

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: ASSEMBLY BILL 3194

DATE: November 4, 2019

Approved

D. D. S. Y. L.

Date

11/4/19

INFORMATION

Over the last several years, the California legislature has considered and passed an unprecedented number of new housing and housing-related laws aimed at addressing California's housing crisis. Sixteen new laws were signed into law by former Governor Jerry Brown towards the end of his final term in office. This memorandum focuses on one of the laws that took effect on January 1, 2019, AB 3194.

BACKGROUND

Assembly Bill 3194 (Daly) – Housing Accountability Act Amendments

The Housing Accountability Act (HAA) was originally adopted in 1982. AB 3194 is one of many amendments to the HAA. The HAA was adopted by the State of California to address the State's housing shortage crisis due to lack of supply and increasing unaffordability, and amendments to the HAA have continued to focus on that goal as well.

Assembly Bill (AB) 3194 makes important revisions to strengthen the HAA (California Government Code section 65589.5). The HAA strictly limits local governments' authority to reject or restrict housing development projects that comply with applicable objective general plan, zoning, and subdivision standards. Legislative reforms to the HAA in 2017 were significant. The most significant changes to the HAA, as revised by AB 3194, include the following:

1. If the zoning for a project site is inconsistent with the general plan, a proposed housing development project cannot be considered "inconsistent" with a jurisdiction's zoning standards and cannot be required to seek a rezoning, as long as the project complies with the jurisdiction's objective General Plan standards.
2. Local agencies must now apply zoning standards and criteria to facilitate and accommodate development at the density allowed on the site by the General Plan.
3. The Legislature declared its intent that a "specific, adverse impact on the public health and safety" (the only permissible basis on which a local government can reject or reduce the size of a project that complies with objective standards) will "arise infrequently."
4. There are new timeframes for review of a project and if the agency fails to comply with the timelines, the project is deemed consistent with the agency's General Plan.

The discussion below focuses on how the City of San Jose will implement these most recent change to the HAA.

General Plan Consistency

AB 3194 defines a “housing project” as a project with 100% housing or a mixed-use project where two-thirds of the square footage is designated for residential use. The law states that if a housing project, regardless of affordability, is proposed on a site where the project is consistent with the objective standards and criteria of the General Plan, the local agency cannot require the property to be rezoned to accommodate the project, even if the zoning of the site is not consistent with the General Plan. However, the jurisdiction would need to evaluate the project using the closest zoning district that is consistent with the General Plan land use designation of the site. The zoning standards and criteria must be applied to facilitate and accommodate development at the density allowed on the site by the General Plan and proposed by the project.

AB 3194 also limits denying or conditioning a very low, low-, or moderate-income housing project or emergency shelter project at a lower density than what is allowed by the General Plan by imposing conditions of approval which result in a project that is infeasible to be constructed. Local agencies cannot deny or condition approval of an affordable housing project at a lower density unless it makes at least one of these findings:

- The jurisdiction has met its Regional Housing Need Allocation (RHNA) for the type of housing proposed; or
- The project would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
- Denial of the project is needed to comply with State or Federal law; or
- The project is on land zoned for agriculture or resource preservation or there is not enough water or wastewater facility capacity to serve the project; or
- The project is inconsistent with both the jurisdiction’s zoning ordinance and General Plan land use designation as specified in any element of the General Plan as it existed on the date the application was deemed complete.

Furthermore, a local agency cannot deny a housing project if it is proposed on a site identified as suitable for very-low, low-, or moderate-income housing in the jurisdiction’s Housing Element and is consistent with densities specified in the Housing Element, even if the project is otherwise inconsistent with both the zoning ordinance and General Plan land use designation. If a jurisdiction did not identify enough sites in its Housing Element to satisfy the RHNA obligation for all income levels, the jurisdiction cannot deny housing projects on lands designated for residential in the General Plan, or commercially-designated lands that allow permitted residential or conditionally permitted residential uses in the General Plan.

