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CITY COUNCIL STAFF REPORT

Meeting Date: February 5, 2019

Subject

Possible Formation of a Santa Clara County Regional Housing Needs Allocation (RHNA) subregion allowing the City the option of trading allocation of housing needs among participating entities.

Recommended Action

That the City Council:

1. Review the by-laws proposed for the Santa Clara County RHNA subregion and
2. Adopt Resolution No. 19- (Attachment A) authorizing the City Manager to discuss the formation of a Santa Clara County RHNA subregion and develop a work plan, budget and schedule of actions leading to the formation of a countywide RHNA subregion.

Discussion

Background

This item was presented to the City Council as a consent item in January 2019. At the January 2019 meeting, the Council postponed action on this item since councilmembers wished to review the draft by-laws for the RHNA subregion that had previously been shared in August 2018 and the by-laws for the San Mateo RHNA subregion from the fourth Housing Planning cycle (see Attachments B and C.)

State Planning and Zoning Law requires cities and counties to 1) adopt General Plan policies to address housing issues in each community and 2) identify adequate sites to accommodate the regional housing need allocated to that jurisdiction within a required Chapter of the General Plan called the Housing Element. A final draft of the Housing Element is sent to the Department of Housing and Community Development (HCD) for its review and approval prior to adoption by the City Council.

The process of setting targets for housing growth, a necessary precursor to updating Housing Elements, is called the Regional Housing Needs Allocation (RHNA). The state mandates that different California regions begin their eight-year housing planning cycle on a staggered basis identified by the HCD. HCD determines housing demand for the state and subsequently, allocates this housing demand by region upon consultation with the regional Council of Governments (COG). The COG for each region then plans for this demand by distributing the need among all of its constituent cities and counties. By law, the methodology the COG uses to allocate the housing need must comply with State policy objectives in the Government Code and be adopted through a public process. The task of allocating the housing needs among the nine county San Francisco Bay Area falls to the Association of Bay Area Governments/Metropolitan Transportation Commission (ABAG/MTC). Once each jurisdiction receives its final RHNA from ABAG, they must amend their Housing Element to show how it plans to accommodate the growth allocation, including identifying and zoning sites appropriately, according to state law requirements. Cupertino's next Housing Element update is expected in 2022 with the housing allocation process occurring in 2021.

State law allows the formation of subregions to conduct an allocation process parallel to, but separate from, the regional COG process. Jurisdictions that have not been satisfied with housing allocation occurring at the geographically larger regional level (COG) have formed their own RHNA subregions to develop their own methodology and allocate housing in a more locally relevant regional level. In the subregional process, the COG assigns a percentage of the region's total housing need to the subregion as a whole. The subregion then has the ability to either allocate the RHNA to its members using its own methodology, provided that the subregion's methodology is consistent with the objectives listed in Government Code section 65584(d) and follows the state-mandated public process for assigning allocations, or it could accept the allocation assigned by the COG and then determine whether there are any local housing needs allocation trades that may/could be conducted. The most important specific limitation from state law is that every city and county must be assigned at least some very low and low-income units under Government Code section 65584.04(i)(2).

Once a subregion arrives at a final allocation, including any trades between member jurisdictions, the subregional allocations must be submitted to the COG for approval, and the COG retains the ability to modify the allocations, if necessary, to meet state law requirements.

In the ABAG/MTC region, of which Cupertino is a part, subregions were formed in Napa, San Mateo and Solano counties for the 2015-2023 RHNA cycle. The jurisdictions in these subregions worked together to allocate their housing allocation based on local factors, and ABAG/MTC approved agreed-upon distribution. As an example, in the fifth Housing Cycle, of the 21 jurisdictions in the San Mateo subregion, seven jurisdictions did not see any changes to their COG allocated RHNA allocations, nine jurisdictions had a reduction in their RHNA allocations and 5 jurisdictions had an increase. In most cases, jurisdictions that were willing to accept more units did so because they had already contemplated the development of a higher number of units in their adopted general plan.

Several jurisdictions in the Santa Clara county expressed their concerns with the regional housing allocation process from the prior housing planning cycle to the Cities Association of Santa Clara County¹; as a result of which, in the interests of improving the implementation of housing in a more locally relevant regional manner, the Board adopted the exploration of a Santa Clara County RHNA subregion as a priority for the upcoming RHNA cycle (2023 - 2031.) To that end, the Board approved the formation of a Regional Housing Task Force/Subcommittee in 2015 to:

1. Develop of a framework and process needed to form and implement a subregion in Santa Clara County for the next RHNA cycle (2023 – 2031); and
2. Review potential options for further regional response.

