

To: City of Cupertino
Legislative Review Committee

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State Legislative Update

September 10 marked the conclusion of the first year of the 2021-22 legislative session.

This year, there were 836 bills that reached the Governor's Desk out of 2,421 bills introduced (Senate—828; Assembly—1,593). On October 9, the Governor signed 770 bills, or 92 percent, and vetoed 66 bills, or 7.9 percent. This means that 34.5 percent of the bills introduced made it to the Governor's Desk; 32 percent of the bills introduced got signed into law; and 2.7 percent of the bills introduced got vetoed.

The 2021 session produced nearly twice as many bills passed by the Legislature than in 2020, which featured a total of only 428 bills passed by the Legislature due to the onset of the COVID-19 pandemic – the lowest approved by the Legislature in over 50 years. Despite the 2021 session's higher passed bill count, the 836-bill total is lower than in previous years. This can be attributed to the 12-measure per legislator cap imposed by Assembly and Senate leadership to ensure focus was directed to critical COVID mitigation and recovery legislation.

Much of the legislation signed by the Governor was packaged with other similar measures to address economic recovery, the housing crisis, and extreme weather events, including drought and wildfires. For instance, the Newsom Administration has been focused on the implementation of the *California Comeback Plan* through significant budget allocations to both accelerate the state's recovery from the pandemic and tackling persistent challenges. Part of the \$100 billion plan has included over \$20 billion in housing and homelessness investments, with the goal of producing 84,000 homes. Other investments include a climate resiliency package and stimulus payments to the state's vulnerable residents.

Given the massive impacts the pandemic had upon the legislative proceedings during the 2020 Session, legislators were focused this year on streamlining the passage of COVID recovery legislation, as well as legislation that was paused last year due to the immediate need for emergency measures, such as land use and public safety reform.

Ultimately, the 2021 Legislative Session will be remembered for its passage of one of the most significant housing and land use reform and policing reform packages, as well as a long, drawn-out Budget process, which featured a record amount of funding reserves and federal relief funds.



Below are brief summaries of legislative action in a few key areas, as well as additional information regarding legislation that was approved by the Governor, which may be of interest to the City.

Housing Legislation

During last year's session, it appeared that the issues of affordable housing, housing production, and homelessness would dominate the policy conversation. However, the pandemic stalled the progression of many top-down housing reform measures as attention was diverted to addressing immediate COVID-19 mitigation strategies. This year, housing and land use reform measures were thrust back into the spotlight, with numerous measures sailing through the policy committee process, unlike previous renditions of the same bills had in prior sessions. Notable land use legislation like Senate Pro Tempore Toni Atkins' SB 9 made it to the Governor's desk nearly a week before the end of session.

Just shy of a week after the Legislature's adjournment on September 10, Governor Newsom signed the first round of housing and land use reform bills, which included SB 8 (Skinner), which extends the Housing Crisis Act of 2019, SB 9 (Atkins), which requires the ministerial approval of urban lot splits and two-unit developments on single-family zoned parcels, and SB 10 (Wiener), which authorizes local governments to zone any parcel up to 10 units via ordinance.

After the enactment of the first round of housing and land use bills, the Governor signed a 27-bill package on September 28 to further address the state's housing crisis, with more focus on accountability and enforcement as it pertains to development goals. The bills in this package included AB 215 (Chiu), which increases enforcement within the Department of Housing and Community Development (HCD) and housing element transparency standards, AB 602 (Grayson), which increases the transparency of impact fees through revised nexus study requirements, and SB 478 (Wiener), which prohibits local governments from imposing certain floor area ratio standards on specified housing projects.

