



CITY OF CUPERTINO

DRAFT MINUTES

LEGISLATIVE REVIEW COMMITTEE

10300 Torre Avenue, City Hall

Tuesday, July 23, 2019

9:30 AM

Special Meeting

ROLL CALL

The meeting was called to order at 9:35 a.m.

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, City Manager Deborah Feng (10:00), Townsend Public Affairs, Assistant to the City Manager Katy Nomura.

APPROVAL OF MINUTES

1. Subject: Approve the May 24th Legislative Review Committee minutes
Recommended Action: Approve the May 24th Legislative Review Committee minutes

This item is continued to the August 27th meeting due to a date error in the subject and recommended action lines.

ORAL COMMUNICATIONS

Connie Cunningham discusses AB 68 and mentions that this bill is the only ADU bill that retains the City's authority to require owner occupancy requirements for the ADU's and the JADU's. She notes that the City has taken a position against this bill and wonders if changing the position to "support if amended" in reference to that particular piece would help provide specific direction to the legislature. She also mentions various other positives about AB 68 and is unsure which parts about the bill the City is opposing.

Jennifer Griffin wants the City to have aggressive future planning to protect local control from State legislation, specifically SB 330.

PUBLIC COMMENT (including comments on all agenda items)

This item was not conducted

AGENDA REVIEW

This item was not conducted.

ACTION ITEMS

2. Subject: Legislative updates
Recommended Action: Receive legislative update and provide input

TPA explains that the legislators are currently on summer recess. They left on July 12th and will be back in session on August 12th. They will then have a quick sprint to focus on moving bills out of the Appropriations Committee and taking the final votes in the Assembly and Senate floor before they adjourn on September 13th. TPA has included a legislative update which has information about the State budget and its trailer bills.

In addition to the budget, the legislature's primary focus was on moving bills through the Policy Committee. The update also includes the status of the bills that the City has taken a position on. All of the housing bills that the City has taken a position on are still moving are now in the Appropriations Committee for consideration of their fiscal impacts.

Most of the bills are passing as is but some of the bills were amended. SB 592 was amended to remove compensatory damages. Some of the ADU bills were slightly amended but nothing major has changed. AB 1487 has a long way to go since Senator McGuire and Assemblymember Chiu want ABAG and MTC to work together to come up with a set of amendments that could be approved once the legislature returns from recess. Essentially the legislature pulled everything out of the bill with the understanding that ABAG and MTC would be considering and potentially approving provisions that will be amended back into the bill. If AB 1487 makes it out of the Appropriations committee, it will be referred back to the Policy Committee. This bill will most likely be amended right when the legislature is back in session and then it will go on to appropriations suspense calendar which will be picking up at the end of August. Then if it moves off of Suspense it would go back to the Senate governance and finance and potentially the Senate Housing Committee before it goes to the Senate floor. If it goes to the Senate floor and is approved there, then it has to go back to the Assembly where it will likely be heard in committee and on the floor again.

Mayor Scharf asked TPA if the Appropriations Committee considers the fiscal impact of the cities or just the impact to the State. TPA explains that they are mainly concerned with the fiscal impacts to the state, unless there are local impacts that will then impact the State.

In order to answer a question from public comment, Vice Mayor Chao asks TPA if AB 68 has the owner occupancy requirement. TPA explains that all three ADU bills waive the owner occupancy requirement. AB 881 waives the provisions for five years and SB 13 will be amended to do the same thing. AB 68 is actually the only one that does not contain a sunset provision so that bill would never require owner occupancy. However, the bill has cross references that may seem confusing so TPA will go back and confirm the correct information regarding AB 68 and its owner occupancy provisions.

TPA reiterates that the main point of AB 68 and the other ADU bills is to streamline and facilitate the building of ADU's and limit local conditions imposed on them.

Mayor Scharf explains that schools are losing revenue since these bills don't have provisions for the additional students these ADU's would bring to the district. Vice Mayor Chao mentions that there will be an increase in property value which would increase property taxes but the Mayor comments that the owner will not be paying parcel taxes for each unit.

