

TO: FOSTER CITY PLANNING COMMISSION

PREPARED BY: SOFIA MANGALAM, CDD DIRECTOR

CASE NO.: N/A

PROJECT LOCATION: CITYWIDE

REQUESTED ACTION/PURPOSE

The purpose of this Study Session is to inform the Planning Commission and the public regarding recent developments in land use law that affect how the City plans for, reviews, and act on new housing development applications.

KEY PLANNING OR DESIGN CONSIDERATIONS

- Understanding opportunities for new development created by state law.
- Recognizing limitations on City discretion to deny or condition certain housing development projects.

NOTICING/PUBLIC OUTREACH

The public was advised of this Study Session in the following ways:

- Ad in the Foster City Islander – January 31, 2024
- Foster City Website: www.fostercity.org – January 25, 2024
- Electronic Marquee Sign in Leo Ryan Park – February 1, 2024 through February 15, 2024
- Public Posting Places – January 25, 2024

BACKGROUND

Over the past several years, the California State Legislature has adopted numerous bills intended to address California's housing crisis by limiting local government discretion over housing development projects in an effort to increase housing supply. In 2023, this trend continued in Sacramento. Over the course of the year, members of the Legislature introduced many bills related to planning and land use that would affect the Planning Commission's work.

Of these bills, many of the highest profile proposals were passed by both houses and signed into law by the Governor. Several prominent bills were chaptered and take effect in 2024, such as: SB 423 (Wiener), which extends and strengthens SB 35; SB 4 (Wiener), which provides for ministerial approval of affordable housing on lands owned by education and religious institutions; AB 1633 (Ting), which makes certain California Environmental Quality Act ("CEQA") violations also constitute Housing Accountability Act ("HAA") violations; and AB 1287 (Alvarez), which expands density bonus for very low and moderate-income units if a developer includes the maximum amount of very low, lower, and moderate-income units.

Several new CEQA bills were enacted, including AB 1307 (Wicks), SB 69 (Cortese), AB 356 (Mathis), SB 91 (Umburg), SB 406 (Cortese), and AB 1449 (Alvarez). In addition, the Legislature enacted several bills refining accessory dwelling unit (“ADU”) law and density bonus law.

The Study Session will include a presentation (see Attachment #1) that reviews each of these bills in detail.

ANALYSIS

SB 423

In 2017, the Legislature introduced SB 35 to streamline and accelerate housing permits in areas that have not met their Regional Housing Needs Assessment (“RHNA”) goals. SB 423 expands and strengthens SB 35’s housing development streamlining provisions, and extends the sunset of SB 35 from January 1, 2026 to January 1, 2036. In addition to areas that have not met their RHNA goals, SB 423 will also apply to jurisdictions without a compliant housing element.

Under SB 423, the City must ministerially approve a housing development application for a multifamily housing project with at least two units that meets specific objective planning standards. SB 423 clarifies that a jurisdiction’s planning director can make determinations about a project’s eligibility for streamlined, ministerial approval and ultimately take action to approve or deny the application. The Planning Commission may not conduct a public oversight meeting, but may conduct design review.

SB 423 alters provisions relating the Fire Hazard Severity Zones, carves out an exception for equine sites, and extends SB 35’s provisions to qualifying multifamily housing projects in the coastal zone, excluding environmentally sensitive areas. SB 423 requires a new pre-application public comment meeting process for projects in low- or moderate-resource areas and in areas of high segregation of poverty. Projects that use SB 423 will be subject to defined labor standards.

SB 4

SB 4 provides ministerial streamlining for affordable housing projects on educational and religious institution owned lands meeting certain criteria. The City must provide the developer with written documentation explaining any conflicts with objective standards under a specified timeframe, or the development shall be deemed to satisfy the objective standards. Only streamlined, ministerial design review is allowed.

Generally, 100% of the units must be affordable to lower income households, exclusive of manager units, but up to 20% of the units may be affordable to moderate-income households and up to 5% of the units may be for staff of the institution that owns the land. Ancillary uses are authorized on the ground floor of the development. SB 4 projects must provide off-street parking of up to one space per unit, unless a state law or local ordinance provides for a lower standard of parking. SB 4 projects remain eligible for any density bonuses.

SB 4 currently sunsets on January 1, 2036.

