CITY OF CUPERTINO

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CITY COUNCIL STAFF REPORT

Meeting: March 19, 2019

Subject

Presentation on CASA by Assistant City Attorney.

Recommended Action

Receive presentation on CASA and provide any direction to staff.

Discussion

Attached please find summaries of Senate Bills 50 and 330 that will be the subject of a presentation at the March 19 City Council meeting.

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Prepared by: Richard Taylor, Assistant City Attorney
Approved for Submission by: Heather Minner, City Attorney
Attachments: Summary of Senate Bill 50
Summary of Senate Bill 330

Summary of Senate Bill 50

This following is an overview of Senate Bill 50, the More Housing Opportunity, Mobility, Equity, and Stability ("HOMES") Act of 2019 ("SB 50") as amended March 11, 2019. A copy of the legislation and information on its status is available here.

I. SB 50 Provides Development Incentives in "Job-rich" and "Transit-rich" Areas

For qualifying residential development projects in "job rich" and "transit rich" areas SB 50 would require a local government to grant an "equitable communities incentive" allowing more housing development than authorized by local General Plan and zoning standards. Qualifying projects would need to meet these requirements:

- the project must be located in a "job-rich" housing area or a "transit-rich" area;
- the project must be located on a site already zoned to allow housing as an underlying use in the zone (i.e., residential, mixed-use, or commercial);
- if it includes more than 10 units, the project must meet minimum affordability requirements (or comply with the local jurisdiction's inclusionary housing ordinance if that ordinance is more restrictive than SB 50);
- the project must comply with CEQA and relevant standards, requirements, and prohibitions imposed by the local government regarding architectural design, restrictions on or oversight of demolition, impact fees, and community benefits agreements (except to the extent these requirements must be waived as part of the equitable communities incentive); and
- the project must *not* be located on a site that contained (1) housing occupied by tenants within the last seven years or (2) parcels on which an owner of residential real property used the Ellis Act (Gov't Code 7060) to withdraw accommodations from rent or lease within 15 years prior to the submission of the application.

II. What is a "Job-rich Area"?

SB 50 defines a "job-rich area" as one that is "both high opportunity and jobs rich, based on whether, in a regional analysis, the tract meets the following:

(A) The tract is higher opportunity and its characteristics are associated with positive educational and economic outcomes for households of all income levels residing in the tract.

(B) The tract meets either of the following criteria:

(i) New housing sited in the tract would enable residents to live in or near a jobs-rich area, as measured by employment density and job totals.

(ii) New housing sited in the tract would enable shorter commute distances for residents, compared to existing commute levels."[1]

Jobs-rich areas would be identified by the Department of Housing and Community Development ("HCD") in consultation with the Office of Planning and Research. HCD would be required to publish a map showing Jobs-rich areas on January 1, 2020 and update the map every five years thereafter. SB 50 does not set out a process for the HCD determinations or indicate whether local communities or agencies will be consulted in that process.

III. What is a "Transit-rich" Area"?

SB 50 defines a "transit-rich housing project" as "a residential development the parcels of which are all within a one-half mile radius of a major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor."[2] A "major transit stop is "an existing rail transit station or a ferry terminal served by either bus or rail transit service" and a "high quality bus corridor" is a corridor with fixed route bus service meeting specific criteria such as average service intervals of 15 minutes or less during peak weekday commute hours.

IV. Equitable Communities Incentives

For qualifying projects in areas that HCD has identified as "Jobs-rich" SB 50 would require local governments to provide the following "Equitable Communities Incentives:"

- a waiver from maximum controls on density;

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[1] Not all the proposed development must be located within the identified Jobs Rich Area. Instead, the legislation provides that "A residential development shall be deemed to be within an area designated as job-rich if both of the following apply:

(1) All parcels within the project have no more than 25 percent of their area outside of the job-rich area.
(2) No more than 10 percent of residential units or 100 units, whichever is less, of the development are outside of the job-rich area."

[2] Not all the proposed development must be located within the identified area. The legislation provides that "A project shall be deemed to be within the radius [of a major transit stop or high-quality bus corridor] if both of the following apply:

(1) All parcels within the project have no more than 25 percent of their area outside of a one-half mile radius of major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor.
(2) No more than 10 percent of the residential units or 100 units, whichever is less, of the project are outside of a one-half mile radius of a major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor."

