



MANAGEMENT SERVICES DEPARTMENT

MEMORANDUM

DATE: Jan. 21, 2020

TO: The Honorable City Council

FROM: Bryan Cook, City Manager
By: Brian Haworth, Assistant to the City Manager

SUBJECT: LEGISLATIVE UPDATE

RECOMMENDATION:

The City Council is requested to:

1. File this report on newly enacted state laws that will impact city services and policies;
2. Receive a presentation on newly enacted housing laws pertaining to accessory dwelling units and new affordable housing provisions; and
3. Direct the City Manager to implement all required procedures and policies in alignment with new and applicable state laws.

BACKGROUND:

1. On Oct. 13, 2019, the recent legislative session concluded with Governor Newsom signing more than 1,000 bills into law effective Jan. 1, 2020.
2. On Nov. 19, 2019, staff presented Council with a preliminary analysis of new state laws that will impact city services and policies. Given the amount of ambiguities associated with three series of sweeping legislation—affordable housing, accessory dwelling units and worker reclassification—staff was directed to return to Council in January 2020 with more definitive analyses. (Note: Council discussion on worker reclassification legislation is on hold pending lawsuits statewide, which could take years to resolve.)

ANALYSIS:

In response to California's affordability crisis, more than 30 individual pieces of housing legislation were recently enacted into law. These new bills categorically resulted in more tenant protections, reforms to the state's Density Bonus Law and ministerial approval process, and additional funding mechanisms for affordable housing production—just to name a few.

Worth noting are two housing legislative packages that will impact city planning and development policies. Summarized below and the focus of tonight's discussion (Attachments "A" and "B"), the legislation will increase local housing production, and preempt the City's control on land use policies and development decisions.

Accessory Dwelling Units: State law now makes it easier for property owners to construct accessory dwelling units (ADUs) on residentially zoned properties. Single-family homes can be converted into three separate housing units—the main home, an ADU and junior ADU—while multiple units would be permitted on properties with multi-family units. The law also cuts a municipality's permitting deadline from 120 to 60 days and bans city ADU ordinances from imposing minimum lot sizes for construction, requiring replacement parking, and other building-size restrictions.

Affordable Housing Construction: Effective until 2025, new laws ban housing construction moratoriums, prohibit density reductions, and allow the demolition of affordable and rent-controlled housing only if the demolished units are replaced. Municipalities are also banned from changing permit requirements or increasing development fees once a project applicant has submitted preliminary development plans. Similar to new ADU provisions, the permitting of affordable housing units must be streamlined; furthermore, proposed housing projects with 100% affordability for low-income households can qualify for additional density bonuses and other development concessions.

Finally, provided for Council's information is a revised list of new legislation that will impact city services and policies (Attachment "C"). This amendment identifies four additional bills that will affect the City's community development and public safety functions, i.e.:

- Parking standards for electric vehicles, which will alter current minimum parking requirements.
- Changes to the business license renewal process, which requires certain businesses to first demonstrate NPDES permit coverage for stormwater discharges.
- Cultural competency into the next update of city emergency plans to ensure the integration of interpreters in all emergency communications.

- A general plan amendment to the safety element that addresses, among other things, evacuation routes related to identified fire and geologic hazards.

CITY STRATEGIC GOAL:

Actions contained in this report align with the strategic goal of good governance.

FISCAL IMPACT:

There is no fiscal impact associated with the requested Council actions. Nevertheless, implementation of the state's new provisions will impose operational expenses, the amount which is currently unknown. An itemized list of estimated expenses will be presented as part of Council's mid-year budget review on Feb. 18, 2020.

ATTACHMENTS:

- A. Fact Sheet: ADU Laws
- B. Fact Sheet: Housing Production Laws
- C. Amended List of Enacted Legislation

COUNCIL FACT SHEET

HOUSING PRODUCTION LAWS

AB 1763 | SB 330

PROHIBITS:

Applies to projects that submit a complete application after Jan. 1, 2020

Changes in land use or development standards to reduce density
Applies to existing land use designations as of Jan. 1, 2018
Allows less intensive land use changes if densities are changed elsewhere

A moratorium or similar restriction on housing development
Includes mixed-use development

Imposing design review standards established after Jan. 1, 2020
Only if standards are not objective

Caps on population or housing construction

Changes to project-related zoning and development standards
Only after a preliminary application is submitted

