Planning & Transportation Commission

Staff Report (ID # 13646)

Report Type: Study Session **Meeting Date:** 10/13/2021

Summary Title: Update on Planning and Housing 2021 Legislation

Title: Study Session to Review 2021 State Legislation Related to Planning and Housing

From: Jonathan Lait

Recommendation

This is a Study Session with the Planning and Transportation Commission (PTC) to provide an update on the most recent State legislation session and signed legislation affecting housing and planning policy; no action is required at this time.

Report Summary

This report provides a summary of key planning and housing related State legislation in 2021 that Governor Gavin Newsom has signed. The report focuses on legislation that will likely have more direct impacts on Palo Alto's current policies and procedures and includes the anticipated actions needed by City staff. Unless otherwise stated in the bills, the legislation will be effective January 1, 2022.

Background

There were many bills related to housing and planning under consideration during the 2021 legislative session. The following discussion summarizes four key bills, now signed into law: SB 8, SB 9, SB 10, and SB 478 (SB stands for Senate Bill). These laws are relevant to our planning and housing policies and are focused primarily on process streamlining and housing production. Links to the State web page for the text of each bill are provided in the following sections and more detailed summaries are provided as attachments. There are other notable laws listed in this report and more information regarding those will be forthcoming.

Discussion

Planning & Housing

SB 8 (Skinner) Housing Crisis Act of 2019:

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Existing law, the *Housing Crisis Act of 2019 (HCA)*, requires a housing development project be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application is submitted, except as specified. The act defines "housing development project" to mean a use consisting of residential units only, mixed-use developments consisting of residential and nonresidential uses with at least 2/3 of the square footage designated for residential use, and transitional or supportive housing.

Notable changes by the law, now signed by Governor Newsom:

- Extends the sunset of the HCA by five years to January 1, 2030.
- Expands on the definition of "housing development project" for the purposes of the HCA to include both discretionary and ministerial projects. SB 8 also applies the HCA to the construction of single dwelling units. Therefore, single dwelling units may submit pre-applications to freeze zoning laws, may be subject to the no-net-loss provision of the HCA, and may be limited to five total hearings.
- Clarifies that appeals and public meetings related to density bonus law are counted for the purposes of the five-hearing limit in the HCA.

This law clarifies the HCA and staff will continue to process applications in accordance with the State law. No local ordinance is necessary for implementation. For a more detailed summary of the bill, refer to Attachment A of this report.

SB 9 (Atkins) Housing Development
This new law applies to single-family zoned parcels and includes two primary by-right provisions. One provision allows for a lot split of parcels that are at least 2,400 square feet in area. The other provision allows construction of up to two units on each parcel in a single-family zone. A lot split followed by a two-unit project on each of the new lots could result in four total dwellings on what was formerly one single-family residential lot.

The City would need to consider these two-unit projects and lot splits ministerially (i.e., without discretionary review or hearing), if the proposed housing development meets certain requirements. In particular, the law allows local development standards to apply to the dwelling units constructed on the subject parcel(s). The local development standards, however, must be objective standards. While the City currently is in process to develop objective standards, that effort was not developed with a two-family unit typology in mind. The City, including the PTC and the Architectural Review Board, may want to pursue development of standards to ensure any resulting units created by this law align with Palo Alto's preferences.

Additionally, the legislation imposes certain conditions and restrictions. The City will need to determine the process for accepting applications and reviewing applications and ensuring compliance with restrictions. Notable aspects include that the resulting units cannot be short term rentals. The law does not require the City to allow accessory dwelling units when four units are created by both lot split and subsequent two-unit projects. Likewise, the law requires

that lot splits and unit development only be performed by property owners who attest they will reside in one of the units for at least three years. Staff will need to understand how to implement that provision. For a more detailed summary of the law refer to Attachment B of this report.

This law has gained attention in the press and academics alike resulting in many published articles. One research article that may be of interest published in July 2021 prior to the signing of the law[1] provides some context of the law's impacts on housing production throughout the state.