- a waiver from minimum automobile parking requirements greater than 0.5 automobile parking spots per unit;

- up to three incentives and concessions under the Density Bonus Law. (These incentives typically include a reduction in site development standards or modification of zoning code and architectural design requirements, such as reductions in setbacks, height limits and square footage requirements, approval of mixed-use zoning if it will reduce the cost of the housing development and remain compatible with the existing area, or the waiver of fees or dedication requirements. (Gov. Code § 65915(k).)

For qualifying Transit-rich projects, local governments would be required to make available the incentives for Jobs-rich areas and additional incentives based on the nature of the transit. Projects located within a one-quarter mile radius of a major transit would not subject to maximum height requirements less than 55 feet; maximum floor area ratio requirements less than 3.25; or any minimum automobile parking requirements. A project located within a one-half mile radius, but outside a one-quarter mile radius, of a major transit stop would not be subject to maximum height requirements less than 45 feet; maximum floor area ratio requirements less than 2.5; or any minimum automobile parking requirements.

SB 50 would allow local governments to "modify or expand the terms of an equitable communities incentive" as long as the modification is consistent with, and meets the minimum requirements of SB 50.

V. Housing Affordability Requirements

To be eligible for an equitable communities incentive, a project would need to include an affordable housing contribution or comply with the local jurisdiction's inclusionary housing ordinance (if that ordinance requires levels of affordable housing in excess of the requirements in SB 50). The affordability requirements would be required to remain in place for a period of 55 years for rental units and 45 years for units offered for sale.

SB 50 would set the following standards for affordability of projects qualifying for an equitable communities incentive:

- If the project has 10 or fewer units there is no affordability requirement.

- If the project has 11 to 20 residential units, the development proponent may pay an in-lieu fee to the local government for affordable housing.

- If the project has more than 20 residential units, the development proponent shall do either of the following:

    - Make a comparable affordability contribution toward housing offsite that is affordable to lower income households; or

    - Include units on the site of the project that are affordable to extremely low, very low, or low-income households as follows:

Project Size	Inclusionary Requirement
21– 200 units	15% low income; or

	8% very low income; or 6% extremely low income
201–350 units	17% low income; or 10% very low income; or 8% extremely low income
351 or more units	25% low income; or 15% very low income; or 11% extremely low income

For projects making in-lieu contributions for offsite housing, the local government would be required to "make every effort to ensure that future affordable housing will be sited within one-half mile of the original project location within the boundaries of the local government by designating an existing housing opportunity site within a one-half mile radius of the project site for affordable housing." In addition, the law would provide that "[t]o the extent practicable, local housing funding shall be prioritized at the first opportunity to build affordable housing on that site." If no housing opportunity sites that satisfy these requirements are available, the local government would be required to designate a site for affordable housing within the boundaries of the local government and make findings that the site for the affordable housing development affirmatively furthers fair housing.

VI. Compliance with Other Laws

In order to be eligible for an equitable communities incentive, a project would still be subject to environmental review and need to comply with other state and local laws. The law would require that a project comply "with all applicable labor, construction employment, and wage standards otherwise required by law and any other generally applicable requirement regarding the approval of a development project, including, but not limited to, the local government's conditional use or other discretionary permit approval process, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), or a streamlined approval process that includes labor protections." In addition, projects would be required to comply with "with all other relevant standards, requirements, and prohibitions imposed by the local government regarding architectural design, restrictions on or oversight of demolition, impact fees, and community benefits agreements." Of course this requirement does not apply to standards that must be waived under the specific terms of the legislation (e.g., height limits for transit-rich projects or rules waived as part of the three density bonus incentives or concessions required).

VII. Sensitive Communities

SB 50 would allow jurisdictions with sensitive communities to satisfy its requirements through a community-led planning process at the neighborhood level to develop a community plan that may include zoning and any other policies that encourage multifamily housing development at a range of income levels to meet unmet needs, protect vulnerable residents from displacement, and address other locally identified priorities. These plans would be required to be consistent with the overall residential development capacity and the minimum affordability standards in SB 50.

Sensitive communities would be identified by HCD except in the Bay Area. In the Bay Area, SB 50 would adopt the following definition of sensitive community: "areas designated by the Metropolitan Transportation Commission on December 19, 2018, as the intersection of disadvantaged and vulnerable communities as defined by the Metropolitan Transportation Commission and the San Francisco Bay Conservation and Development Commission." This identification would be updated at least every five years by HCD.