Increases in exactions or fees during a project's application period
Allows automatic inflation increases by resolution or ordinance

More than five public hearings on a proposed housing development
Only if project complies with objective general plan and zoning standards
Goes into effect at the time an application is deemed complete
Jurisdiction to approve or disapprove application at any of these hearings
Does not include appeals

ALLOWS:

All provisions throughout sunset in 2025 except for densities associated with 100% affordable housing projects

Housing projects to be subject to new standards
Applies to projects that do not start construction within 2.5 years of final approval
Includes modified projects that add 20% or more residential units or square footage
^^ These provisions are exclusive of density bonuses

A clear determination of what constitutes a "preliminary application"
Jurisdictions have one chance to identify incomplete items in the initial application
Missing items are limited to those on the jurisdiction's submittal requirement list
Jurisdictions may not request additional info from the initial list of missing items
HCD to adopt a form that identifies requirements for a complete initial application

Housing projects to be denied if they do not replace on-site existing units
Applies to the greatest number of units that existed on-site in the last five years
Existing residents can occupy units until six months before start of construction
Developer may be required to provide relocation benefits and right of first refusal
New units can meet specified inclusionary housing requirements

Applicants get a streamlined permit review
For general projects and those requiring CEQA review: 90 days
For projects with at least 49% affordable units: 60 days
Applicants have 180 days to provide info after submitting a preliminary application

Additional density, concessions, incentives and height increases
Provision amends the state's existing density bonus law
Applies to projects that consist of 100% affordable housing
^^ Provision allows up to 20% of units for moderate-income households
All affordable units require 55-year affordability covenants
Provides a potential 80% increase in base density and up to four incentives
Eliminates the parking requirement for rental units
Allows unlimited density bonuses for qualifying projects near major transit stops

REQUIRES:

Applies to CY 2020 work program and policies

Added duties for local planning officials
Adopt an ordinance specifying compliance with AB 1763 (additional density, etc.)
Establish internal procedures and timelines for processing applications; anticipate covenants
Continue to monitor state legislation for necessary code and policy amendments

COUNCIL FACT SHEET**ACCESSORY DWELLING UNIT (ADU) LAWS**

AB 68 | AB 69 | AB 670 | AB 671 | AB 881 | SB 13

ALLOWS:*Applies by right only to residential and mixed-use zones*

A junior ADU (<500 SF within an existing single-family structure)

Applies even if the city does not have an ADU ordinance

A junior ADU and ADU (from the minimum unit size up to 1,000 SF) on the same lot

The junior ADU must be within the existing living area or combined with an ADU

Multiple converted ADUs on lots with a multifamily dwelling

Allows one ADU and up to 25% of the existing multifamily dwelling units thereafter

Up to two detached ADUs on lots with a multifamily dwelling

Subject only to a 16-foot height limit and 4-foot setback

Multi-family ADUs may be built in the non-habitable part of dwelling units

*Ex: garages, carports, basements and attics***MODIFIES:***Applies to city municipal code and zoning standards*

Development impact fees

*No impact fees for ADUs <750 SF**Larger ADU to be charged in proportion to the primary home (≈ 25% of fees)*

Lot requirements

*Eliminates criteria for lot coverage, floor area ratio, open space and minimum lot size**Cannot prevent the construction of an 800 SF unit if it meets other zoning standards*

Parking standards

*No longer requires the replacement of off-street parking spaces (for the primary home)**ADU proposals >½ mile from public transit are to provide a parking space*

Setback requirements

*No setbacks required for an existing structure (or portion) converted to an ADU**Four-foot side and rear setbacks required for new ADU structure; conditions apply*

Planning reviews

*Removes the owner-occupancy requirement for ADUs until 2025**Establishes a ministerial 60-day review period**Complete applications not acted upon within 60 days are deemed approved**Can be prohibited if water and sewer is inadequate or if there are traffic and safety impacts**Requires staff to consult with water and sewer providers prior to permitting an ADU**ADUs may not be ministerially approved if setbacks are insufficient for fire safety**Requires certificate of occupancy first for primary residence (followed by ADU)**Cannot condition ADU permit approval on nonconforming zoning conditions**Allows ADUs on single-family properties governed by HOAs/CC&Rs***FORMALIZES:***Applies to CY 2020 work program and policies*