The City will need to update Palo Alto Municipal Code (PAMC), Title 18 (Zoning) for consistency with the new law; particularly, Chapter 18.12, R-1 Single-Family Residential Districts and 18.10, Low Density Residential (RE – Residential Estate). Other PAMC titles, including Title 21 may need adjustments as well for consistency. The PTC will have the opportunity to review and recommend any permanent Ordinance updates to Title 18.

It is expected that an interim ordinance would be developed for City Council. Due to the limited time for development of the interim ordinance before the state law takes effect, the interim ordinance may not come to PTC before adoption. A permanent ordinance would follow and need review and recommendation from the PTC. This process is akin to the updates completed for the accessory dwelling unit laws in the past.

SB 10 (Wiener) Housing Development/Density:
This new law authorizes a city to adopt an ordinance to zone any parcel for up to 10 residential units, at a height specified by the ordinance if the parcel is in a transit-rich area or an urban infill site. An ordinance adopted in accordance with this law is not a project for purposes of CEQA. For a more detailed summary refer to Attachment C of this report.

While this law will go into effect in January 2022, it is not a requirement that the City adopt an ordinance. It is meant as a tool for local agencies to increase housing development in transit-rich areas. Staff will not act on this bill unless Council directs staff to do so.

SB 478 (Wiener): Planning and Zoning Law: Housing Development
The new law applies to housing development projects located in a multifamily residential zone or a mixed-use zone. For Palo Alto, this could apply to several commercial districts that allow residential and commercial uses. The law does the following:

- This law prohibits a local agency from imposing a Floor Area Ratio (FAR) standard that is less than 1.0:1 on a housing development project that consists of three to seven units, or less than 1.25:1 on a housing development project that consists of eight to ten units.

[1] Terner Center for Housing Innovation (UC Berkeley). July 2021. https://ternercenter.berkeley.edu/wp-content/uploads/2021/07/SB-9- Brief-July-2021-Final.pdf

- The law prohibits a local agency from imposing lot coverage requirements that would physically preclude a housing development project from achieving the FARs described above.
- The law prohibits a local agency from denying a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency's requirements for minimum lot size.

For more detailed summary of this law refer to Attachment D of this report.

This law impacts most of Palo Alto's existing mixed-use development standards. The City will need to update Title 18 for consistency with the State law. Staff will provide more analysis of the effects of the regulations for a future public hearing.

Other Notable Legislation

The following signed laws are also relevant to planning and development in Palo Alto:

- *AB 215 (Chiu):* *Planning & Zoning Law: Housing Element Violations*. Provides the Department of Housing and Community Development (HCD) with additional enforcement authority for local agency violations of specified housing laws and increases public review for housing elements.

- *AB 537 (Quirk):* *Communications: Wireless Telecommunications and Broadband Facilities.* This law updates existing law establishing a timeline and process through which wireless telecommunication siting facility permits will be deemed approved.

- *AB 602 (Grayson):* *Development Fees: Impact Fee Nexus Study.* Adds new requirements to impact fee nexus studies. Requires cities and counties to request certain information from development proponents and requires the HCD to develop a nexus study template.

- *AB 787 (Gabriel):* *Planning & Zoning: Housing Element: Converted Affordable Housing Units.* Authorizes cities and counties to receive credit towards their regional housing need for the conversion of above moderate-income units to moderate-income units.

- *AB 1466 (McCarty):* *Real Property: Discriminatory Restrictions.* Requires a title insurance company involved in any transfer of real property and that provides a deed or other documents to identify whether any of the documents contain unlawfully restrictive covenants and, if found, record a specified modification document with the county recorder. Makes changes to the existing process of recording a restrictive covenant modification, as provided. Please note, this relates to prior PTC interest in removing racially restrictive covenants from deeds.