In addition to the more than 30-bill housing package addressing issues like density, zoning, and development streamlining, another key element to the state's housing laws is the new Housing Accountability Unit (HAU) within the state Housing and Community Development (HCD) Agency created in the 2021 Budget. The 25-person team with a budget of more than \$4 million is expected to assist local governments meet their housing goals – and crack down on those that fail to do so. Per the Governor's remarks on the newly created unit, "*The HAU will be empowered to take escalating enforcement steps to bring municipalities into compliance with their RHNA goals in the event of persistent non-compliance.*"

Climate Resiliency Investments and Legislation Package

In addition to the Administration's investments in housing production and the Governor's signing of the housing package, Governor Newsom announced his signing of a climate resiliency package, outlining investments in wildfire and forest resilience, drought response, and combatting sea level rise. This package of bills included two budget trailer bills, SB 170 (Skinner) and SB 155 (Committee on Budget and Fiscal Review), which provide a combined \$14.5 billion for climate resiliency and environmental quality related issues over the next several fiscal years. SB 155 contains \$200 million in continuously appropriated funds to CalFire for fire prevention programs.



SB 170 includes significant funding to bolster the state's organic waste infrastructure, which includes grants to help local governments implement upcoming SB 1383 organic waste regulations. In addition to these investment bills, the Governor also signed wildfire and forest resiliency legislation like Senator Dodd's SB 109, which creates the Office of Wildfire Technology Research and Development at CAL FIRE to evaluate emerging firefighting technology. Additionally, the funding package includes \$3.7 billion for climate resiliency to combat issues such as extreme heat and sea level rise, which will be complimented by legislation like Senate Pro Tem Atkins' SB 1, which establishes the California Sea Level Rise Mitigation and Adaptation Act to help coordinate and fund state efforts to prepare for sea level rise.

Police Reform Legislation

Following the death of George Floyd in 2020, the Legislature introduced several bills aimed at police reform and means of alternative response to non-emergency calls for law enforcement. Authors of the various legislative proposals worked with the Newsom Administration and many stakeholders, including representatives from law enforcement, in efforts to advance their legislation. Ultimately, some bills were able to move forward, but many bills which attempted to make significant policy changes, were ultimately held so that they could receive full legislative consideration in 2021.

This year, public safety reform became a major focus of the Legislature. Following session's adjournment, the Governor signed into law a package of police reform bills that constitute some of the most significant changes to peace officer accountability in recent years. The package included bills such as SB 2 (Bradford), which creates a system to investigate and revoke or suspend peace officer certification for serious misconduct along with imposing changes to qualified immunity standards, and SB 16 (Skinner), which allows for public access of police officer misconduct records related to excessive use of force and failure to intervene, among other things.

Other bills include AB 89 (Jones-Sawyer) which increases the minimum qualified age for peace officers and establishes a college-level curriculum for certification, and AB 48 (Gonzalez), which prohibits the use of rubber bullets and pepper spray against peaceful protestors. While significant, the passage and enactment of these measures comes at no surprise, given the behind-the-scenes work done via the Assembly's formation of a Select Committee on Police Reform and a series of recommendations for policing and protesting reform outlined by the Newsom Administration this year.

Labor and Pensions

Governor Newsom also implemented a major change to public agency responsibilities to CalPERS by signing SB 278 (Leyva) into law. SB 278 requires public agencies and schools to directly pay retirees and/or their beneficiaries disallowed retirement benefits using general fund and Proposition 98 dollars. The bill places 100% of the total liability for overpayments on public agencies, abdicating all responsibility previously held by CalPERS. Despite any existing memoranda of understanding between employers and employees on what guides pensionable compensation, this new law significantly alters public agency contributions by shifting liability away from the retirement system administration and onto public agencies.

Broadband Legislation



In addition to the significant packages of housing and police reform measures signed into law, the Legislature was focused on the deployment of broadband infrastructure, as connectivity needs were laid bare by the pandemic and reliance on the internet. During the Budget process, the Legislature passed SB 156, a Budget trailer bill providing over \$6 billion to expand broadband infrastructure and enhance internet access for unserved and underserved communities.

