-application," the City's fees and development standards are locked in for that project. Previously, the City's development standards would be locked in as of the date the full application was deemed complete. The bill impose a number of other streamlining obligations, described in more detail below.

Commissioner Cherukuru asked whether SB 330 applies only to affordable housing developments, or all housing developments, including market-rate housing.

For the most part, the law applies to all housing developments, not just affordable housing projects. The bill is broken down as follows:

- Sections 1 and 2 contain recitals.
- Section 3 of the bill amends the Housing Accountability Act (HAA).
- Sections 4 through 5 amend the Planning and Zoning Law (PZL).
- Sections 6 through 12 of the bill amend the Permit Streamlining Act (PSA).
- Section 13 of the bill adds a new chapter to the Government Code called the Housing Crisis Act (HCA).

All of the laws listed above apply to all types of housing developments, not just affordable developments. The HAA and PSA contain a few provisions that are specific to affordable development, however. The following is a description of each of the four laws, how SB 330 revised them, and what provisions of the HAA and PSA are unique to affordable housing. If this level of detail does not interest you, feel free to skip to the next section.

The Housing Accountability Act (HAA) limits the City's authority to disapprove or condition housing development applications. For all development projects, both affordable and market-rate, if the project is consistent with the City's General Plan, then the City cannot disapprove the project, or impose conditions that reduce the project's density, unless the City makes findings that the project would have a specific, adverse impact on public health or safety. § 65589.5(j)(1). For affordable housing developments, the City also cannot impose conditions, beyond generally applicable objective

design standards, that would make the affordable project infeasible. § 65589.5(d). The HAA imposes penalties and judicial remedies on cities that fail to comply. In 2018, the Legislature expanded the HAA so that it applies even when a proposed project is inconsistent with the Zoning Ordinance, as long as it is consistent with the General Plan. § 65589.5(j)(4).

SB 330 modified the HAA by locking in development standards at the time of a complete pre-application, rather than the time of a complete application. The City cannot impose conditions on a housing project, beyond the development standards that were in place at the time of the pre-application, without making the onerous health & safety findings discussed above. § 65589.5(o)(1).

SB 330 also modified two sections of the Planning and Zoning Law (PZL), the comprehensive statute on land use regulation in cities. The first change was to place a limit on the number of hearings for housing projects; under SB 330, if a residential development application complies with both the General Plan and Zoning Ordinance, the City cannot conduct more than five public hearings, including Planning Commission hearings, City Council hearings, continuances, and appeals. § 65905.5(a). The other change was to accelerate the timeline for making a determination about a property's historic significance, for housing development projects. As revised, the PZL now mandates that the City make a determination as to a property's historic significance at the time the City determines a pre-application is complete. Both of these new PZL requirements apply broadly to "housing development projects," which include both affordable and market-rate housing. §§ 65905.5(b)(3), 65913.10(b)(2).

Next, SB 330 revised the Permit Streamlining Act (PSA), which is the law that imposes time limits on which the City must approve or disapprove certain kinds of development applications. The bulk of the changes related to creating the new "pre-application" process for housing development projects, including listing the permissible types of information the City can request in this process (data on the project site, the existing uses, a site plan, the proposed land uses, the number of parking spaces, any proposed pollutants, any known endangered species, and a few other categories). § 65941.1(a). As with the other statutes, "housing development projects" are defined to include both market-rate and affordable housing. § 65950(c).

SB 330 also shortened the timeframe under the PSA for making a decision on whether to approve a housing development project; under prior law, the City had 120 days following the certification of an Environmental Impact Report (EIR) for market-rate housing, or 90 days for certain kinds of affordable developments. Under SB 330, the City now has only 90 days following the certification of an EIR for market-rate housing, or 60 days for certain affordable developments. § 65950(a)(2).

Finally, SB 330 added a new chapter to the Government Code called the Housing Crisis Act of 2019 (HCA). The HCA imposes a citywide prohibition on down-zoning of any residential properties below the density that was allowed more than two years ago, on January 1, 2018. The prohibition on down-zoning applies to proposed reductions in densities, height, floor area ratios, or increases in requirements on setbacks, lot size, lot coverage, frontage, or anything else "that would lessen the intensity of housing." § 66300(b)(1)(A). (There is a limited exception to the prohibition, described under Commissioner Jain's question below.)

