

To: City of Cupertino
Legislative Review Committee

From: Townsend Public Affairs, Inc.
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Subject: Legislative Update

State Legislative Update

On September 10th, 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 10th 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 included:

Public Meetings

- **AB 361 (R. Rivas)** Would, until January 1, 2024, authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided. **This bill was approved by the Legislature on the final night of session and has been sent to the Governor for his consideration.**
- **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. **This measure was approved during the last days of session and has been sent to the Governor for his consideration.**

Local sales tax



- **SB 792 (Glazer)** 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 controversial measure was approved by the Assembly and Senate on the final night of session and has been sent to the Governor for his consideration..**

Police Reform

- **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 has been sent to the Governor for his consideration.**
- **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.**
- **AB 118 (Kamlager)** referred to as the CRISES Act, would create a pilot program for cities or counties to shift certain emergency response calls from law enforcement to community-based organizations. The bill would provide grants of at least \$250,000 to communities to pilot the program. This bill was a reintroduction of a measure that was vetoed by the Governor last year. **The measure was approved during the last days of session and has been sent to the Governor for his consideration.** This year funding was allocated for the program as part of the budget act, and it is expected this bill will receive favorable consideration from the Governor.

Protests

- **SB 742 (Pan)** makes it a misdemeanor to intimidate, harass or obstruct patients and workers leaving or entering a vaccine site, punishable by a fine up to \$1,000 and six months in jail. **Despite being the subject of a large demonstration outside the Capitol in the final week of session, this measure was approved by the Legislature and has been sent to the Governor for his consideration.**
- **SB 98 (McGuire)** affirms journalists’ right to attend and cover protests, rallies, and other events, even in an area that has been closed by law enforcement. It would prevent police from detaining, arresting, or citing news media for failing to disperse. This measure was introduced in response to actions that have been carried out in large-scale protests over the last year. **The measure was approved during the last day of session and has been sent to the Governor for his consideration.**

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 and has been sent to the Governor for his consideration.**
- **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. **This bill 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 and has been sent to the Governor for his consideration.**

Recall Election Update

As the Legislature was working to conclude its business for the year, Governor Newsom has been busy campaigning throughout the state in advance of the September 14th recall election. If the recall is successful, Governor Newsom will remain in office until the election is certified. It is anticipated that the Secretary of State would take the full time that is permitted (30 business days) to certify the election. This would keep the Governor in office past the deadline for him to act on legislation.



In late August, a federal judge affirmed in a recent ruling that California's recall process is constitutional. This follows some legal scholars questioning the process in recent weeks because the two-question recall ballot makes it possible for a candidate to replace Newsom with fewer votes. Two Los Angeles voters filed a federal suit challenging the recall process and asking a court to either cancel the election or to add Newsom's name to the list of replacement candidates on the second part of the ballot. Judge Fitzgerald ruled that the plaintiff "plainly feels disgruntled that a replacement candidate with a small plurality might replace a sitting governor who, based on a robust 'No' vote, might well have beaten that same replacement candidate in a general election," and that, "such disgruntlement raises no federal constitutional issues and certainly does not give the federal judiciary the right to halt the mammoth undertaking of this gubernatorial recall election."

Leading up to Election Day, early voter turnout indicated that there is significantly more interest in the recall election than many previously predicted. Prior to in-person voting on election day, over 35% of all ballots had been returned via mail, which is a significantly higher turnout than is traditional in off-year statewide special elections. An analysis of ballots that were turned in prior to Election Day indicated that registered Democrats were returning their ballots early, while more registered Republican voters were waiting, presumably to cast their votes in-person on the day of the election.

Given the large number of mail-in ballots and state law allowing for their tabulation as long as they are postmarked by election day, counties are likely to have a significant number of ballots to tally after Election Day. The Secretary of State has thirty business days to work with counties to finalize their results, so the official results will not be posted until October 22nd. While it is likely that the outcome of the election will be known prior to that date, it is possible that it will take a day or two after the election for a winner to be declared.

Pandemic Impact on Local Revenues

In August, the California State Auditor (Auditor) has released an updated analysis of the revenue impact of COVID on California's local governments. While this information just focuses on cities, we are expecting additional analysis from the LAO in the coming months for more public agencies.

Last fall, the Auditor began working to estimate the impact that the response to the COVID-19 pandemic would have on the revenues of cities throughout California. The Auditor found that almost all cities were projected to lose some revenue, but found that COVID-19 restrictions significantly affected cities that rely on tourism and entertainment.

The Auditor just updated its initial assessment to determine the financial situation of California cities in light of stimulus payments from the federal American Rescue Plan Act, property taxes, and increased tax revenues as the economy has started reopening.

The Auditor analysis has found the following:

- Out of the over 450 cities in California, only Yountville is projected to receive insufficient stimulus funds, property tax revenue, and other tax revenue increases to cover its COVID-19 related revenue loss.



- Property tax revenues also increased across the State. Economic forecasts indicate that California cities will receive over \$2.3 billion in additional property taxes between fiscal years 2019-20 and 2021-22.
- By the end of fiscal year 2021-22, the Auditor projects that five cities will have received revenue increases equal to at least one year of pre-pandemic revenues (San Joaquin, Maricopa, Parlier, Mendota, and Orange Cove).
- The Auditor projects that 18 cities did not receive enough stimulus funds alone (without considering property tax and other tax revenues) to cover their COVID-19 related revenue losses, including: Avalon, Beverly Hills, Brisbane, Burlingame, Calistoga, Carmel-By-The-Sea, El Segundo, Emeryville, Indian Wells, Laguna Beach, Mammoth Lakes, Menlo Park, Monterey, San Francisco, Santa Monica, Solvang, West Hollywood, and Yountville.

While the Legislature and Administration are not compelled to take any action, as it relates to the State Auditor's report, it is likely that the report may be referenced in future discussion related to local government funding needs.

