



Agenda Report

21-2175

Agenda Date: 9/28/2021

REPORT TO COUNCIL

SUBJECT

Action on 2021 Q2 Legislative Update

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

On October 9, 2018, the City Council adopted Resolution No. 18-8611 to approve a Legislative Advocacy Position (LAP) Policy (Attachment 1). The LAP Policy establishes clear guidelines for advancing City goals and positions through legislative review and advocacy at the regional, state, and federal levels of government. The policy also provides guidance for City officials who serve on regional, state, and national boards, committees, and commissions when they are asked to review public policy matters and issues.

On February 9, 2021, the City Council adopted twelve (12) LAPs for 2021 on the following key issues:

- COVID-19 Legislation
- Energy Legislation, Regulations and Issues
- Engagement with Federal Aviation Administration Regarding Airplane Noise
- Housing
- Human Resources and Public Sector Employment
- Local Authority over Wireless Telecommunications Facilities and Cable Services
- Public Safety
- Regional and State-wide Water Supply and Conservation
- Regional Issues and Collaboration
- Regional Transportation Issues
- School Mitigation Fees
- Sustainability and Environmental Legislation, Regulations and Issues

On May 25, 2021, the Council approved amended versions of the Energy Legislation, Regulations and Issues and Public Safety LAPs. The most current versions of the adopted LAPs can be found under the 2021 Legislative Advocacy Positions document (Attachment 2).

In addition to requiring the City Council to adopt or update LAPs annually to identify specific legislative priorities, the LAP Policy also requires staff to provide quarterly legislative updates on public policy items of interest to the Council and provide Council copies of letters or summary of actions on legislative items.

The City has an existing agreement with Townsend Public Affairs for state and federal legislative advocacy services, which includes tracking and monitoring legislation and advocating the City's position on various legislation at the State and federal levels of government. This update provides information on such legislation.

DISCUSSION

Since the adoption of the 2021 LAPs, staff and Townsend Public Affairs have been tracking and monitoring various legislative items. The 2021 Q2 Legislation document (Attachment 3) summarizes tracked bills that have been passed by the State Legislature. As described below, the Governor has until October 10, 2021 to sign the bills into law. The bills are grouped by their aligned LAP, guiding principle for legislative advocacy, or approved City policy (e.g., City Council Goals and Priorities) and a summary has been provided for each bill.

The City has taken action on some of the bills that are included in the 2021 Q2 Legislation document (e.g. submitted a letter of support or opposition), as well as other bills that did not move forward in the legislative process. Those actions are documented in the 2021 Q2 Legislative Action attachment (Attachment 4).

State Legislative Update

On September 10, 2021 the Legislature concluded the 2021 legislative session and adjourned for interim recess until January 3, 2022. In the two weeks leading up to adjournment, the Legislature considered hundreds of measures, ultimately sending nearly 900 bills to the Governor for his consideration. The Governor has until October 10, 2021 to sign or veto all bills that are awaiting action.

As is generally the case, the Legislature deferred action on many of the most contentious bills until the final days of session. Over the course of the final week of session, numerous votes were taken on controversial bills, with many advancing to the Governor while others failed on the Floor or were moved to the Inactive File for lack of support. All bills that were not approved by the Legislature will be eligible for consideration next year. Some of the bills that were decided in the final days of session, as impacted by the City's LAPs, included:

COVID-19 Legislation

- **AB 339 (Lee)** creates standards for public participation and access for jurisdictions of at least 250,000 people to join and comment at open and public city council and county board of supervisor meetings, in-person and remotely, between January 1, 2022, to December 31, 2023.
- **AB 361 (R. Rivas)** gives local agencies the authority to host virtual meetings until January 1, 2024, and for state agencies until January 31, 2022. Under the state of emergency, the legislative body must, in order to continue meeting subject to this exemption to the Brown Act, no later than 30 days after it commences using the exemption, and every 30 days thereafter, make findings by majority vote. AB 361 was amended in the final week of session to include an urgency clause. This bill was approved by the Legislature on the final night of session.

