



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Receive Update From City Attorney On Senate Bill 50</b>
<b>Category:</b>	Leadership and Support Services
<b>Meeting Date:</b>	1/21/2020
<b>Staff Contact:</b>	<b>Christopher J. Diaz, City Attorney</b>
<b>Recommendation:</b>	Receive update on Senate Bill 50 and direct staff regarding position letter or other legislative efforts

The following provides a high-level overview of Senate Bill 50 as requested by the City Council on January 7, 2020.

### **Background:**

#### *Procedural Status*

Senate Bill 50 (SB 50) was originally introduced in 2018. It failed to pass out of Appropriations in June 2019, but it was made a two-year bill. It is back now, with amendments, and must be approved by the Senate by the end of January 2020 to stay alive. If it makes it out of the Senate to the Assembly, it will be subject to further amendment.

#### *Controversy*

The bill has been controversial, due in large part to the potential that it has for turning R-1 properties into R-4 properties, allowing four-plex development in all residential and mixed-use zones, including single-family zones. The bill also reduces local control by requiring cities to waive local development standards as “Equitable Community Incentives” in addition to the concessions, incentives, and bonuses that cities must grant under the State’s density-bonus statute. Housing advocates and local governments disagree over the wisdom of these amendments.

### **Analysis:**

#### *Recent Amendments*

While SB 50 was amended after the Legislature returned earlier this month, the amendments are relatively minor. They do not change the two-fold thrust of the bill, namely, allowing four-plex development by right and reducing local control of housing projects in “transit rich” and “jobs rich” areas. The most recent amendments do add a “local flexibility plan” concept, which allows cities to avoid some of the Equitable Community Incentive requirements if they develop a “local flexibility plan” and have it approved by State Housing and Community Development (HCD). However, the local flexibility plan is likely to amount to substantially the same kinds of limits on local control, just more tailored to the respective city. A local flexibility plan does not affect the four-plex requirements in the bill and those provisions would apply regardless of whether a city adopts a local flexibility plan.

## *Four-plex Development*

SB 50 would allow multifamily residential development, up to four units, by right on every parcel that meets the following conditions:

- Has a general plan designation or is zoned residential or mixed-use (note the “or”). If mixed-use, then at least 2/3 of the square footage of the proposed development must be residential.
- Lies in an urbanized area (Milpitas probably is, but HCD will confirm).
- Is surrounded by urban uses (on at least 75 percent of perimeter).
- Has no affordable units or historic structures already on site.
- Is not farmland, a wetland, or in a flood, fire-hazard, hazardous-waste, earthquake, or conservation area.
- Is either vacant land or has an existing structure (e.g., a single-family home) that can be converted to multifamily without demolishing 25 percent of the exterior or adding more than 15 percent to the square footage.

If the parcel qualifies, the project must still meet all *objective* development standards (not subjective ones), except for restrictions on density.

## *Equitable Community Incentives*

Starting in 2023, SB 50 would also require cities to grant “Equitable Community Incentives” (ECIs) to project applicants (essentially waivers of zoning requirements), beyond what cities must grant under the State’s density-bonus law.

ECIs are only available for “transit rich” and “job rich” projects. Transit rich means that most of the land and units lie within a short distance of a major transit stop or bus corridor (1/2 or 1/4 mile, respectively). This likely applies to most of Milpitas and definitely around the BART station. Job rich means that most of the land and units lie within a job-rich area as designated by HCD. Milpitas is in a designed job-rich area.

ECI requirements differ based on county population. Six hundred thousand is the tipping point. Santa Clara County has more than 600,000 people. So a transit rich or job rich project in Milpitas would be eligible for

- A waiver from maximum density controls, and
- A waiver from minimum parking.

The extent of the waivers varies with proximity to transit. The closer the project is to transit, the greater the extent of the required waiver.

## *Local Flexibility Plans*

The bill would require HCD to develop rules regarding “Local Flexibility Plans” (LFPs) by July 2021, and cities may begin submitting an LFP on that date. HCD must review and approve an LFP. To be approved, an LFP must go beyond what the city would do under just the ECI requirements. The LFP must increase overall feasible-housing capacity and affirmatively further fair housing to a greater extent and achieve the same or better transportation efficiency as under just the ECI requirements. It appears that an LFP would not lessen the loss of local control, but it would allow a city to perhaps tailor the nature of that loss and avoid the Equitable Community Incentive requirement for job-rich and transit-rich projects.

**Fiscal Impact:** None identified at this time.

**California Environmental Quality Act:** N/A

**Recommendation:** Receive update on SB 50 and direct staff regarding position letter or other legislative efforts.

**Attachments:** Copy of SB 50, as amended 1/6/2020