The HCA also prohibits enforcing design standards established on or after January 1, 2020, that are not objective design standards. § 66300(b)(1)(C). Residential developers who demolish existing

dwellings are obligated to replace those dwellings as part of the new development, and if any of the demolished units were "protected" (income-restricted), the developer must replace them with an equal number of protected units. § 66300(d). As with the other laws, the HCA defines "housing development project" to include both market-rate and affordable housing. § 66300(a)(6).

Most of the provision of SB 330 contain a "sunset clause," meaning that many of its provisions will automatically expire, on January 1, 2025.

Commissioner Jain asked whether the City could still create planned "activity zones" on El Camino Real, if the existing zoning allows for residential development, or whether this would violate SB 330's prohibition on down-zoning.

The City could potentially change the zoning of a residential zoning to a non-residential zoning, but only if simultaneously up-zones another piece of property.

Under SB 330, changing the residential zoning of a property to a non-residential zoning would "lessen the intensity of housing," and so the City could not legally approve such a rezone without an exception. § 66300(b)(1). The bill contains such an exception, in that the City can designate another site in the City where it will increase the permissible residential density by the same amount that the density was decreased on the first site. § 66300(i)(1). A similar provision already existed in state law, but it had only applied to sites designated for potential future housing development as part of the RHNA inventory in the housing element, and the City had 180 days to "up-zone" the replacement site. § 65863(c)(2). Under SB 330, this requirement applies to all residential parcels citywide, and any upzoning must be concurrent with the development project. The City could, theoretically, utilize this exception to change a residential parcel to a non-residential designation on El Camino Real, provided that it identified and concurrently upzoned another site to replace the loss in residential capacity.

Without the use of this exception, the City could only rezone residential sites along El Camino for commercial and other non-residential uses if the rezoning was to a mixed-use designation that still allowed for the same amount of residential uses.

Density Bonuses - AB 1763

AB 1763 created a new, "super" density bonus for 100% affordable housing developments. Such projects are entitled to an 80% density bonus, if located more than a half-mile from public transit, or unlimited density, if located within a half-mile from public transit.

During the discussion on AB 1763, Commissioner Jain asked about the density bonus under existing state law for "student housing". (That law gives housing developers a 35% density bonus when at least 20% of units or beds are restricted to lower-income students for at least 55 years.)
Commissioner Jain asked what provisions there are in the law to ensure that the housing will, in fact, be used by students.

The statute provides that all student housing units must be used exclusively for students enrolled full time at an accredited institution of higher education. In order to qualify for the density bonus, the developer must provide the City with a copy of an operating agreement or master lease with one or more institutions of higher education for the institution(s) to occupy all units of the student housing

development with students from that institution(s). The "institution of higher education," in turn, must be accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. § 65915(b)(1)(F).

SB 744 & AB 101 - Low Barrier Navigation Centers & Supportive Housing

SB 744 and AB 101 addressed housing issues faced by unsheltered persons. SB 744 modified the laws on supportive housing, which provide for by-right housing in mixed-use and multifamily zones for unsheltered persons. In order to qualify as "supportive housing," the housing must be linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community. § 65651. SB 744 modified the law by creating new exemptions from CEQA review for supportive housing developments of 50 units or less, or for conversions from existing hotels, or for developments funded by the "No Place Like Home" state fund.

AB 101 created a new type of by-right housing, "Low Barrier Navigation Centers" ("LBNCs"), for certain mixed-use and nonresidential zones, and exempted such housing from CEQA review. LBNCs are intended to provide amenities to unsheltered persons that would not be available in a homeless shelter, such as more private settings, places to store possessions, the ability to keep pets, and the ability to stay with partners. In order to qualify as a LBNC, the housing has to meet certain requirements including supportive services, a coordinated entry system, and a system for entering client data into the state Homeless Management Information System. § 65660 et seq.

Commissioner Jain asked whether these bills would allow for by-right development of "tiny homes" or other similar small, detached single-family dwellings.