The historic investment includes:

- \$3.25 billion to build, operate and maintain an open access, state-owned middle mile network – high-capacity fiber lines that carry large amounts of data at higher speeds over longer distances between local networks.
- \$2 billion to set up last-mile broadband connections that will connect homes and businesses with local networks. The legislation expedites project deployment and enables Tribes and local governments to access this funding.
- \$750 million for a loan loss reserve fund to bolster the ability of local governments and nonprofits to secure financing for broadband infrastructure.
- Creation of a broadband czar position at the California Department of Technology, and a broadband advisory committee with representatives from across state government and members appointed by the Legislature.

Accompanying measures to this investment include Assemblymember Aguiar-Curry's AB 14 and Senator Lena Gonzalez's SB 4, which prioritize the broadband needs of California's unserved and underserved communities and make important, separate tweaks to the California Advanced Services Fund surcharge program. Specifically, AB 14 and SB 4 extend the operation of the California Advanced Services Fund (CASF) through 2032 and increase the annual funding cap from \$66 to \$150 million, thus increasing the amount of funds within the CASF's various subaccounts, which fund projects like broadband deployment in low-income housing communities.

Each of these broadband deployment bills was accompanied by a veto of Senator Dodd's SB 556, which would have forced local governments to make space on public infrastructure available to telecommunications providers. In his veto message, the Governor highlighted the role local government will have in last mile deployment, which is essential to driving competition and increasing access.

City Bill Positions

The City of Cupertino took positions on 25 bills this year, 15 of which were approved by the Legislature and sent to the Governor for his consideration. The final disposition of the 15 measures sent to the Governor:

AB 215 (Chiu) – Request for Veto

This bill would require a local government 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 the department. The bill would also require a local government to post any subsequent draft revision on its internet website and to email a link to the draft revision to



individuals and organizations that have requested notices relating to the local government's housing element. In addition, this bill provides the Department of Housing and Community Development (HCD) with additional enforcement authority for local agency violations of specified housing laws by authorizing HCD to seek outside counsel should the Attorney General not choose to enforce a violation of state housing law. *This measure was signed into law by Governor Newsom.*

AB 1174 (Grayson) – Request for Veto

Current law provides that an SB 35 approval remains valid for three years following approval of the project and allows a city or county to extend that approval for an additional year, at its discretion. Approvals never expire for projects that include public investment in housing affordability outside of tax credits and that designate at least 50 percent of the units for affordable housing. SB 35 also extends the approval for other projects indefinitely until after litigation is resolved or if vertical construction on the site has begun and is in progress, meaning that the applicant has begun construction and has not ceased for more than 180 days, or specified actions on building permits have been taken. AB 1174 changes “vertical construction” to “construction activity” and makes clarifying changes to the tolling of the approval for litigation and applies these changes retroactively to developments approved prior to January 1, 2022. *This measure was signed into law by Governor Newsom.*

SB 8 (Skinner) - Request for Veto

This bill extends the sunset on the Housing Crisis Act of 2019 (HCA) by five years, to January 1, 2030. Additionally, would clarify, for various purposes of the Housing Crisis Act of 2019, that “housing development project” includes projects that involve no discretionary approvals, projects that involve both discretionary and nondiscretionary approvals, and projects that include a proposal to construct a single dwelling unit. This bill would specify that this clarification is declaratory of existing law, except that the clarification does not affect a project for which an application was submitted to the city, county, or city and county before January 1, 2022. *This measure was signed into law by Governor Newsom.*

SB 9 (Atkins) – Request for Veto

This bill 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), or both. *This measure was signed into law by Governor Newsom.*

SB 10 (Wiener) – Request for Veto

This bill 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. Allows for such an ordinance to supersede a voter-approved initiative against adopting zoning ordinances. *This measure was signed into law by Governor Newsom.*

SB 52 (Dodd) – Request for Signature

This bill defines a “deenergization event” as a planned power outage and includes a deenergization event in the list of conditions constituting a local emergency. *This measure was signed into law by Governor Newsom.*

