



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Review of 2017 Housing Legislation (Information Only)

#### **BACKGROUND**

This report provides a summary and analysis of the new housing laws enacted by the State of California in 2017, commonly referred to as the “2017 Housing Package,” which took effect on January 1, 2018. Staff analyzed these laws (which included a review of the analysis of various outside groups and legal firms) to assess the likely positive or negative near term impacts of these laws on the City. Two summaries of this legislation, one provided by the California Department of Housing and Community Development Department (HCD) and the other by the League of California Cities, are attached to this report as Attachments 1 and 2, respectively.

#### **EXISTING POLICY**

##### **Council Policy 7.3.1:**

**Goal 7.3B** Assure that City policy is established, documented and enacted according to established procedures and legal principles.

**Policy 7.3B.3** Prepare and update ordinances to reflect current community issues and concerns in compliance with state and federal laws.

#### **DISCUSSION**

The fifteen bills comprising the Housing Package (plus several other housing bills not officially included in the Housing Package but also enacted in 2017) were developed by the California Legislature to address the statewide housing crisis. The statewide housing crisis is considered by most of the bill authors and sponsors as a matter of both inadequate supply and significant affordability concerns. Most of these bills can be grouped into one or more of the following four categories:

- **Funding Measures:** SB 2, SB 3, and to a limited extent AB 73, AB 571;
- **Accountability, Reporting, and Enforcement Measures:** SB 166, SB 167, AB 72, AB 678, AB 879, AB 1397, AB 1515; AB 1568
- **Streamlining Measures:** SB 35, SB 229, SB 540, AB 73, AB 494
- **Miscellaneous:** AB 571, AB 1193, AB 1505, AB 1521

Potentially significant impacts of the new legislation in each of the above areas on City business or operations are noted below. A table showing which bill has impacts in each category(ies) is provided in Attachment 3. That table also indicates whether the bill creates new mandatory requirements that

cities and counties must meet, or new opportunities that jurisdictions may opt to pursue. Of those bills that create new mandatory requirements for local governments, the table also indicates whether those requirements apply to charter cities, such as Sunnyvale, and charter counties, or only to “general law” jurisdictions. Please see Attachment 1 for more detail on each bill, and Attachment 2 for analysis of likely impacts to cities and counties of the new laws.

### **Funding Measures**

**SB 2** is estimated to generate approximately \$250 million per year for the State from new real estate recording fees. These funds will be available for local planning and affordable housing purposes. The bill requires the State to distribute half of the revenues received in 2018 to cities and counties for planning activities intended to create additional capacity for housing, streamline development review, or otherwise support production of affordable housing. The remainder of the 2018 funds will be available to the State for affordable housing and homelessness programs. Starting in 2019 and beyond, the State must distribute 70% of these annual revenues to local governments for affordable housing development and related uses, such as rental and home buyer assistance. See Attachment 2 for more detail about the types of eligible uses of these funds.

What SB 2 Means for Sunnyvale: Based on the estimated amount of SB 2 revenue for 2018, and assuming the 50% set-aside for local governments is distributed evenly among the State’s 540 cities and counties, a very rough estimate of how much the City might be eligible for is approximately \$230,000. It is not clear yet how the State will divide up this amount among the jurisdictions, what the application process will be, or what kinds of strings may be attached to this funding, such as a matching requirement, for example. Some preliminary information about the expected application process is provided in Attachment 2, from the League of Cities; however, HCD may create a more robust application process in the coming months. Staff is monitoring this potential opportunity.

The City has previously completed or is currently working on many planning efforts similar to the type of work eligible for this funding, such as: updating local land use plans, completing plan-level environmental review, streamlining development review processes, developing inclusionary housing ordinances, and/or conducting nexus studies needed to justify and enact housing impact fees. Many jurisdictions around the state have not undertaken such efforts previously, or need to update older plans and programs, and may not have had sufficient funds to do such work earlier. The City is currently undertaking several specific plan updates with a goal of potentially increasing housing capacity in certain areas. Those studies, for the most part, are already funded, so it is not clear whether any additional plan updates will be pursued in 2018 for which this funding could be sought.