Vice Mayor Chao believes that there needs to be a bill that makes it legal to charge parcel tax based on square footage. The Mayor mentions that Berkeley has had that in place for many years and has had no repercussions. Both the Mayor and Vice Mayor Chao agree that that would be a good bill idea for next session.

TPA explains that this year's budget is relatively light on transportation related items. The Governor appropriated \$2 billion under SB 1 revenues and those funds get split in half between state and local governments. The local portion is mainly for streets and roads while the state portion has the larger programs which focus on regional highway improvements. The budget should have about \$750 to \$800 million in funding for a new round of transit-oriented development which can help with some of the infrastructure related housing developments for the year.

Vice Mayor Chao explains that California has been underfunding road maintenance and repairs for years. The Mayor comments that road repairs are funded by the gas tax and vehicle license fees (VLF). TPA explains that SB 1 funds do come from the gas tax and the VLF's. The State has unfortunately not been properly funding its highways and roads which is why SB 1 raises the gas tax and the VLF's. This year it is expected to generate \$2 billion and every year that number is expected to grow as the price of gas grows.

The Mayor asks TPA if there has ever been discussion about basing the VLF fees on the annual miles driven instead of the value of the vehicle. TPA explains that several years ago the State started a working group that is currently studying that exact topic. There are challenges as to how that would be calculated and if people would honestly report their mileage. The working group is expected to report their findings to the legislature by next year. The Mayor believes that charging by miles driven could have an impact on traffic since it may cause people to drive less. The Vice Mayor thinks that charging by mileage could cause more damage to the vulnerable population that is forced to drive more. They are already paying more via the gas tax so the Mayor thinks it would have to be one or the other.

Vice Mayor asks about education funding. TPA explains that State education is fully funded this year. The prop 98 allocation for K-14 education was just over \$81 billion. TPA explains that prop 98 allocates about 48% of the State's general fund to K-14 education in a very complex formula that was approved by the voters. This allocation was suspended during the 2008 recession by a 2/3 majority vote. This means that they defer the payments which are being paid back every year. Last year was the last year for the deferral payments so that "debt" is now fully paid off. This year there is no

suspension of Prop 98 and there is additional funding within the Prop 98 funds for buy down of CalPERS and CalSTRS pension issues over \$3 billion, which will save the State over \$7 billion in the long run. There is also additional funding for special education and preschools, UC and CSU's, and the community college system. The California Promise program will allow two years of free tuition to first time, full-time, community college students and the State has allocated an additional 40 million to cover the tuition. TPA foresees that the Prop 98 funding will continue to increase since Prop 98 serves as a floor for what the education system will receive and not a ceiling. Since the recession, the prop 98 funding has doubled.

Vice Mayor Chao asks about special ed funding since it is an important issue for Cupertino. TPA explains that there is \$152 million from Prop 98 that will go to local education for special education funding and there will be an additional \$490 million for individualized learning plans for students that are getting ready to enter into special education, such as 3 and 4 years old. The administration is also looking to do some long-term reforms, which include additional funding through Prop 63, which is \$50 million for competitive grants for county mental health departments to work with school districts, charter schools, and offices of education for mental health related fields.

Public Comment:

Jennifer Griffin is happy to hear about the funding for special education services to the community.

Vice Mayor Chao wants the public to know that the City is required to provide services to all children with special needs. If a parent prefers a private school, the general fund must cover that child's tuition so that they can receive proper services.

3. Subject: Update on positions taken by the League of California Cities (League), American Planning Association (APA), and the Cities Association of Santa Clara County (CASCC)

Recommended Action: Receive update on positions taken by the League, APA, and CASCC and provide input

TPA explains that the League of Cities has been working on the housing bills to try to stop them or get them amended to a more comfortable position. There is a big push to support SB 5 which would provide long term funding for affordable housing.

Vice Mayor Chao wants to know if the League of Cities has changed any of their positions. TPA explains that they have not changed any positions to date but still have some "oppose unless amended" positions in place. TPA foresees that the League will most likely change those positions once they see those amendments in print when the legislature returns from session.