The Subcommittee presented its findings at the June 14, 2018 Cities Association Board meeting and requested board members to take the topic of a subregion back to each individual City Council for discussion prior to the Board’s vote on the formation of a subregion. The Cupertino City Council reviewed this item at its August 21, 2018 meeting and had the following comments:

- Concern that Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG) are heavily weighted toward big cities;
- Big cities are championing business impact fees that are levied regionally but passed on to cities that generate more housing, so big cities would receive more money since they have more developable land;

¹ The Cities Association of Santa Clara County was formed in 1990 to represent the mutual interests of the diverse fifteen cities of Santa Clara County. The Cities Association presents a unified (and equal) voice to other agencies, organizations, and levels of government.

- With subregions, larger cities would be motivated to force more allocation on job rich cities at the regional level (MTC/ABAG) and expect allocation trading in exchange for financial consideration at the subregional level;
- Right way to allocate housing is objective needs for each City of Cupertino;
- Wary of allocation trading;
- Need to have vote on regional body, so proceed, but make sure staff gets answers to questions such how does a city consent to an increase in allocation (is it a majority vote or super majority vote)?;
- Keep autonomy over any increases in allocation.

Following input from all the jurisdictions in the Santa Clara County, at its October 11, 2018 meeting, the Cities Association Board voted unanimously to establish a subregion. The subregion Task Force will be reconvened to oversee the RHNA subregion formation process.

Housing Commission Recommendation: The Housing Commission reviewed this item at its December 13, 2018 meeting and recommended that the City Council authorize the City Manager to enter into discussions through the Cities Association to form a RHNA subregion.

Analysis

The Regional Housing Task Force/Subcommittee presented a number of items for the Board's consideration in June and October 2018. These include proposed by-laws for the formation of the RHNA subregion (Attachment B,) an overview of the RHNA subregion (see Attachment D,) and pros and cons of forming a RHNA subregion (Attachment E.)

Overview: Subregions may be formed between any two jurisdictions but must include a county. A subregion is allowed to develop its own methodology, issue draft allocations to member jurisdictions, conduct the revision and appeal processes, and issue final allocations. Each subregion is also required to ensure that its final housing allocation is consistent with the Bay Area's Sustainable Communities Strategy.²

² The Sustainable Communities Strategy or SCS is a state-mandated, integrated long-range transportation and land use plan. Required by Senate Bill 375, all metropolitan regions in California must complete a SCS as part of a Regional Transportation Plan. In the Bay Area, ABAG/MTC is responsible for developing and adopting a SCS that integrates transportation, land use and housing to meet greenhouse gas reduction targets set by the California Air Resources Board (CARB). The most recent SCS for the San Francisco Bay Area is the Plan Bay Area 2040, updated last in 2017.

Proposed Organization: For purposes of this RHNA subregion, the Cities Association is not proposing to change the methodology for determining the allocation (See Attachment B.) The subregion would allow cities the opportunity to make mutual agreements with cities in the subregion to trade allocations, provided such agreements are consistent with State-defined objectives and that each jurisdiction retain at least some allocation of units for low- and very low income households. Cities can choose not to make any agreements and simply accept the regional allocation. However, being a member of the subregion would allow each city a vote in the final subregional RHNA allocation. If a city chooses not to be a part of the subregion, they would neither have the opportunity to trade allocations nor have a vote in the proposed trades and allocations within the subregion.

The SC county RHNA subregion could consist of one member of each City Council and one member of the County Board of Supervisors. The final structure of the subregion would be part of the discussions the City Manager would be involved in. Several standing committees that would assist in the goals of the RHNA subregion could be established. As currently proposed, these include the:

- Policy Committee – elected officials provide policy direction, review the Technical Advisory Committee recommendations and adopt policy consensus for transmittal for cities and counties for ratification;
- Technical Advisory Committee – Senior staff technical experts in the field of housing and land use from each jurisdiction to develop recommendations for the City Manager’s Association to consider;
- City Managers Association – monthly outreach through the City Manager’s Association to allow ongoing input and consideration of the Technical Advisory Committee recommendations, prior to approval of the final by the Policy Committee;
- City Councils and Board of Supervisors – Ratify the final allocation; and
- ABAG – Final approval of the RHNA Final Allocation.