Housing

- **AB 215 (Chiu)** provides the Department of Housing and Community Development (HCD) with additional enforcement authority for local agency violations of specified housing laws and increases public review for housing elements. With respect to increasing the Department's enforcement authority, the bill adds to the list of housing law violations for which HCD is authorized to take legal enforcement action against a noncompliant jurisdiction and authorizes HCD to appoint or contract with other counsel in the event the Attorney General declines to act. To increase public review for housing elements, the bill requires local governments to make the first draft revision of a housing element available for public comment for at least 30 days and, if any comments are received, take at least 10 additional business days to consider and incorporate public comments into the draft revision before submitting it to HCD before posting to their website. This bill was approved by the Legislature on the final night of session.
- **AB 602 (Grayson)** requires local agencies conducting an impact fee nexus study after 2022 to follow specific standards and practices, including completing an impact fee nexus study prior to adopting a development fee, identifying existing public facility service levels and an explanation for why the new level of service and corresponding fee is necessary, and identifying the levied or proposed fee proportionately to the square footage of proposed units.
- **SB 9 (Atkins)** requires ministerial approval of a housing development of no more than two units in a single-family zone (duplex), the subdivision of a parcel zoned for residential use into two parcels (lot split). Parcels located in areas prone to environmental degradation, historic landmark districts, or areas designated for conservancy are excluded from the bill's provisions. Imposes a minimum three-year owner occupancy requirement for applicants of lot splits. This top-down housing reform measure was notably approved by the Legislature a week prior to its adjournment.
- **SB 10 (Wiener)** authorizes a city or county to pass an ordinance to zone any parcel for up to 10 units of residential density, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area or an urban infill site. Defines "transit-rich area" as a parcel within one-half mile of a major transit stop, or a parcel on a high-quality bus corridor. Defines "urban infill site" as an area within an urban cluster with at least 75% of the perimeter adjoining to parcels developed with urban use and is zoned for residential or mixed use. This bill was approved by the Legislature a week prior to its adjournment.

Energy Legislation, Regulations and Issues

- **SB 52 (Dodd)** defines a 'deenergization event' as a planned power outage and would make a deenergization event one of those conditions constituting a local emergency, thus allowing counties to seek reimbursement for the costs incurred by running the emergency operation centers.
- **AB 1403 (Levine)** adds "deenergization event" to the list of conditions constituting a state of emergency and local emergency and defines "deenergization event" to mean a planned power outage, undertaken by an electrical corporation, to reduce risk of wildfires caused by utility equipment.

Human Resources and Public Sector Employment

- **AB 123 (Gonzalez)** increases the wage replacement rate for paid family leave (PFL) claims

commencing after January 1, 2023, but before January 1, 2025 to 65% or 75%; and for claims commencing after January 1, 2025 to 70% or 90%.

- **SB 278 (Leyva)** provides that when a retiree's CalPERS pension is reduced post-retirement, due to the inclusion of compensation agreed to under a collective bargaining agreement that is later determined to be nonpensionable, the public employer must cover the difference between the pension as originally calculated and as reduced by CalPERS.

Local Authority Over Wireless Facilities and Cable Services

- **AB 14 (Aguiar-Curry)** extends the California Advanced Services Fund (CASF) program to encourage deployment of broadband service to unserved Californians, including updating the CASF's surcharge and preserving various changes made by recent budget legislation. This measure requires the passage of jointed legislation, SB 4, in order to go into effect, an arrangement referred to as "contingent enactment."
- **SB 4 (Gonzalez)** extends the operation of the California Advanced Services Fund (CASF) through 2032, increases the annual funding cap for the CASF, and expands projects eligible for CASF grants to include fund broadband deployment at unserved locations used for emergency response. This measure, along with AB 14, were passed in the final days of the Legislative session on a tight margin and await consideration from the Governor.
- **SB 556 (Dodd)** establishes permitting requirements for the placement of small wireless facilities on streetlight and traffic signal poles owned by local governments, including specified timelines for approving and attaching infrastructure, limitations on fees for attachments, and restrictions on local governments' ability to prohibit small wireless facility attachments.

Public Safety

- **AB 26 (Holden)** requires use of force policies for law enforcement agencies to include the requirement that officers "immediately" report potential excessive force, and further describes the requirement to "intercede" if another officer uses excessive force. Provides additional specifications for law enforcement agency policies on the duty to intervene when another officer uses excessive force.
- **AB 48 (Gonzalez)** bans police from using tear gas and "less-lethal" projectiles on protestors. This bill was introduced last year and was one of the bills that ran out of time, so it was reintroduced this session. The measure was approved during the last days of session and has been sent to the Governor for his consideration.
- **SB 2 (Bradford)** creates a process for law enforcement officers to be terminated if convicted of crimes or some forms of misconduct. In certain circumstances, such as if an officer is convicted of wrongful death, the bill would remove immunity protections, which shield public employees from civil lawsuits. Despite significant objections from law enforcement, this bill was approved and sent to the Governor for his consideration nearly a week prior to the Legislature's adjournment.
- **SB 16 (Skinner)** expands the categories of police personnel records that are subject to disclosure under the California Public Records Act (CPRA) to include sustained findings

involving force that is unreasonable or excessive, and any sustained finding that an officer failed to intervene against another officer using unreasonable or excessive force.