VIII. Responsibility for Costs

SB 50 provides that the State would not be required to provide reimbursements to local agencies pursuant to Government Code section 17556(d), which states "[t]he local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Thus, cities and counties would be responsible for any costs associated with implementing the legislation.

Senate Bill 330 – the Housing Crisis Act of 2019

This following is an overview of Senate Bill 330, the Housing Crisis Act of 2019 (SB 330) as introduced on February 19, 2019. A copy of the legislation and information on its status is available here.

SB 330 would declare a statewide housing emergency to be in effect until January 1, 2030. During that period, cities and counties found to have high rents and low rental vacancy rates would:

- Be prohibited from reducing housing densities, increasing development fees, or taking a range of other actions affecting housing development (both for-sale and rental);
- Have any such actions taken since January 1, 2018 declared null and void;
- Be prohibited from imposing fees on new units that are deed restricted for families earning less than 80% of the area median income;
- Be prohibited from enforcing requirements that new developments include parking;
- Be required to process housing development applications under the general plan and zoning ordinance in effect at the time the application is deemed complete.

Other provisions of SB 330 would apply to all jurisdictions not only those with high rents and low vacancy rates. These include requiring cities and counties to process housing development applications under the general plan and zoning ordinance in effect at the time the application is deemed complete, a ban on holding more than three de novo public hearings on a project, and a requirement that cities and counties post all development standards online. The bill would also call for the State Department of Housing and Community Development to update building standards for "occupied substandard buildings."

A more detailed summary of SB 330 is provided below.

I. Limits on "Affected" Cities and Counties

Most of SB 330's provisions apply only to an "affected county or city." The bill defines "affected county or city" as "a county or city, including a charter city, for which the Department of Housing and Community Development determines, in any calendar year, that both of the following conditions apply:

- "The average rate of rent is [__] percent higher than the fair market rent for the state, for the year."
- "The vacancy rate for residential rental units is less than [__] percent."

As introduced, the bill does not identify the threshold percentages to be considered an affected or city and does not indicate how the Department of Housing and Community Development will determine the "fair market rent for the state" and the vacancy rate in each jurisdiction.

"Affected" cities and counties would be subject to the following constraints on exercising their land use authority until January 1, 2030.

A. Prohibitions on Legislation Limiting Residential Development

For areas where housing is an allowable use, SB 330 will prohibit the legislative body or voters of an affected county or city from amending a General Plan or zoning ordinance in a manner that would:

- change the zoning or General Plan designation to a less intensive use (e.g., reductions to height, density, or floor area ratio or increases in open space or lot size requirements) or reduce the intensity of land use within an existing zoning district or plan designation below what was previously allowed on January 1, 2018.

- impose a moratorium on housing development, except pursuant to a zoning ordinance that protects against an imminent threat to the health and safety and is approved by the Department of Housing and Community Development.

- impose design standards that are more costly than those in effect on January 1, 2018.

- establish a maximum number of conditional use or other discretionary permits for the development of housing or impose a cap on the number of housing units or the population.

In addition, any amendment on or after January 1, 2018 that had any of the effects noted above would be deemed void.

The bill expressly allows General Plan and zoning amendments that would prohibit the commercial use of land that is designated for residential use. The commercial use regulation could include limits on short term occupancy of residences. Further, the bill does not prohibit the amendments that would allow greater density in or reduces the costs to a housing development project or as necessary to comply with the California Environmental Quality Act.

B. Limits on Review of Proposed New Housing Development Projects

SB 330 would impose limits similar to those above on local government review of proposed housing development projects. Specifically, for areas where housing is an allowable use, SB 330 will prohibit an affected county or city from:

- changing the general plan designation or zoning to a less intensive classification or reduce the intensity of land use within an existing zoning district below what was previously allowed on January 1, 2018 once an application for a permit is deemed complete.

- enforcing an existing moratorium or imposing a moratorium on housing development (including mixed use development).

- enforcing requirements that a proposed housing development include parking or imposing any new or increased parking requirements.
- charging any fee or imposing an exaction in connection with the approval of a housing development in excess of the amount of fees/exactions that would have applied to the project as of January 1, 2018.