For supportive housing, § 65651(b)(1) requires that the City apply the same standards to supportive housing as to other multifamily developments within the same zone. The City's multifamily zones allow for "dwelling groups," SCCC § 18.20.030(c), but City Code restrictions on numbers of dwelling units on multifamily lots, as well as development standards (setbacks, lot coverage) that are not designed to accommodate tiny homes, may limit their feasibility.

For LBNCs, however, the legislation does not appear to contain any limitations about the physical setup of the LBNCs, so a series of tiny homes could theoretically fit this definition, if they provided the requisite services to qualify as an LBNC. Given that LBNCs are only allowable in mixed-use and nonresidential zones, the more relaxed development standards in commercial or industrial areas may help to facilitate such developments.

Surplus Lands - AB 1486

AB 1486 expanded Surplus Land Act requirements for local governments. As revised, the Surplus Lands Act now requires local governments to include specified information relating to surplus lands in their housing elements and annual progress reports, and requires the state Department of Housing and Community Development (HCD) to establish a database of surplus lands. Until recently, charter cities such as Santa Clara were believed to be exempt from the reach of the Surplus Lands Act. However, a December 2019 court of appeal case, *Anderson v. City of San Jose*, established that the Surplus Lands Act applies to charter cities.

Commissioner Ikezi asked whether the Surplus Lands Act would now preclude the City from ever selling or leasing its surplus property for a non-residential development.

Under the Surplus Lands Act, before the City could sell or lease property to a developer for non-residential purposes, the City would first have to notify a large number of public entities, affordable housing developers, open-space districts, school districts, and similar entities. If any of those parties indicate, within 60 days, that they are interested in acquiring the property, then the City must negotiate in good faith with them for at least 90 days to sell or lease the property to them for fair market value.

In theory, if these good faith negotiations fail to result in a transfer of the property, the City is then free to dispose of the property in any manner, including through the sale to a non-residential developer. The bill imposes numerous conditions on the "good faith negotiations," however, starting with a requirement that the City cannot disallow residential use of the site as a condition to the sale or the lease. Consequently,
if the City declined to sell to an affordable housing developer after such negotiations, and then later sold the property to a non-residential developer, this could constitute bad faith. In such a circumstance, there would be severe penalties for failing to comply with the statute. Specifically, a disappointed housing developer can sue the City and recover 30% of the sale price of the property, for a first violation, and 50% for subsequent violations.

Consequently, the legislation will place significant limits on the City's ability to sell or lease surplus land to a non-residential developer.

Tenant Protections - AB 1482 & AB 1110

AB 1482 and AB 1110 created new protections for rental tenants. AB 1482, applicable to tenancies of 12 months or more, prohibited annual rent increases of more than 5% plus the area consumer price index (CPI), or 10%, whichever is less. AB 1110, applicable to shorter tenancies, required a minimum 90 day notice prior to increasing rent by more than 10%.

Commissioner Biagini asked about the interplay of these two laws. **If AB 1110 only applies to month-to-month rentals, what is to prevent a landlord from waiting for a twelve-month lease to expire, allowing the lease to convert to month-to-month status, and then increasing the rent more than 10%?**

The hypothetical situation Commissioner Biagini described could not arise, because the bills are tied to how long the tenant has stayed in a unit, not how long the lease is. A landlord could not utilize AB 1110 on a tenant who had been in a dwelling for more than 12 months. Once a tenant has been in place for that long, the protections of AB 1482 apply, even if the lease has converted to month-to-month. The protection applies to the length of time a tenant has been in place, not the length of the lease itself. Civ. Code § 1947.12.

Safe Parking - AB 891

At the end of the presentation, Commissioner Ikezi asked for an update on the "safe parking" legislation, AB 891, which would have required certain public entities to provide safe parking locations and options for individuals and families living in their vehicles. The bill would have required

the provision of safe parking locations with bathroom facilities and onsite security, among other requirements. The bill only applied to large cities and counties, with a population greater than 330,000, but a county could partner with a city in its jurisdiction to provide the safe parking zone.

Although both the California Assembly and Senate ultimately voted to approve AB 891, Governor Newsom vetoed the bill on October 12, 2019.

RECOMMENDATION

Note and file this report.

Prepared by: Alexander Abbe, Assistant City Attorney
Approved by: Reena Brilliot, Planning Manager