Regional and State-wide Water Supply and Conservation

- **SB 273 (Hertzberg)** authorizes a municipal wastewater agency to enter into agreements with entities responsible for stormwater management for the purpose of managing stormwater and dry weather runoff and to levy taxes, fees, and charges consistent with the municipal wastewater agency's existing authority to fund wastewater management projects.
- **SB 323 (Caballero)** authorizes a local agency or interested person to bring a validation action in a superior court to determine the validity of a fee or charge for water and sewer service. Additionally, requires an interested party bring a validation action within 120 days after the fee or charge becomes effective, thus providing public agency water and sewer rates the same protections already afforded to fees and charges that fund other essential government services.

Regional Issues and Collaboration

- **SB 60 (Glazer)** allows cities to impose a fine of up to \$5,000 for public and health and safety violations of a short-term rental ordinance, bringing the fine threshold above the existing \$1,300 for each additional violation of the same ordinance within a year.

Regional Transportation Issues

- **AB 43 (Friedman)** grants local governments greater flexibility in setting speed limits based on recommendations the Zero Traffic Fatality Task Force (Task Force) made in January 2020.

Sustainability and Environmental Legislation, Regulations, and Issues

- **SB 1 (Atkins)** establishes the California Sea Level Rise Mitigation and Adaptation Act of 2021 and creates the California Sea Level Rise State and Regional Support Collaborative at the Ocean Protection Council to help coordinate and fund state efforts to prepare for sea level rise associated with climate change
- **SB 619 (Laird)** allows local governments to submit a notice of intent to comply with requirements set forth by SB 1383 (Lara, 2016) regulations to CalRecycle, which, if approved, would authorize a jurisdiction to receive civil penalty relief for the 2022 calendar year and a corrective action plan.

Additional Housing and Land Use Legislation Update

The final weeks of the legislative session saw the Assembly and Senate consider a number of key housing and land use bills. At the end of August, the Legislature passed the highly contentious SB 9 (Atkins), which would require the ministerial approval off a housing development of up to two units, or the subdivision of a parcel into two equal parcels. The bill is now in the Governor's Office for a signature or veto. At the same time as they considered SB 9, the Legislature also approved SB 10 (Wiener), which would permit a local government to pass an ordinance to rezone any parcel up to 10 units of residential density per parcel. Both bills have been sent to the Governor for his consideration.

In addition to the passage of housing bills SB 9 and SB 10, numerous priority bills related to housing

and land use were considered in the Assembly and Senate Appropriations Committees, as well as on the Assembly and Senate Floors. Below is a brief overview of a few housing and land use bills and their outcomes:

- **AB 215 (Chiu)** increases the enforcement authority of HCD in relation to violations of state housing law. While this measure was amended to no longer require a mid-cycle RHNA evaluation by HCD, the bill still contains provisions related to housing element adoption and the establishment of a statute of limitations for actions brought forth in the housing enforcement process. AB 215 was ultimately approved by the Senate and Assembly on the final night of session.
- **AB 989 (Gabriel)** would establish an Office of Housing Appeals within the Department of Housing and Community Development to review projects that are alleged to have been denied or subjected to conditions in violations of the Housing Accountability Act. This measure was ultimately moved to the Inactive File on the Senate Floor in the closing days of session.
- **AB 1401 (Friedman)**, which would prohibit local governments from imposing or enforcing a minimum parking requirement on developments near public transit, was held on the Senate Appropriations Committee Suspense File and was not further considered at the end of session.
- **SB 478 (Wiener)**, establishes a minimum Floor Area Ratio (FAR) of 1.0 for a housing development project consisting of three to seven units, and 1.25 for a housing development project consisting of eight to ten units. The bill also prohibits the enforcement of maximum lot coverage requirements that preclude building at the FAR established in the bill. These requirements would only apply on sites that are not zoned for single family, are not in historic districts, and are within or proximal to existing urban areas. Despite opposition from the Department of Finance, this measure was approved by the Legislature at the end of session.

These updates are current as of the writing of this report, although changes may occur before the meeting date.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

The City’s three-year agreement with Townsend Public Affairs for state and federal legislative advocacy services is for an amount not to exceed \$252,000. The services outlined in this report are included at no additional cost as part of the consultant’s monthly service fee.

COORDINATION

This report has been coordinated with Townsend Public Affairs and the City Attorney’s Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>.

RECOMMENDATION

Note and file the 2021 Q2 Legislative Update.

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ATTACHMENTS

1. Legislative Advocacy Position Policy
2. 2021 Legislative Advocacy Positions
3. 2021 Q2 Legislation
4. 2021 Q2 Legislative Action