A requirement for a local ADU ordinance, subject to HCD review

*Adopt urgency ordinance to bring existing code into compliance with state law**Amend planning review protocol for ADU applications**Develop FAQ to explain ADU provisions to the community**Continue to monitor state legislation for necessary code and policy amendments*

An amnesty program for non-permitted ADUs

*Property owners have five years to address non-health and safety related code issues**Evaluate current cases; include provision into the city's code enforcement program*

Needed revisions to the Housing Element and Building Code

*Housing Element to include a plan that incentives/promotes ADUs at affordable rents**Building Code to reflect the state's small home building standards in 2021*

AMENDED: ENACTED 2019 STATE LEGISLATIONIMPACTS TO CITY SERVICES & POLICIES
EXCLUDES NEW ADU AND AFFORDABLE HOUSING BILLS**HUMAN RESOURCES**Employment Discrimination Claims (A8 9)

Extends the statute of limitation from one to three years for complaints alleging employment discrimination under the Fair Employment Housing Act. (Note: This limitations period is six times the length of the federal standard and three times the length of the current state standard.) Does not apply to previously lapsed claims.

Flexible Spending Accounts (AB 1554)

Requires that employers now provide two different forms of notice (one which may be electronic) to employees participating in a flexible spending account of upcoming withdrawal deadlines toward the end of the benefit/plan year.

Harassment Prevention Training (SB 778)

Requires employers with five or more employees to provide harassment prevention training and education to new non-supervisory employees within six months of hire and to new supervisory employees within six months of assuming a supervisory position. Mandates employers who have provided such training to an employee in 2019 to provide refresher training to that employee every two years thereafter

Lactation Accommodation (SB 142)

Obligates employers to provide a private, safe lactation room with a seat, electricity and a surface, that is not a bathroom and is in proximity to the employee's workstation. Employers must also provide access to refrigeration or a cooler, and running water near the workspace.

Living Organ Donation (AB 1223)

Requires an employer to provide additional, unpaid leave time—of up to 30 days to a year—to an employee who is donating an organ. Public employees are required to first exhaust all available sick leave before taking unpaid leave.

Occupational Injuries and Illness (AB 1804)

Requires employers to report serious injury, illness or death immediately through an online mechanism established by the Division of Occupational Safety and Health or to report by telephone.

Paid Family Leave (AB 83)

Increases paid family leave from six to eight weeks beginning July 2020. Also requires a task force to develop a proposal that extends the duration of Paid Family Leave benefits to six months by fiscal year 2021-22; and to address job protections for workers and the goal of providing a 90% wage replacement rate for low-wage workers utilizing the Paid Family Leave program.

AMENDED: ENACTED 2019 STATE LEGISLATION**IMPACTS TO CITY SERVICES & POLICIES**
*EXCLUDES NEW ADU AND AFFORDABLE HOUSING BILLS*Worker Classification (AB 5)

Adopts as law the ABC test from the *Dynamex v. Superior Court* case as a way to classify whether workers are employees or independent contractors, based on whether the hiring entity controls the work, if the workers does tasks outside the usual course of the hiring entity's business, and whether the worker performs similar work for other customers. Applies to ABC test to the wage orders, labor code, unemployment insurance code—and effective July 1, 2020, workers' compensation laws.

PLANNING & DEVELOPMENTParking Stalls: Electric Vehicles (AB 1100)

Counts parking stalls served by electric vehicle (EV) charging equipment as standard parking spaces for purposes of complying with a local jurisdiction's minimum parking requirement; stalls served by EV charging equipment shall count as at least two standard parking spaces.

Stormwater Discharge (SB 205)

Requires applicable facilities to enroll in the industrial stormwater permit (NPDES) when applying for or renewing a business license. Requires an agency to develop a provisional license procedure for business license renewals, which allows businesses three months to comply.

PUBLIC SAFETYCultural Competency (SB 160)

Requires local jurisdictions, upon the next update to its emergency plans, to incorporate a cultural competence into its emergency plans by integrating interpreters in all emergency communications. This includes qualified representatives from community groups during the planning process, and using culturally appropriate resources when preparing community members for emergencies or disasters.

Safety Element (AB 747)

Mandates local jurisdictions, by Jan. 1, 2022, to include a safety element in their general land use plans. Emergency scenarios to be addressed include evacuation routes, geologic hazards, flooding, wildland and urban fires, and climate adaptation and resilience strategies.