**SB 3** authorizes an affordable housing bond measure to be placed on the State ballot in 2018. If approved, \$4 billion in state bonds will be issued, of which \$3 billion will be for existing State affordable housing programs, and \$1 billion will be for veterans’ housing programs. If the bond measure passes, some of this funding may be available for future affordable housing projects within the City, primarily new construction and/or rehabilitation of rental housing for lower-income households. Usually the housing developer, rather than the city, is eligible to apply for such funds, most of which are provided as loans against the property, but the City may need to submit documents in support of that application. These funds help the developers further leverage any local housing funds the City contributes to such projects, in addition to leverage provided by federal tax credits or other non-City sources.

What SB 3 Means for Sunnyvale: The ultimate impact on the City as a whole would be potentially more affordable rental units developed in the City at a lower per-unit City cost. The City has previously taken advantage of State housing programs funded by prior State bond measures, so this would not be an entirely new process. For example, both the Fair Oaks Plaza and Onizuka Crossing projects applied for and were awarded Infill Infrastructure Grants (IIG) by HCD, which were funded by an earlier bond measure, Proposition 1C. In both cases the City supported the housing developer's application by providing technical assistance through the Community Development Department, and adopting Council resolutions in support of those funding applications, when required by the program.

### **Accountability, Reporting and Enforcement Measures**

#### **AB 678, SB 167 and AB 1515**

These bills make changes to an existing law known as the Housing Accountability Act (HAA), also known as the "Anti-Nimby Act." The changes make it more difficult for all jurisdictions, including charter cities, to deny proposed housing developments, or to reduce the density or size of proposed housing projects. It increases the penalties for jurisdictions that fail to approve housing projects that conform to all "objective" general plan and zoning standards. AB 1515 requires the courts to give less deference to a local governments' determinations of a proposed development's consistency with local zoning or land use plans. Although cities and counties may not deny or reduce the density of a project once it is deemed consistent with objective development standards, they may still require projects to go through a design review process.

What AB 678, SB 167 and AB 1515 Mean for Sunnyvale: The City's development review processes and practices are for the most part largely consistent with these requirements; therefore, staff does not expect these new requirements to have significant impacts in Sunnyvale (some jurisdictions around the State may need to update their development standards to meet these requirements). However, staff is currently examining the City's codes and procedures to see if any amendments are needed to comply with these laws. If so, staff will bring forward any proposed amendments requiring Council action. See Attachments 1 and 2 for more detail on these bills.

### **Changes to Housing Element Laws**

**AB 1397** adds various technical requirements for housing elements, many of which were already implemented to some degree in practice by State staff (HCD), but may not have been specified clearly enough in State law. For example, the need to thoroughly analyze whether sites identified in the housing element had realistic capacity for, and/or likelihood of redevelopment or additional housing units being added to those sites during the coming Regional Housing Needs Allocation (RHNA) period, was previously communicated to local staff as a requirement by HCD staff, but was not specified in State statutes. The City's Housing Element already complies with these requirements. The high level of redevelopment of existing properties over the past decade or so, primarily due to privately initiated projects, provides substantial evidence that the City's sites inventory has been based on a realistic assessment of redevelopment potential of sites with existing uses.

What AB 1397 Means for Sunnyvale: Staff does not expect this bill to have immediate impacts on the City; however, it may have some impacts the next time the Housing Element is updated (2023). For example, HCD staff reviewing the City's next draft Housing Element for

compliance (in 2023) may question or reject a site listed on the site's inventory if HCD does not find that the site has a "realistic potential for redevelopment" within the next housing element cycle. While similar concerns were expressed by HCD upon prior reviews of the City's draft housing elements, now HCD staff has the language in these new State statutes to clarify and support this requirement. In prior cycles staff provided sufficient evidence of the City's track record with redevelopment of other sites to alleviate HCD's concerns and ultimately obtain HCD certification (without a requirement to remove those sites from the inventory).

**AB 879 and AB 72** further clarify the types of analysis of "local constraints on housing development" to be included when housing elements are updated. AB 72 authorizes HCD to review city and county actions, such as denial of a housing project, or rezoning or downzoning a housing site, for compliance with the jurisdiction's housing element. It authorizes HCD to issue a notice of non-compliance if HCD deems that action to conflict with the jurisdiction's housing element or otherwise violate housing element law. Previously HCD was not able to take such compliance actions directly, rather private litigation was required to enforce these requirements.

What AB 879 and AB 72 Mean for Sunnyvale: Historically Sunnyvale has not had a track record of litigation or significant compliance problems of this nature, so staff does not anticipate any immediate impacts in the near term. Nonetheless, this bill gives all jurisdictions more reason to proceed with caution if contemplating any action that might result in a non-compliance notice from HCD.