SB 60 (Glazer) – Request for Signature



This bill allows cities to impose a fine of up to \$5,000 for public and health and safety violations of a short-term rental ordinance. *This measure was signed into law by Governor Newsom.*

SB 278 (Leyva) – Request for Veto

This bill provides that, when a retiree’s California Public Employees’ Retirement System (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 non-pensionable, the public employer must cover the difference between the pension as originally calculated and as reduced by CalPERS. *This measure was signed into law by Governor Newsom.*

SB 290 (Skinner) – Request for Veto

This bill requires a unit designated to satisfy the inclusionary zoning requirements of a city or county to be included in the total number of units on which a density bonus and the number of incentives or concessions are based. The bill would require a city or county to grant one incentive or concession for a student housing development project that will include at least 20% of the total units for lower income students. *This measure was signed into law by Governor Newsom.*

SB 477 (Wiener) – Request for Veto

This bill would, commencing January 1, 2024, require a planning agency to include in that annual report specified information on costs, standards, and applications for proposed housing development projects and specified information on housing development projects within the jurisdiction. *This measure was vetoed by Governor Newsom.*

SB 478 (Wiener) – Request for Veto

This bill would prohibit a local agency, as defined, from imposing a floor area ratio standard that is less than 1.0 on a housing development project that consists of 3 to 7 units, or less than 1.25 on a housing development project that consists of 8 to 10 units. *This measure was signed into law by Governor Newsom.*

SB 556 (Dodd) – Request for Veto

This bill would prohibit a local government or local publicly owned electric utility from unreasonably denying the leasing or licensing of its street light poles or traffic signal poles to communications service providers for the purpose of placing small wireless facilities on those poles. The bill would require that street light poles and traffic signal poles be made available for the placement of small wireless facilities under fair, reasonable, and nondiscriminatory fees, as provided. The bill would authorize a local government or local publicly owned electric utility to condition access to its street light poles or traffic signal poles on reasonable terms and conditions, including reasonable aesthetic and safety standards. *This measure was vetoed by Governor Newsom.*

SB 619 (Laird) – Request for Signature

This bill authorizes a local jurisdiction facing continuous violations of the regulations adopted pursuant to SB 1383 (Lara, Chapter 395, Statutes of 2016) to submit a notice of intent to comply to CalRecycle. If approved by CalRecycle, the jurisdiction is eligible for administrative civil penalty relief for the 2022 calendar year and a corrective action plan. *This measure was signed into law by Governor Newsom.*

SB 780 (Cortese) – Request for Signature



Current law establishes enhanced infrastructure financing districts to finance public capital facilities or other specified projects of communitywide significance. Current law provides for the membership of the governing body of the district, referred to as the public financing authority. This bill would authorize the legislative bodies to appoint an alternate member to the public financing authority who may serve and vote in place of a member who is absent or disqualifies themselves from participating in a meeting of the authority. If a district has more than 3 participating affected taxing entities, the bill would authorize the legislative bodies of the taxing entities to, upon agreement, appoint only one member of their respective legislative bodies, and one alternate member, in addition to the public members. *This measure was signed into law by Governor Newsom.*

SB 792 (Glazer) – Request for Veto

This bill requires specified retailers to include with their sales tax returns a schedule that reports the gross receipts from sales of property for each local jurisdiction where it shipped or delivered to a purchaser in that jurisdiction. *This measure was vetoed by Governor Newsom.*

Other Priority Legislation

In addition to the bills outlined above, the City took positions on four measures that did not advance out of the Legislature. As is the case with all bills that failed to advance this year, these bills will be eligible for consideration when the Legislature returns to session in January 2022.