4. Subject: Consider adopting a position on AB 1210 (Low) - Crimes: package theft
Recommended Action: Adopt a position supporting Assembly Bill 1210 and authorize

the Mayor to send a letter of support to the State Legislature

TPA reports that this measure will create a new crime for people who enter a property with an attempt to steal packages from doorways or patios. Currently, The District Attorney's Association and some prosecutors feel that they do not have the legal tools to adequately prosecute for these crimes and this bill will officially make that a crime and make it easier to prosecute people who steal packages.

This measure was introduced earlier in the year and it did not advance out of public safety, however, it will be up for consideration in January 2020. This is a good bill for the City to support in order to continue working to build positive relationships with local legislators.

TPA explains that the only registered opposition for this bill comes from the Public Defenders Association and the ACLU because they believe the current laws are adequate to prosecute for these crimes. The ACLU believes that adding a new crime that could potentially charge non-violent offenders with a felony goes against the will of the voters, since the voters passed Prop 47 in 2014 that changed a lot of non-violent felony crimes into misdemeanors.

The Mayor asks if there is a bill that can repeal Prop 47. TPA explains that there is not one for this election cycle, but there have been bills introduced ever since it passed. Typically, they fail to pass out of the Public Safety Policy Committee since its usually held by the democrats. It is up to the voters to repeal this bill since it was a voter approved initiative. The legislature can still propose a bill for the 2022 ballot in order to revise Prop 47. TPA explains that if the legislature wants to put something on the ballot, they need to approve it 131 days before the election.

The Mayor believes that the rises in package theft is most likely not related to the fact that it would be considered a misdemeanor over a felony, but instead is because there are much more packages laying around.

Vice Mayor Chao says that now that many crimes are considered misdemeanors, the police cannot help youth get into helpful rehabilitation programs and instead are just being put right back on the street to repeat the cycle.

No action was taken to adopt a position or send a letter. Discussion of this bill will be continued to the next meeting.

5. Subject: Consider adopting a position on H.R. 530 (Eshoo) - Accelerating Broadband Development by Empowering Local Communities Act and S. 2012 (Feinstein) - Restoring Local Control Over Public Infrastructure Act

Recommended Action: Adopt a position supporting HR 530 and S. 2012 and authorize the Mayor to send a letter of support to the State Legislature

TPA explains that these are two Federal bills that mirror each other, and one was

introduced in the House and one in the Senate. These bills are a result of Governor Brown's veto of SB 649 in California, so now the issue has been taken to the federal level. These bills would nullify the FCC series of rules that were adopted in 2018 as it relates to utility poles and telecommunications infrastructure. The FCC rules put caps on the rents for poles, limit application fees, and ban negotiation for in-kind contributions that limit timelines for review.

The Mayor doesn't believe this bill will pass the Senate and TPA explains that there has been a gridlock in the Senate where Senate Majority Leader McConnell isn't really moving any bills. Vice Mayor Chao is happy to see our legislators supporting local control.

The Mayor and Vice Mayor both agree to support these two bills. Vice Mayor Chao wants to write to Congressman Ro Khanna, who sponsored the FCC bill, to let him know that he is not supporting his local government by sponsoring bills that remove local control.

Action Taken:

The Mayor moved and the Vice Mayor seconded to support HR 530 and S. 2012 and send a letter of support to the Federal Legislature. The motion carried unanimously.

6. Subject: Discuss the constitutionality of AB 1487, SB 330, and SB 592

Recommended Action: Discuss the constitutionality of AB 1487, SB 330, and SB 592

TPA provides an overview of how a bill is first deemed constitutional. The Legislative Council serves as the lawyers for the legislature and they draft all the bill language. They advise individual members of the constitutionality of their bill through written documentation. The member would then decide if they want to address the issues or not. There is nothing in place that prohibits the legislature from passing bills that may have questions about constitutionality. If that bill is signed into law, then that is then left up to the judicial system. The Legislative Council does write letters to the governor about every single bill that informs them of any constitutional issues with that bill.

For ballot measures, the title and summary have to be written by the Attorney General's Office. Usually if there are constitutional issues it becomes a burden of someone to challenge it in court and then the judges will decide if it should be removed from the legislative realm.