General Plan Density; Findings of Specific Impact on Public Health and Safety

AB 3194 also limits local agencies from denying or conditioning all housing projects (i.e., market rate and affordable) at a lower density than allowed by the General Plan. If a housing project meets the objective General Plan, Zoning, and Subdivision standards and criteria (including design review standards) that are in effect at the time the project is deemed complete, the local agency cannot deny the project or approve the project at a lower density by imposing a density maximum lower than the General Plan allows or by imposing conditions that make the housing project infeasible unless the jurisdiction makes both of the following findings:

- The project would have a specific, adverse impact upon the public health or safety unless it is disapproved or approved upon the condition that the project be developed at a lower density; and
- The adverse impact cannot be mitigated or avoided.

Furthermore, local agencies cannot use the receipt of a state density bonus (Senate Bill 35) to prove non-conformance with plans, policies, or ordinances, and thereby deny a housing project.

Timeframe for Review

Local agencies must also inform the applicant of any inconsistency with programs, plans, policies, and ordinances within 30 days from when the application was deemed complete for projects with 150 or fewer units, and 60 days for projects with more than 150 units. If the jurisdiction fails to meet these timelines, then the project is deemed in conformance with applicable programs, plans, policies, and ordinances. If the local agency provides the required compliance analysis on the application within the required timeframes, the jurisdiction may require the project to conform to the objective standards and criteria consistent with the General Plan.

ANALYSIS

The following discussion is an analysis of the implications of AB 3194 on the City of San Jose.

Implications to the Development Review Process

If the General Plan supports housing on a given site, then the City can no longer require an applicant to file a rezoning application to bring the underlying zoning designation into conformance with the General Plan land use designation. Instead, the City needs to analyze the project against the closest conforming zoning district to the General Plan land use designation. The project will be processed according to the conforming zoning district's permitting process. If housing is permitted or requires a Special Use permit in a zoning district, the Site Development Permit or Special Use Permit will be heard at a Planning Director's hearing, appealable to the Planning Commission. If housing is a conditional use in a zoning district, the Conditional Use Permit will be heard at a Planning Commission hearing, appealable to the City

Council. Only if the project has a separate action that requires Council approval (e.g., certification of an Environmental Impact Report which has a Statement of Overriding Consideration for Significant Unavoidable Impacts, street vacation, historic reviews, etc.) or is processed under the Zoning Ordinance Section 20.100.140 Concurrent Review allowances, will the housing projects be heard and decided upon by the City Council.

Four rezoning applications have been approved since January 1, 2019, where AB 3194 may have applied; approximately eight rezoning applications are currently on file where AB 3194 may be applicable. When such projects are approved because of General Plan consistency, but are not consistent with the Zoning Ordinance, the City will be responsible for amending the zoning to be consistent with the General Plan under another new law requiring General Plan and zoning consistency in charter cities (SB 1333 [Wieckowski], effective January 1, 2019).

Implications to the Urban Village Implementation and Amenities Framework

AB 3194 prohibits local agencies from requiring a rezoning of properties to facilitate housing projects if the General Plan land use designation supports housing. Since the rezoning requirement is no longer allowed and many of General Plan land use designations in urban villages allow housing, the rezoning can no longer be used to create a value capture mechanism to facilitate building additional public improvements and amenities as was envisioned by the Council-adopted Urban Village Implementation and Amenities Framework (Implementation Framework). As such, the City must find alternative ways to facilitate the construction of amenities and further implement the Envision San José 2040 General Plan Urban Village Major Strategy.

The Implementation Framework outlined a strategy through a streamlined entitlement process for development consistent with the applicable Urban Village Plans, and provided the community and developers with a simplified, transparent and predictable mechanism to have residential mixed-use projects build or contribute towards payment for the amenities and additional public improvements identified in the Village Plans in exchange for the value increase created by conversion of land from commercial to residential mixed-use. This value increase was to be used to provide amenities (or pay an equivalent fee) as outlined by the Implementation Framework. These amenities included:

- Privately Owned and Maintained/Public Open Spaces
- Commercial Space above and beyond what is required in the applicable Urban Village plan
- Deed restricted commercial space for “non-formula” employment uses (i.e. mom and pop) and community facilities
- Place making art installations
- Additional off-site streetscape amenities or improvements above and beyond what is required
- Contributions towards, or construction of, unfunded projects identified in the applicable Urban Village Plan
- Construction of additional public open space amenities and park facilities above and beyond the City’s Parkland Dedication Ordinance and the Parks Impact Ordinance fees and dedication requirements

