

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Betsy Shotwell

**SUBJECT: BY-RIGHT APPROVAL OF
MULTIFAMILY HOUSING**

DATE: May 24, 2016

Approved

D. DSYL

Date

5/26/16

INFORMATION

In response to Council's inquiry on May 17, 2016, the purpose of this Information Memorandum is to update the Council on the pending legislation Assembly Bill 2522 (AB 2522) pertaining to the By-Right Approval of Multifamily Housing. By-right approval is the approval of a project without allowing discretionary review. By-right approval is currently required on any housing element site where rezoning was required, AB 2522 would extend by-right approval to all housing development projects which meet certain criteria pre-empting local land use policies and housing development requirements to allow these approvals as-of-right.

With the intention to alleviate pressure on the housing market, the Governor showed support for a suite of housing production bills in the May Revision of his proposed Fiscal Year 2016-2017 Budget. Specifically relevant to AB 2522, the Governor indicated his support for "...legislation requiring ministerial, 'by-right' land use entitlement provisions for multifamily infill housing developments that include an affordable housing component" and recently unveiled this initiative in the budget trailer bill.

Currently the law requires an attached housing development to be a permitted use, not subject to a conditional use permit, in any parcel zoned for multifamily housing if a certain percentage of the units are available to low, lower and moderate income households, provided a negative or mitigated negative declaration has been adopted under the California Environmental Quality Act (CEQA).

Assembly Bill 2522 would exempt from CEQA review any housing development that includes either 20% low-income units or 100% moderate and middle income units. The housing development would have to be on a site located in an urbanized area and now with its amendments, only requires compliance with "objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need" and design criteria. Should a housing development meet these requirements, a local agency would be required to approve the development without the ability to look at the actual impacts of the project.

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Proponents assert that by bypassing the CEQA review requirement, the public will become engaged earlier in the process by participating in the adoption of the General Plan, housing element, zoning and design criteria.

Opponents, including the League of California Cities, assert that by-right approval does not allow a local agency to adequately analyze the impacts of that project or whether or not the proposed number of units are actually feasible at the site. The bill also only requires continued affordability for 30 years, instead of the 55 years currently required under the density bonus law.

In order for a local agency to opt out of the by-right requirements, the agency would have to find and subsequently notify the Department of Housing and Community Development, on an annual basis, that they have exceeded 60% of the agencies' total Regional Housing Need Allocation (RHNA) and 40% of the RHNA for very low and low-income levels.

The following groups support this bill: American Planning Association, California Chapter (sponsor), California Apartment Association, California Association of Realtors, California Building Industry Association and California Housing Consortium.

The following groups oppose this bill: City of Lakeport, City of Torrance, Council of Community Housing Organizations and the League of California Cities.

AB 2522 is currently in the Assembly Committee on Local Government, and additional amendments are expected to align the bill with the Governor's proposal. The City is working closely with the League of California Cities to quickly understand the impact of these forthcoming amendments on the City's Inclusionary Housing Ordinance and land use authority. June 3, 2016 is the last day for each house to pass bills introduced in that house.

/s/

Betsy Shotwell

Director of Intergovernmental Relations

For questions, please contact Betsy Shotwell, Director of Intergovernmental Relations: (408) 535-8270.