TPA explains that anyone can request the Attorney General to do a review of legislation as a private individual or as a legislator. This can be a lengthy process, but it will result with something from the Attorney General that confirms the constitutionality of a bill.

The Mayor believes that Cupertino should consider requesting something or an organization like the League of CA Cities can request something. The Mayor believes that the League will have more of an impact than an individual city.

Anyone who challenges a legislative bill has to go through the judicial process and can bring suit to the courts if they have proper standing.

Public Comment:

Jennifer Griffin commented that she is very glad this item was listed on the agenda because there is something strange going on with the State and its constitutionality.

Vice Mayor Chao asks if TPA could provide specific constitutionality questions that apply to the 3 bills for this item. TPA explains that the information from the Legislative Council is not public information unless the Legislators choose to make it public. TPA provides the following overview of constitutionality questions that they have seen raised about AB 1487, SB 330, and SB 592:

- AB 1487 – Does the housing crisis in the Bay Area warrant special legislation?
- SB 330 – Should the same rules apply to everyone equally? Can the legislature set certain rules for larger jurisdictions and other rules for smaller areas?
- SB 592 – Is it okay to gut and amend?

TPA does not necessarily see anything about these bills in regard to the above questions as being unconstitutional. TPA correspondent, Casey Elliot, wants to reiterate that he is not a lawyer, and is solely giving his professional opinion.

7. Subject: Future bill ideas

Recommended Action: Discuss and provide input on future bill ideas

The Mayor asks about the Prop 13 split role, and TPA answers that it has qualified for the November 2020 ballot.

The Mayor has the following bill ideas to propose for the future legislative session:

- A law that compels developers that receive RHNA entitlements to construct that entitlement within a certain period of time.
- A law that requires new commercial office developments to be accompanied by sufficient housing to maintain a jobs/housing balance.
- A law that in lieu fees can be set at a level sufficient to buy land to construct an equivalent amount of non-inclusive BMR housing as to what would normally be required.
- Modify the Leroy F green school facilities act of 1998 to allow realistic mitigation fees for the construction and new school facilities.
- A law requiring mitigation fees to pay for building new water infrastructure.
- Amending SB 35 to prevent the concession of being able to make the BMR housing smaller or substandard to the market rate housing.
- Explicitly legalize square footage-based parcel taxes.
- A law basing vehicle license fees on mileage and maybe fuel efficiency and not vehicle value.
- Local ballot measures should be written by the city attorney and the elected

officials should not be permitted to change it.

- A law that requires a subjective criterion that defines when a crisis or emergency starts and when it ends.
- A bill to eliminate the gut and amend process.

The Vice Mayor wants to introduce the following bill ideas for the future legislative session:

- A bill that clarifies the election law in regard to ballot boxes. It should at least say within 100 ft of the ballot boxes, which are not technically a voting center since voters just drop off the ballots and do not actually fill out the material there.
- A bill that doubles property taxes that come back to the city for housing development and lowered for office development so that it matches the city service and infrastructure needs.
- A bill that creates a state appeal board that will review the approval or rejection of streamline projects.

Public Comment:

Jennifer Griffin wants a bill that would encourage the public to have more access to the activity in Sacramento.

8. Subject: Discussion of future meetings and agenda topics

Recommended Action: Recommend future meetings and agenda topics

The minutes from the June 25th meeting will be brought back to our next meeting for approval since the date was listed incorrectly on this meeting's agenda.

The Mayor would like to discuss AB 1487 at the next meeting to possibly take a position on it. Currently, the bill is mostly redlined so TPA expects the bill language to be in print once the Legislature returns from their recess after August 12th.

Vice Mayor Chao wants to discuss the Split Role ballot initiative in order to gather information and see if the City can take a position on it. TPA believes that the City can take a position on it but advises the committee to check with the City Attorney first. TPA will provide background information for the initiative for the next LRC meeting.

The Mayor and Vice Mayor would like to continue discussing AB 1210 during the next meeting.

The next LRC meeting was scheduled for August 27th at 9:30 a.m.

ADJOURNMENT

The meeting was adjourned at 11:32 a.m.