As approved by the City Council in May 2018, the Implementation Framework was to apply to the following Council approved Urban Village Plans:

1. 24th and William
2. Five Wounds
3. Little Portugal
4. Roosevelt Park
5. The Alameda
6. Santana Row/Valley Fair
7. Stevens Creek
8. Winchester
9. West San Carlos
10. South Bascom (North)
11. East Santa Clara Street

Most of the approved plans contain a list of community amenity priorities which complement the Implementation Framework. The Alum Rock Urban Village was not subject to the Implementation Framework as the area was already rezoned in 2013 to allow housing development. As approved by Council, the Implementation Framework did not apply to wholly commercial projects, 100% deed restricted affordable housing projects, Signature Projects (as defined in General Plan Policy IP-5.10), and Planned Development Zonings and discretionary development permits on file prior to the adoption of the Framework in May 2018.

Proposed Approach to Address AB 3194

Urban Village Zoning Districts and Implementation Framework

Planning staff's current work plan includes the creation of Urban Village Commercial and Urban Village Mixed-Use zoning districts as directed by the City Council with the adoption of the Implementation Framework. Staff has begun preliminary analyses on the feasibility and potential method for incorporating some of the amenities identified in the Implementation Framework into the new urban village zoning districts and how those amenities can be adopted or modified as objective development standards. Staff is also exploring other potential tools to obtain amenities and improvements identified in each of the approved Urban Village Plans.

Conventional Residential Zoning District

AB3194 amends the HAA to require local agencies to apply zoning standards and criteria to facilitate and accommodate development at the density allowed on a given site by the site's General Plan land use designation. The San Jose Zoning ordinance, however, often does not have conventional zoning districts that facilitate the density supported in the General Plan, including the densities supported in the Mixed Use Neighborhood, Urban Residential and Transit Residential General Plan land use designations. As part of the current work to bring zoning into conformance with the General Plan, staff will be creating new, or modifying existing zoning districts to facilitate housing consistent with the General Plan, without the need for a Planned

development zoning. Staff will be bringing these ordinance amendments to Council in June 2020.

Next Steps

The creation of new Urban Village Zoning Districts and new or modified conventional zoning districts are part of staff's current work plan. These zoning districts are anticipated to be developed and considered by Council in spring 2020. However, given the need to now incorporate the Implementation Framework into the Urban Village zoning districts, it is anticipated that additional time may be needed to develop these districts. Following development of the new zoning districts, staff will begin the process of actively rezoning properties in urban villages consistent with General Plan land use designations.

Until such time that the new urban village and other needed zoning districts are created, proposed residential and residential mixed-use projects that are subject to AB 3194 will be analyzed and processed against the closest conforming zoning district to the General Plan land use designation.

Over the last two years, more than 200 bills were introduced by state legislators aimed at addressing California's housing crisis. Given that the Planning Division has not had dedicated staff tracking proposed state laws, it has proven challenging to track all of the housing bills. To ensure better and more timely tracking of proposed state law changes, a recently-filled position on the Planning Division's Housing Team will be assigned, as a primary responsibility, the close tracking of State legislation as it relates to housing and land use. Staff will also continue to coordinate with the Citywide Legislative Team and the Housing Department.

Council has directed staff to bring AB 3194 for Council discussion. In addition to AB 3194, there are a significant number of other housing related bills passed by the state legislature this year. In January 2019, staff will provide Council with an Information Memorandum on all these bills collectively. This memorandum will discuss the implications of these bills upon San Jose's planning policy and ordinance framework, identifying work needed to bring this framework into conformance with state law, including policy and ordinance amendments, and changes to the City's current permit processes. Staff also anticipates scheduling a hearing in February 2019 for Council discussion on these bills, including AB 3194. As part of this hearing, staff will discuss its proposed approach on an Urban Village Implementation and Amenity Framework 2.0 and may present additional options for Council to consider.

/s/

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