AB 988 (Bauer-Kahan): Mental health: 988 crisis hotline

Current federal law, the National Suicide Hotline Designation Act, designates the 3-digit telephone number “988” as the universal number within the United States for the purpose of the national suicide prevention and mental health crisis hotline system operating through the National Suicide Prevention Lifeline maintained by the Assistant Secretary for Mental Health and Substance Abuse and the Veterans Crisis Line maintained by the Secretary of Veterans Affairs. This bill would require 988 centers to, by July 16, 2022, provide a person experiencing a behavioral health crisis access to a trained counselor by call and, by January 1, 2027, provide access to a trained counselor by call, text, and chat. The City took a support position on AB 988. **AB 988 was approved by the Assembly but was not considered in a policy committee in the Senate.** It should be noted that in August, Governor Newsom announced that the state would be allocating \$20 million, in the current budget year, to help begin the implementation of the state’s 988 hotline.

AB 989 (Gabriel) Housing Accountability Act: appeals: Office of Housing Appeals.

This bill would, until January 1, 2029, establish an Office of Housing Appeals (office) within the department, administered by the director of the department, to review housing development projects that are alleged to have been denied or subject to conditions in violation of the Housing Accountability Act. The bill would establish housing appeals panels, consisting of administrative law judges with specified qualifications, within the office. The City took an oppose position on AB 989. **AB 989 was approved by the Assembly but was placed on the inactive file at the behest of the author during the Legislature’s final stretch.**

SB 6 (Caballero): Local planning: housing: commercial zones

This bill, the Neighborhood Homes Act, would deem a housing development project an allowable use on a neighborhood lot, which is defined as a parcel within an office or retail commercial zone that is not adjacent to an industrial use. The bill would require the density for a housing



development under these provisions to meet or exceed the density deemed appropriate to accommodate housing for lower income households according to the type of local jurisdiction, including a density of at least 20 units per acre for a suburban jurisdiction. The City took an oppose position on SB 6. **SB 6 was approved by the Senate but was not considered by a policy committee in the Assembly.**

SB 612 (Portantino): Electrical corporations: allocation of legacy resources

Would require an electrical corporation, by July 1, 2022, and not less than once every 3 years thereafter, to offer an allocation of certain electrical resources to its bundled customers and to other load-serving entities, including electric service providers and community choice aggregators, which serve departing load customers who bear cost responsibility for those resources. The bill would authorize a load-serving entity within the service territory of the electrical corporation to elect to receive all or a portion of the vintaged proportional share of those legacy resources allocated to its end-use customers and, if it so elects, would require it to pay to the electrical corporation the commission-established market price benchmark for the vintage proportional share of the resources received. The City took a support position on SB 612. **SB 612 was approved by the Senate but was not considered by a policy committee in the Assembly.**

Looking Ahead

The Legislature will return to Sacramento for the second year of the 2021-22 Legislative Session on January 3, 2022. Upon their return, the Legislature will need to consider bills that were introduced in 2021 but did not advance out of the House of Origin. These measures will need to be considered prior to the end of January. Bills that do not advance out of their House of Origin, will need to be reintroduced as new bills in order to be further considered in 2022.

When the Legislature returns next year, it is likely that they will continue to pursue some priority initiatives from 2021, as well as look to advance new legislation addressing policy topics that are more urgent than when the Legislature met last year. It is likely that the topics that will continue to receive significant attention will include the State Budget and affordable housing production, while newer topics could include wildfire impact on urban/rural interfacing areas and addressing local public safety concerns, such as the increase in sideshows.

Moreover, it is likely that there will be a large number of housing bills introduced in 2022. Over the last several years, there have been dozens and dozens of bills approved that aim to address the housing shortage in California. The Legislature has approved bills to increase the production of accessory dwelling units, streamline local government review of proposed housing developments, limit the reasons for which a proposed housing development can be denied. Most recently the Legislature approved SB 9 and SB 10 which aim to create more small- and medium-sized housing developments. Despite these efforts, it is likely that the Legislature will continue to introduce new bills, that will impact local governments, in an effort to generate more housing production. Governor Newsom has set forth ambitious housing production goals, and as such, he will likely continue to engage with the Legislature on efforts to increase the amount of housing available in California. At this point, it is unclear if the Legislature will continue to focus its efforts on the role of local government in housing production, or if it will focus on any of the numerous other factors that contribute to the lack of housing production.