- *SB 556 (Dodd):* *Street Light Poles, Traffic Signal Poles: Small Wireless Facilities Attachments.* This law establishes permitting requirements for the placement of small wireless facilities

on streetlight and traffic signal poles owned by local governments, including specified timelines for approving and attaching infrastructure, limitations on fees for attachments, and restrictions on local governments' ability to prohibit small wireless facility attachments.

Other Legislation Signed by Governor Newsom

The Governor also signed the following bills into law:

- AB 68 by Assemblymember Sharon Quirk-Silva (D-Fullerton) – Department of Housing and Community Development: California Statewide Housing Plan: annual reports.
- AB 345 by Assemblymember Sharon Quirk-Silva (D-Fullerton) – Accessory dwelling units: separate conveyance.
- AB 447 by Assemblymember Tim Grayson (D-Concord) – California Debt Limit Allocation Committee: income taxes: low-income housing tax credits.
- AB 491 by Assemblymember Christopher Ward (D-San Diego) – Housing: affordable and market rate units.
- AB 571 by Assemblymember Chad Mayes (I-Rancho Mirage) – Planning and zoning: density bonuses: affordable housing.
- AB 634 by Assemblymember Wendy Carrillo (D-Los Angeles) – Density Bonus Law: affordability restrictions.
- AB 721 by Assemblymember Richard Bloom (D-Santa Monica) – Covenants and restrictions: affordable housing.
- AB 787 by Assemblymember Jesse Gabriel (D-Encino) – Planning and zoning: housing element: converted affordable housing units.
- AB 838 by Assemblymember Laura Friedman (D-Glendale) – State Housing Law: enforcement response to complaints.
- AB 948 by Assemblymember Chris Holden (D-Pasadena) – Bureau of Real Estate Appraisers: disclosures: demographic information: reporting: continuing education.
- AB 1029 by Assemblymember Kevin Mullin (D-South San Francisco) – Housing elements: pro-housing local policies.
- AB 1043 by Assemblymember Isaac Bryan (D-Los Angeles) – Housing programs: rental housing developments: affordable rent.
- AB 1095 by Assemblymember Ken Cooley (D-Rancho Cordova) – Affordable rental and owner-occupied housing: equity in state and local programs.
- AB 1297 by Assemblymember Chris Holden (D-Pasadena) – California Infrastructure and Economic Development Bank: public and economic development facilities: housing.
- AB 1304 by Assemblymember Miguel Santiago (D-Los Angeles) – Affirmatively further fair housing: housing element: inventory of land.
- AB 1398 by Assemblymember Richard Bloom (D-Santa Monica) – Planning and zoning: housing element: rezoning of sites: pro-housing local policies.
- AB 1584 by the Committee on Housing and Community Development – Housing omnibus.
- SB 263 by Senator Susan Rubio (D-Baldwin Park) – Real estate applicants and licensees: education requirements: fair housing and implicit bias training.

- SB 290 by Senator Nancy Skinner (D-Berkeley) – Density Bonus Law: qualifications for incentives or concessions: student housing for lower income students: moderate-income persons and families: local government constraints.
- SB 381 by Senator Anthony Portantino (D-La Cañada Flintridge) – Surplus residential property: priorities, procedures, price, and fund: City of South Pasadena.
- SB 591 by Senator Josh Becker (D-Menlo Park) – Senior citizens: intergenerational housing developments.
- SB 728 by Senator Robert Hertzberg (D-Van Nuys) – Density Bonus Law: purchase of density bonus units by nonprofit housing organizations.
- SB 791 by Senator Dave Cortese (D-San Jose) – California Surplus Land Unit.
- AB 1174 by Assemblymember Tim Grayson (D-Concord) – Planning and zoning: housing: development application modifications, approvals, and subsequent permits.

Environmental Review

The California Environmental Quality Act (CEQA) does not apply to the subject matter of this staff report since it not considered a "project" under CEQA.

Public Notification, Outreach & Comments

The Palo Alto Municipal Code does not require notice of this item because it is a Study Session and staff did not conduct any public outreach for this discussion.