AB 1633

AB 1633 amends the HAA to clarify that a local agency’s failure or abuse of discretion to (a) make a determination on whether a project is exempt from CEQA, or (b) adopt or certify environmental documents under specified circumstances in urban areas, constitutes a disapproval of the project under the HAA. Housing development projects subject to these provisions must be located on a

legal parcel or parcels within an urbanized area, meet one or more specified criteria, and meet or exceed 15 dwelling units per acre. The local agency's failure or abuse of discretion, described above, is deemed final for purposes of filing a petition to enforce the provisions of the HAA if the local agency did not make a final decision within a specified time period of the applicant's notice. AB 1633 currently sunsets on January 1, 2031.

SB 684

SB 684 requires a local agency to ministerially approve a parcel map or a tentative and final map for a housing development project that consists of 10 or fewer single-family residential units, meets certain minimum parcel size and density requirements, is located on a lot zoned for multifamily or single-family residential development that is no larger than five acres, is substantially surrounded by qualified urban uses, and meets other qualifying criteria. There is a 600-foot minimum parcel size, but otherwise no minimum requirements on the size, width, depth, or dimensions.

A local government must also approve, on a ministerial basis, an application for a housing development project of up to 10 units on a lot subdivided by this law, unless the project would have an adverse impact on health and safety. If the City does not make a decision on projects within 60 days, they will be deemed approved. Projects meeting Mullin densities cannot be physically precluded, and setback, parking, and FAR restrictions are limited. Building permits must be issued on a ministerial basis, and may be issued prior to recording the parcel or final map.

Most provisions are effective July 1, 2024.

CEQA

Several bills adopted in 2023 address CEQA, including AB 1449 (exemption for 100% affordable housing), AB 356 (waives consideration of aesthetic effects for derelict building projects), SB 91 (eliminates sunset on hotel conversion exemption), SB 406 (exemption for providing low- and moderate-income housing assistance), AB 1307 (noise generated by project occupants is not a significant effect on the environment), and SB 69 (requires NODs to be filed with the State Clearinghouse, and authorizes the filing of NOEs).

Density Bonus

The State Density Bonus Law allows developers to qualify for bonus units, reduced parking standards, and other development standard modifications (known as incentives/concessions and waivers) in exchange for affordable housing, senior housing, or other special housing types. In 2023, three bills (AB 323, SB 713, and AB 1287) modified the State Density Bonus Law.

AB 323 limits the ability of developers to sell deed-restricted units intended for owner-occupancy to purchasers that would rent the unit unless there are no qualified owner-occupant buyers. SB 713 clarifies that "development standards" means those standards adopted by the local government or enacted by the local government's electorate exercising its local initiative or referendum power. AB 1287 expands density bonus for very low and/or moderate-income if a developer includes the maximum amount of lower, very low and moderate-income units, and clarifies that base density for a development requesting a density bonus is the greatest allowable density in the zoning ordinance, specific plan, or the land use element of the general plan.

ADUs

The Legislature also passed several bills relating to accessory dwelling units (“ADUs”) in 2023, including AB 671, AB 932, AB 976, AB 1033, and AB 1332. Among other things, these bills make permanent an existing state law that prohibits cities and counties from adopting ordinances imposing owner-occupancy requirements on ADUs, clarify that cities and counties may require that ADUs be rented for 30 days or longer (as opposed to longer than 30 days), authorize local agencies to allow ADUs to be sold separately or conveyed from the primary residence as condominiums, and require local agencies to develop a program for the preapproval of accessory dwelling unit plans.

Miscellaneous

Other miscellaneous bills passed by the Legislature in 2023 include AB 1218 (expansion of SB 330 replacement housing), AB 821 (zoning consistency), AB 1490 (ministerial streamlining for adaptive reuse affordable housing projects), AB 516 (additional Mitigation Fee Act reporting requirements), AB 965 (batch permit processing for broadband projects), AB 1317 (unbundled parking for certain multi-family properties), AB 1308 (prohibits parking requirements for single-family renovations), and AB 894 (shared parking agreements).

SUMMARY

The Study Session is intended to allow the Planning Commission and members of the public to receive information about new land use legislation related to housing and ask questions about how the new requirements may affect planning in Foster City.

NEXT STEPS

Receive the presentation and continue to monitor developments in state law. The Planning Commission may also direct staff to bring back further information on any of the topics discussed.

ATTACHMENTS:

1. Recent Developments in Land Use Law Slide Presentation by Eric S. Phillips