Given the continued high level of fire activity throughout the state, it is likely that wildfire preparedness and response will continue to be a major focus of the Legislature in 2022. While there have been several efforts to address wildfires, to date most of the funding and programs that have been made available to address the situation are at the state-level through CalFire. We may see efforts next year in the Legislature to provide more resources to local jurisdictions for wildfire prevention and recovery. It is likely that additional focus will be paid to urban/rural interfacing areas, as there have been a number of large fires in recent years that have threatened more heavily populated areas of the state. These interfacing areas face significantly different challenges, and will require a different set of policy and budget solutions, than are needed in more rural portions of the state.

One final area that will likely see legislative focus next year is public safety. While there have been a number of public safety related bills in recent years, many of these were in direct response to instances of officer misconduct, public protest, and other events that have occurred throughout the nation. Next year, it is possible that we will see more legislation to address specific public safety issues that have been increasing in communities throughout the state, such as sideshows and the increase of organized retail theft rings. Whether it is due to the lack of recreational opportunities, or the increase of online shopping during the pandemic, a number of smaller crimes have been on the rise in communities throughout the state. Given a recent rise in high profile smash-and-grab robberies carried out by organized groups of individuals, a number of elected officials have weighed in on the need to aggressively prosecute those that commit these crimes. The Governor has also indicated that he will be proposing additional resources to help combat these crimes, as part of his January budget proposal.

State Budget Outlook

As is the case in most years, a significant amount of work will be dedicated, by both the Legislature and Administration, to the state budget. In developing the FY 2022-23 budget, the state will still have significant federal resources at their disposal, from COVID-19 relief funds, and potentially new funding from any federal infrastructure or budget funding packages that may be approved. It is likely that the Legislature and Governor will consider a handful of current year budget trailer bills, when they return in January, in order to further develop funding proposals that were contained in this year's budget. Developing additional details for transportation related funding and funding to address climate resiliency will likely need to occur in advance of the normal budget schedule. Additionally, the state will need to react to potentially volatile revenue, as it remains to be seen how the state's revenues will fair with a large number of Californians still recovering from the pandemic.

The Legislative Analyst's Office (LAO) recently released its fiscal outlook report for the state's 2022-23 upcoming budget cycle. The report's significant takeaway is that the state is projected to have a \$31 billion operating surplus in the 2022-2023 fiscal year. Despite the economic impact of the ongoing COVID-19 pandemic, the LAO stated that state revenues are growing at "historic rates," which can be attributed to an annual 30% rate increase in tax collections in the 12-month period ending in September, representing the fastest rate in roughly 40 years.

While the surplus is great news for the state's fiscal stability and earmark potential, it's important to note that not all off the \$31 billion will be under the Legislature's discretion. The report estimates that in order to meet the State Appropriations ("Gann") Limit requirements, which limits state



expenditures to the annual growth in population and to growth in average personal income, the state would need to divert roughly \$14 billion between statutorily available avenues, which could include personal income tax rebates and additional funding for education. The report noted that there is significant uncertainty in these figures, and that the state could have \$12 billion in *additional* appropriations limit requirements in 2022-23. Ultimately, the report reiterated that the Gann Limit would likely be the key issues this year and implored the Legislature to explore ways to meet past and current appropriations limit requirements prior to the introduction of the May Revision and budget trailer legislation.

For comparison, the 2021-22 budget had a budget surplus of nearly \$80 billion, with an estimated \$16 billion in excess revenue needed to be split in order to meet Gann Limit requirements. Through debt accounting strategies, which included diverting funds into programs like cash relief payments to Californians under specified income levels, the state was able to recalibrate expenditures to create some space within the spending cap.

Looking forward, the Governor will release his draft budget framework proposal on January 10, 2022. He has mentioned publicly that he will potentially use some of the surplus funds to pay down the state's \$11.3 billion in pension obligations and ramping up infrastructure investments to mirror the federal dollars coming down the pipeline.