Next Steps

Staff will review the adopted legislation and determine the appropriate follow-up actions needed. Title 18 will need to be updated to bring certain code sections into compliance with the new State law. Staff will develop a workplan and initiate the staff work to codify the required changes.

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Attachments:

- Attachment A - SB 8 Summary (DOCX)
- Attachment B - SB 9 Summary (DOCX)
- Attachment C - SB 10 Summary (DOCX)
- Attachment D - SB 478 Summary (DOCX)

[2] Emails may be sent directly to the PTC using the following address: planning.commission@cityofpaloalto.org

SB 8 (Skinner) Housing Crisis Act of 2019:

This law makes the following changes:

1) Extends the sunset on the HCA by five years, to January 1, 2030, and provides that until January 1, 2034, the HCA's provisions apply to a housing development project that submits a preliminary application before January 1, 2030.

2) Extends by one year, up to three and a half years, the period during which a local government may not impose new rules or standards on an affordable housing project, as defined.

3) Expands on the definition of "housing development project" for the purposes of the HCA to include both discretionary and ministerial projects, as well as projects to construct single dwelling units. This extends the HCA's pre-application process, no-net-loss provision, and five hearing limit to projects proposing a single dwelling unit. This law also says that these changes are declaratory of existing law and do not affect the interpretation of the scope of the Housing Accountability Act, but provides that its changes do not affect a project for which an application was submitted before January 1, 2022.

4) Clarifies that the receipt of a density bonus is not a basis for finding a project out of compliance with local zoning rules.

5) Defines, for the purposes of the requirement to up-zone concurrently with a downzone, "concurrently" to mean at the same meeting, or within 180 days of the downzoning if the downzoning was requested by an applicant for a housing development project and refines the provisions governing what a downzone means to include any other action that would reduce the site's residential development capacity in effect at the time of the proposed change.

6) Clarifies that appeals and public meetings related to density bonus law are counted for the purposes of the five-hearing limit in the HCA and includes technical changes to the limitation on a local government's ability to reduce the intensity of land use in its jurisdiction.

7) Provides, regarding the HCA's demolition and replacement provisions, that:
    a. The replacement requirements must be followed, despite local density requirements that may be in conflict;
    b. Any existing occupants that are required to leave their units must be allowed to return at their prior rental rate if the demolition does not proceed and the property is returned to the rental market;
    c. Relocation and right-of-first-refusal requirements no longer apply to occupants of any protected units that are moderate-income or high-income households; and

d. The right of first refusal provided to occupants of protected units would not apply in the following circumstances:
    i. In a development project that consists of a single residential unit located on a site where a single protected unit is being demolished.
    ii. In units in a housing development in which 100% of the units, exclusive of a manager's unit or units, are reserved for lower income households, and the existing residents of the protected unit would be precluded from occupying the new units based on requirements of one or more funding source of the housing development.

SB 9 (Atkins) Housing Development

This law:

1) Requires a city to ministerially approve either or both of the following, as specified:
    a. A housing development of two units in a single-family zone.
    b. The subdivision of a parcel zoned for residential use, into two approximately equal parcels (lot split), as specified.

2) Requires that a development or parcel to be subdivided must be located within an urbanized area or urban cluster and prohibits it from being located on any of the following:
    a. Prime farmland or farmland of statewide importance;
    b. Wetlands;
    c. Land within the very high fire hazard severity zone, unless the development complies with state mitigation requirements;
    d. A hazardous waste site;
    e. An earthquake fault zone;
    f. Land within the 100-year floodplain or a floodway;
    g. Land identified for conservation under a natural community conservation plan, or lands under conservation easement;
    h. Habitat for protected species; or
    i. A site located within a historic or landmark district, or a site that has a historic property or landmark under state or local law, as specified.

3) Prohibits demolition or alteration of an existing unit of rent-restricted housing, housing that has been the subject of an Ellis Act eviction within the past 15 years, or that has been occupied by a tenant in the last three years.