- charging any fee in connection with approval of any affordable unit within a housing development that meets these two criteria:

    - unit is affordable for household incomes equal to or less than 80 percent of the area median income; and
    - unit is subject to a recorded affordability restriction for at least 55 years.

- enforcing or establishing a maximum number of conditional use or other discretionary permits for the development of housing or imposing or enforcing any cap on the maximum number of housing units or the population.

- Limiting the density of an approved project to level lower than that authorized by the general plan land use designation and zoning ordinances as in effect prior to January 1, 2018.

SB 330 would also provide that, in affected cities and counties, an application for a permit for a proposed housing development project will be deemed consistent and in compliance with the general plan land use designation and zoning ordinances if a reasonable person could have found that the application would have been consistent and in compliance with the general plan land use designation and zoning ordinances in effect on January 1, 2018. Moreover, if a project falls within the maximum density and intensity of use contemplated by the General Plan's land use or housing element, the project must be approved as proposed even if the zoning requires a lower density.

The foregoing limits would not apply, and a local government would not be allowed to approve a project under this part of SB 330 if the housing development would require demolition of (1) a residential rental unit assisted pursuant to Section 8; (2) a residential unit that is subject to any form of rent or price control; or (3) a residential structure containing residential dwelling units that are currently occupied by tenants, or were previously occupied by tenants if those dwelling units were withdrawn from rent or lease in accordance with the Ellis Act and subsequently offered for sale.

In addition, if a proposed housing development project would require the demolition of units that are affordable for households with incomes equal to or less than 80 percent of the area median income, an affected county or city can approve the development only if: (1) the developer agrees to provide relocation benefits and a right of first refusal for units available in the new development project; and (2) the affected county or city is not otherwise prohibited from approving the demolition of the affordable rental units under the bill.

SB 330 states that the limits in this part of the bill do not prohibit planning standards that allow greater density in or reduces the costs to a housing development project or as necessary to comply with the California Environmental Quality Act.

II. Provisions Applicable to All Cities and Counties

SB330 includes provisions that would be applicable to all cities regardless of average rents and vacancy rates. These are:

A. Vested Rights Upon Application Completeness

Under existing a law, a development application is evaluated under the zoning and General Plan provisions in effect at the time that the decision to approve or deny the project is made. SB 330 would provide that development applications be reviewed under the laws in effect at the time the application is deemed complete. Specifically, for applications for a conditional use permit, zoning variance, or any other discretionary permit for a housing development project that is submitted to any city or county that is not otherwise subject to the requirements for "affected" cities and counties, a city/ county would be barred from:

- enforcing or requiring the applicant for a housing development project to comply with any zoning ordinance adopted, an amendment to an existing zoning ordinance or general plan, or any other standard adopted or amendment to an existing standard after the date on which the application for that housing development project is deemed complete.

- charging any fee on the applicant for a housing development project in excess of the amount of fees or other exactions that applied to the proposed housing development project at the time the application for that housing development project is deemed complete

In addition, cities and counties would be required to determine if the site of the proposed project is a historic site at the time the application is deemed complete and this determination is to remain valid throughout the pendency of the project for which the application was filed.

B. Maximum Three Hearings

SB 330 would prohibit all local governments from conducting more than three de novo hearings related to the approval of an application for a zoning variance or development permit, on an application for a zoning variance, conditional use permit, or equivalent development permit for a housing development project. Jurisdictions would be required to approve or disapprove the permit within 12 months from when the application is deemed complete.

C. Posting Development Application Requirements

SB 330 would require all cities and counties to make the list of required information for applications for development projects available in writing to applicants and publicly on the city or county's website.

D. New Regulations for "Occupied Substandard Building"

Under SB 330, the Department of Housing and Community Development would be required to propose the adoption, amendment, or repeal of building standards to the California Building Standards Commission for "occupied substandard buildings." The proposed building standards and regulations must establish minimum health and safety standards for occupied

substandard buildings, including adequate sanitation and exit facilities and comply with seismic safety standards.

An occupied substandard building that complies with the building standards, rules, and regulations adopted pursuant to SB 330 would be deemed to be in compliance with the State Building Standards Code for a period of seven years following the date on which an enforcement agency finds that the occupied substandard building is otherwise in violation of any building standard, rule, or regulation adopted pursuant to this bill.

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