**SB 166** strengthens existing provisions in housing element law (known as "no net loss"), which are intended to prevent local governments from down-zoning residential areas and/or approving developments at a lower density or size than contemplated in their State-approved housing elements. A new aspect of the no net loss concept introduced in this Bill is analysis of the actual income level of the units approved, not only the number of units or density of the project, yet the City cannot deny a proposed development because it may not match the income level estimated in the sites inventory. It is not clear yet how this analysis will be implemented or enforced by HCD. It is unclear how feasible it will be for general law jurisdictions to comply fully with this law as there is a finite amount of land available in most jurisdictions (without annexation of other land). Because of property rights laws, cities cannot force developers or property owners to develop and use their land only for the residential purposes, and the particular income levels and unit counts, indicated in the housing element sites inventory. Staff anticipates that HCD will develop clarifying guidance in this area within the coming year.

What SB 166 Means for Sunnyvale: This bill does not apply to charter cities such as Sunnyvale, so no immediate impacts are anticipated on Sunnyvale, but it could be extended to charter cities through future legislation.

**SB 35 and AB 879** require enhanced annual reporting requirements for cities and counties which must provide new types of data in their annual reports to HCD on their housing element compliance ("APRs"), primarily related to the number of housing units proposed compared to the number approved by the City through Planning approvals (entitlements). AB 879 also requires new types of data to be included in APRs, and directs HCD to evaluate the reasonableness of local government impact fees imposed on housing developments.

What SB 35 and AB 879 Mean for Sunnyvale: Sunnyvale has been submitting the APRs for

many years and will continue to do so; however, the new types of data required by these bills are quite detailed and will increase the level of effort, primarily in terms of staff time, that the City must commit annually to the APR process. Staff is optimistic that the new permitting software the City is pursuing (a.k.a. the new SunGIS) will allow some of this data gathering and reporting effort to be automated in future years and thus lessen the amount of staff time and expense required to comply with these laws. Regarding HCD's forthcoming analysis of local fees on housing development, it is unclear at this time what the outcome of that analysis will be; however, most local government interest groups, such as the League of California Cities and similar entities, are concerned about this and will be following the fee issue closely. The outcome may require cities to actively participate in this analysis by sharing information about how such fees are determined, what they are used for, and how local public services and facilities would be impacted if these revenues were reduced or eliminated.

### **Streamlining Measures**

**SB 35** was primarily initiated as the Legislature's alternative to the housing development streamlining measure proposed by Governor Brown in 2016, which failed to pass the Legislature. This bill requires cities and counties in most cases to provide a by-right (ministerial) approval process for multi-family rental housing projects with a certain percentage of affordable units, if the developer agrees to pay prevailing wages to the construction workers that build the project (See Attachments 1 and 2 for more detail). Sunnyvale added a by-right process for rental projects of 25 or fewer units as an implementation objective included in the 2009-2014 Housing Element update, at the urging of HCD staff reviewing the draft Housing Element at that time. However, SB 35 requires this type of approval process for larger projects as well, therefore some modifications to City approval processes will be required to handle any future SB 35 streamlining applications. This streamlining process must be requested by the developer of the project meeting the affordability and wage-related criteria noted above, so if no developers request it, it will not have any immediate effects. Many market-rate developers hesitate to voluntarily provide affordable units in their projects, and/or to pay prevailing wages, because those commitments can have significant impacts either on total anticipated financial gain or feasibility of the project, and/or on construction costs.

The proposed SB 35 streamlined project must be consistent with objective zoning and design review standards and not exceed the maximum density allowed within the general plan land use designation. Objective standards are those that are "involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal."

What SB 35 Means for Sunnyvale: It is unclear how many market-rate residential developers will pursue this option in Sunnyvale, which is known for its already streamlined, fair, and relatively predictable process, which might not warrant the developer's costs to qualify a project for SB 35 streamlining. Most subsidized affordable housing projects are required to pay prevailing wages as a condition of their financing, and are 100% affordable already, so staff expects that most projects requesting SB 35 streamlining in Sunnyvale, if any, will likely be subsidized affordable projects.

The City will likely need to adopt a few minor zoning amendments to comply with SB 35. These changes may reduce the City's ability to require use permits or other discretionary approvals for certain types of projects pursuing SB 35 streamlining. SB 35 could influence the

size and location of multi-family rental project applications in the City. Large projects requiring rezoning or design exceptions will still have to go through the City's regular review process. However, developers of SB 35-eligible projects in multi-family, commercial, or mixed use zoning districts that allow housing as an ancillary use may choose to pursue the streamlined review. In this situation, existing standards, such as floor area ratio, height, setback, etc. could still be enforced.