4) Prohibits demolition of more than 25% of the exterior walls of an existing structure unless the local ordinance allows greater demolition or if the site has not been occupied by a tenant in the last three years.

5) Authorizes a city to impose objective zoning, subdivision, and design review standards that do not conflict with this law, except:
    a. A city shall not impose objective standards that would physically preclude the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area. A city may, however, require a setback of up to four feet from the side and rear lot lines.
    b. A city shall not require a setback for an existing structure or a structure constructed in the same location and to the same dimensions as the existing structure.

6) Prohibits a city from requiring more than one parking space per unit for either a proposed duplex or a proposed lot split. Prohibits a city from imposing any parking requirements if the parcel is located within one-half mile walking distance of either a high-quality transit corridor or a major transit stop, or if there is a car share vehicle located within one block of the parcel.

7) Authorizes a local agency to deny a housing project otherwise authorized by this law if the building official makes a written finding based upon the preponderance of the evidence that the housing development project would have a specific, adverse impact upon health and safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

8) Requires a city to prohibit rentals of less than 30 days.

9) Prohibits a city from rejecting an application solely because it proposes adjacent or connected structures, provided the structures meet building code safety standards and are sufficient to allow separate conveyance.

10) Provides that a city shall not be required to permit an accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) when a property owner utilizes both the urban lot split and the two-unit provisions of the law.

11) Requires a city to include the number of units constructed and the number of applications for lot splits under this law, in its annual progress report (APR).

12) Requires a city to ministerially approve a parcel map for a lot split only if the local agency determines that the parcel map for the urban lot split meets the following requirements, in addition to the requirements for eligible parcels that apply to both duplex and lot splits:
    a. The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal size, provided that one parcel shall not be smaller than 40% of the lot area of the original parcel.
    b. Both newly created parcels are at least 1,200 square feet, unless the city adopts a small minimum lot size by ordinance.
    c. The parcel does not contain rent-restricted housing, housing where an owner has exercised their rights under the Ellis Act within the past 15 years or has been occupied by tenants in the past three years.
    d. The parcel has not been established through prior exercise of an urban lot split.
    e. Neither the owner of the parcel, or any person acting in concert with the owner, has previously subdivided an adjacent parcel using an urban lot split.

13) Requires a city to approve a lot split if it conforms to all applicable objective requirements of the Subdivision Map Act not except as otherwise expressly provided in this law. Prohibits a city from imposing regulations that require dedicated rights-of-way or the construction of offsite improvements for the parcels being created, as a condition of approval.

14) Authorizes a city to impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this law. A city may, however, require easements or that the parcel have access to, provide access to, or adjoin the public right-of-way.

15) Provides that a local government shall not be required to permit more than two units on a parcel.

16) Prohibits a city from requiring, as a condition for ministerial approval of a lot split, the correction of nonconforming zoning conditions.

17) Requires a local government to require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of lot split, unless the applicant is a community land trust, as defined, or a qualified nonprofit corporation, as defined.

18) Provides that no additional owner occupancy standards may be imposed other than those contained within 17) above, and that requirement expires after five years.

19) Allows a city to adopt an ordinance to implement the urban lot split requirements and duplex provisions and provides that those ordinances are not a project under California Environmental Quality Act (CEQA).

20) Allows a city to extend the life of subdivision maps by one year, up to a total of four years.

SB 10 (Wiener) Housing Development/Density

This law:

1) Authorizes a city to pass an ordinance, notwithstanding any local restrictions on zoning ordinances that limit the legislative body's ability to adopt zoning ordinances, to zone any parcel for up to 10 units of residential density, at a height specified by the ordinance, if the parcel is located in a transit-rich area or an urban infill site (see below for definitions).

2) Specifies that neither an ordinance adopted consistent with (1) above, nor any resolution ordinance or any other local regulation adopted to amend the jurisdiction's general plan to be consistent with that ordinance, is a project for purposes of California Environmental Quality Act (CEQA).