At the January 2019 Council meeting, a question about whether the Council would adopt the by-laws was posed. As a point of clarification, the Council will not adopt the proposed by-laws. These are intended to be adopted the RHNA subregion Policy Committee at its first meeting. As previously mentioned, upon request, the by-laws of the San Mateo RHNA subregion from the prior housing element planning cycle are included as Attachment E.

Timeline: State law requires that all RHNA subregions be formed by September 30, 2020 - at least 28 months prior to the Housing Element due date of January 31, 2023 (Govt. Code Section 65584.03(a)) for this region.

Pros and Cons: The Subcommittee identified several advantages of forming a RHNA subregion. These are attached as Attachment E and include:

- Allowing jurisdictions flexibility and an opportunity for them to trade RHNA allocations. For e.g., notwithstanding the subregions allocation, a city could choose to accept the regional allocation or choose to make agreements with cities in the subregion for trading allocations.
- Empowering cities to have a say in regional planning. For e.g. should a city's appeal on their regional allocation get upheld, it is up to ABAG/MTC to decide how to redistribute the appealed allocation. However, with a subregion, a city can trade allocations with another city.
- Allow cities to collaborate on better planned development since they can work together to address regional issues such as transit and would not necessarily be confined by a city boundary.
- Create a forum to discuss sharing of planning resources. For e.g. in the San Mateo subregion, all 21 jurisdictions share in the cost to pay a consultant to assist in the preparation of their housing elements and data needs.

It also identified disadvantages of the formation of a subregion, which include:

- Putting in time, effort and resources and ending up with the same result as the regional allocation.
- Lack of trust for a fair and equitable process.
- Loss of political distance from ABAG/MTC which may result in pressure on the community to produce additional housing.
- No role model since no other existing subregion has such large variance in population in each of the cities.

Impact of new housing laws: Recent and proposed changes to housing laws may also impact the effect of subregions in future housing cycles. For example, SB 166 was adopted in 2017 to require jurisdictions to make specific findings or upzone additional property if development on housing element sites is proposed and/or approved at different affordability levels than are shown in the housing element's inventory. This requirement may make jurisdictions more hesitant to accept additional lower income RHNA allocations than they have been previously, because there are greater consequences of not approving housing for lower-income households. Other 2017 changes in housing element law have increased the standards for designating acceptable sites to accommodate housing development, so even if a jurisdiction wants to accept a higher allocation of RHNA, it may not have adequate sites available to do so.

Finally, two bills signed by the Governor in September 2018, AB 1771 and SB 828, give HCD additional review authority over regional and subregional allocations

and, in general, would assign more units to high-income, high-job cities. If these bills are adopted, it could further impact potential subregional processes in Santa Clara County and throughout the state, particularly in job-rich cities. In addition to these recently adopted laws, future laws could also severely impact cities ability to negotiate trades. These and other issues will be discussed and evaluated by the City Manager in presenting staff's recommendation at a later date.

What are other cities doing?: Most of the cities in Santa Clara County have signed resolutions authorizing their City Manager to enter into discussions on the formation of a RHNA subregion. While the City of Milpitas has not, as yet, taken action on formation of a RHNA subregion, the item is on the Council agenda for February 5, 2019.

Fiscal Impact

It is expected that there will be costs associated with the establishment of a RHNA subregion related to administration, legal review, outreach, noticing and communicating with ABAG/MTC. The Cities Association expects that an estimate for the Santa Clara County RHNA subregion will be developed as the process moves along but does not expect it to be high. It is anticipated that the costs of participation will be low since existing infrastructure, e.g. the Cities Association, and staff from each individual city will be used, and that the primary expenses will be for noticing and hosting of public meetings for the RHNA subregion..

Conclusion

Given the pros and cons, it is recommended that the City Council authorize the City Manager to enter into discussions related to the formation of a Santa Clara County RHNA subregion and develop a work plan, budget and schedule of actions leading to the formation of a countywide RHNA subregion. Keeping abreast of the subregional activity on RHNA trades will require staff time in any case. Additionally, being a part of the RHNA subregion will allow the City the flexibility to trade allocations if an opportunity arose and the opportunity to vote on the RHNA trades of other jurisdictions in the County as well.

Next Steps

If authorized to, the City Manager will engage in discussions related to the RHNA subregion, and as noted earlier, the RHNA subregion will be formed no later than September 2020.

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Attachments

- A. Draft Resolution
- B. Santa Clara County RHNA subregion proposed by-laws
- C. San Mateo County RHNA subregion bylaws 2011
- D. RHNA subregion Overview
- E. Pros and Cons of RHNA subregion