**SB 540 and AB 73**, were introduced by other authors around the same time as SB 35 to address the same streamlining objectives, but using a voluntary, rather than mandatory approach. SB 540 provides options largely modeled after provisions already available under State law. AB 73 includes more State involvement in this type of effort, including some funding but also State oversight. Please see Attachment 2 for more detail.

What SB 540 and AB 73 Mean for Sunnyvale: Sunnyvale and many other cities have utilized streamlining provisions for many years, such as specific or precise plans, overlay districts, and tiered environmental review. Tiered environmental review is conducting environmental review (e.g., EIRs) at the plan level to streamline the amount of review needed for individual development proposals which are consistent with those plans. Given the significant requirements involved in pursuing either of these new programs, they do not appear to provide any advantages compared to existing efforts the City is already pursuing or has recently completed, such as updating general plan elements and specific or precise plans.

### **Miscellaneous**

Several of the bills in this area, such as **AB 571** and **AB 1521**, make changes that address somewhat technical issues that may have previously hindered certain types of affordable housing projects or efforts, such as farmworker housing and preservation of existing subsidized housing.

What AB 571 and AB 1521 Mean for Sunnyvale: Regarding AB 571, staff does not anticipate any proposed farmworker housing in the City, so that is not likely to impact the City. AB 1521 could be somewhat helpful in any future City efforts to preserve any subsidized affordable housing properties with expiring affordability restrictions. The City does not have any properties in that situation on the immediate horizon, but that may be an issue to address in the next housing element update.

**AB 494 and SB 229** are considered Accessory Dwelling Unit (ADU) "clean-up" bills. They make minor adjustments to the ADU laws adopted last year (2016), which raised questions of interpretation due to unclear or ambiguous language. The 2017 ADU clean-up bills require local governments to amend their ADU codes to comply with current State law.

What AB 494 and SB 229 Mean for Sunnyvale: The City has already initiated amendments to its ADU codes to comply with the ADU clean-up bills. The draft ordinance to enact these changes was approved by Planning Commission on January 8 and will be considered by City Council on February 6.

**AB 1505** is called the "Palmer Fix." This bill overrides the 2009 Palmer court decision that struck down local inclusionary rental ordinances. The City had such an ordinance prior to 2009, adopted originally in 1980 and amended in 2003, which required 15 percent of the units in new multi-family

rental projects to be affordable to lower-income households (“BMR rental units”). AB 1505 allows cities and counties to once again require developers to provide affordable units as part of any rental development. Any ordinances adopted after passage of the bill must include alternate means of compliance, such as in-lieu fees, land dedication, or off-site development of units, and if they require more than 15 percent of the units to be affordable to lower-income households, HCD may review the ordinance and require a feasibility study (nexus study) to justify the requirement.

What AB 1505 Means for Sunnyvale: While the City’s prior rental inclusionary requirements were largely consistent with AB 1505, they did not specifically include several of the alternate compliance options now required, and there were minor incompatibilities with State density bonus law related to calculating the rent limits applicable to the low-income units. Staff will prepare a new rental inclusionary ordinance compliant with AB 1505 and current State density bonus law as part of the 2017 Housing Strategy study issue currently underway. This objective is prioritized to be the first deliverable in the work plan for that study, and will be brought for Council’s consideration before the rest of the Strategy is complete. If that ordinance is enacted, it will help the City meet a portion of its RHNA goals for lower-income units, as was the case until the Palmer case put an end to the prior BMR rental program. In the meantime, the City’s Rental Impact Fee (RIF) program will continue to apply to any proposed new rental projects. The RIF program assesses a fee based on the square footage of the new rental development, but allows developers the option of providing affordable units in their project instead of paying this fee. Since the RIF program has been in effect, most developers have opted to provide the affordable units rather than pay the fee. In effect the RIF program operates similarly in its end result to an inclusionary rental requirement of the type enabled by AB 1505, without violating the case law created by the Palmer decision. Therefore, the City will continue to receive affordable housing contributions in some form or another by any rental projects that may be proposed in the intervening several months between now and when a new inclusionary rental ordinance can be enacted.

## **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City’s website.

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## **ATTACHMENTS**

1. HCD Summary
2. League of California Cities Summary
3. Table of New Housing Laws