3) Requires a local agency that adopts an ordinance pursuant to this law to do all the following:

    a. Include a declaration that the zoning is adopted pursuant to this law.

    b. The zoning ordinance shall clearly demarcate the areas that are zoned.

    c. Make a finding that the increased density is consistent with the city's obligation to affirmatively further fair housing.

    d. If the ordinance supersedes any zoning restriction established by a local initiative, the ordinance shall only take effect if adopted by a 2/3 vote of the members of the legislative body.

4) Prohibits, notwithstanding any other law permitting ministerial or by right approval of a development project, or any other CEQA exemption, a project of more than 10 units from receiving ministerial or by right approval if it uses the provisions of this law.

    a. The creation of up to two accessory dwelling units (ADUs) or junior accessory dwelling units (JADUs) shall not count towards the total number of units when determining whether the project may be approved ministerially or by right under (4) above.

    b. A project may not be divided into smaller projects in order to exclude the project from the prohibition under (4).

5) Defines "transit-rich area" as a parcel within one-half mile of a major transit stop, or a parcel on a high-quality bus corridor. Defines "high-quality bus corridor" as a corridor with a fixed-route bus service that meets specified service interval times.

6) Defines “urban infill site” as a site that satisfies all the following:

   a. A site that is a legal parcel or parcels located in a city if the city boundaries include some portion of either an urbanized area or urban cluster or for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster.

   b. A site in which at least 75% of the perimeter adjoins parcels that are developed with urban uses. Parcels that are only separated by a street or highway shall be considered to be adjoined.

   c. A site that is zoned for residential use or residential mixed-use, or has a general plan designation that allows residential use or a mix of residential and non-residential uses, with at least two-thirds of the square footage of the development designated for residential use.

7) Excludes parcels located in either of the following:

   a. A high or very high fire hazard severity zone, except for sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

   b. A local restriction enacted or approved by a local initiative that designates publicly owned land as open space or for park or recreational purposes.

8) Prohibits a local government from subsequently reducing the density of any parcels subject to an ordinance adopted pursuant to this law.

9) Provides that this law shall not apply to a project located on a parcel or parcels that are zoned pursuant to an ordinance adopted under this law, then subsequently rezoned without regard to this law, as specified.

10) Prohibits an ordinance adopted pursuant to this law from reducing the density of any parcel subject to the ordinance.

11) Includes a sunset of January 1, 2029, and authorizes an ordinance adopted pursuant to this law to extend beyond January 1, 2029.

SB 478 (Wiener): Planning and Zoning Law: Housing Development

This law:

1) Prohibits a local government from doing the following:

    a) For a housing development project consisting of three to seven units, impose a floor area ratio (FAR) standard that is less than 1.0.

    b) For a housing development project consisting of eight to 10 units, impose a FAR standard that is less than 1.25.

    c) Deny a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency's requirements for minimum lot size.

2) Requires, to be eligible for the minimum FAR standards above, the housing development project to meet all the following conditions:

    a) The project contains at least three but no more than 10 units.

    b) The project is in a multifamily residential zone or a mixed-use zone, and is not located in either of the following:

        i) Within a single-family zone.

        ii) Within a historic district or property included in the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

    c) The project is located on a legal parcel or parcels in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster.

3) Provides that this law shall not be construed to prohibit a local agency from imposing any zoning or design standards other than zoning or design standards that conflict with those in 1) above.

4) Prohibits a local government from imposing a lot coverage requirement that would physically preclude a housing development that meets the requirements established in 2) above from achieving FAR ratios allowed in 1) above.

5) Requires the Department of Housing & Community Development (HCD) to notify a local government and may notify the state Attorney General if the local government is in violation of the requirements in this law.

6) Declares void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of governing document of a homeowner's association, if it effectively prohibits or unreasonably restricts an eligible housing development project from using the FAR standards under the law.

7) Provides that it does not apply to reasonable restrictions on a housing development project that do not make the FAR standards in this law infeasible.