



SAN FRANCISCO PLANNING DEPARTMENT

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BACKGROUND

This memorandum responds to the Commission's request for an informational hearing on the many pending housing bills in the California State Legislature. In past years, the Department conducted detailed analysis on a bill of interest, such as [SB 330: Housing Crisis Act of 2019](#), which was eventually enacted. The Department provided an [overview of several regional and state housing initiatives](#) to describe how local housing efforts may supplement and complement regional and state actions. The Department provided detailed analysis for bills which ultimately did not pass such as [SB-50: equitable communities incentive](#) and [SB 827: transit-rich housing bonus](#).

On May 21 2020, the Department provided the Commission with a memo [summarizing facets of this year's legislative cycle](#) including mechanisms of engagement by the City and County of San Francisco; a list of some of the many pending state bills that pertain to planning and land use; and a package of housing bills announced that same day by the Speaker Pro Tempore Atkins. At that time, it seemed that the number of viable bills would be reduced by July. As it stands, there are still many, many viable bills that could affect San Francisco's housing stock. Lawmakers were expected to return from summer recess on July 13th. Due do at least one assembly member testing positive for coronavirus, the resumption of the summer session has been delayed until the end of July. This year's legislative session is slated to end on August 31, 2020.

Given the possibility that one or more State bills will significantly alter San Francisco's housing landscape, it is prudent to provide the Commission with information about a number of bills for discussion in July. At the same time, the health and economic calamity triggered by the COVID-19 pandemic has required a shift in staffing resources towards disaster service work, recovery efforts, and racial equity. For this reason, this memo provides a cursory look at several bills. The fourteen (14) bills reviewed here were chosen because of requests by both Commissioners and members of the public as well as by staff assessment. While most of the bills described are housing-related, staff have also included a CEQA transportation bill related to COVID-19 relief. As our past work has made evident, the interactions between State bills and San Francisco's Planning Code can create complex and unintuitive outcomes. Delving into the details of these bills would require more time and resources than can be made available at this time. Readers looking for more information will find substantial analysis, current bill status, and more on the [California Legislative Information](#) website.

OVERVIEW OF LEGISLATION

The following analysis summarizes the Department's best understanding of the contents of the bill at this time, and in no way reflects any definitive conclusion on the part of the City as to how the bill may affect any local planning processes or existing regulations and policies.

Of note, several of the bills below create "ministerial" approvals for housing related projects, which means that the local government's review of the development project must not require a conditional use nor other discretionary review or approval that would constitute a "project" under the California Environmental Quality Act (CEQA). In San Francisco, most development outside of SB 35 housing projects and certain affordable housing projects are discretionary and, as such, require subjective review, approval, and associated CEQA review. State bills that make local processes ministerial would speed the entitlement process and limit the Department's ability to apply subjective controls, design guidelines, and conduct any discretionary or subjective review. Accordingly, where CEQA review is removed, the CEQA appeal pathway to elected officials would be removed. Appeal pathways for the underlying ministerial permit to the Board of Appeals would remain intact.

Selected Housing Bills in the State Assembly

AB 725 (WICKS) MODERATE-INCOME AND ABOVE MODERATE-INCOME HOUSING

Bill Overview: As part of the Housing Element process, jurisdictions must show they have sufficient sites to accommodate their 8-year Regional Housing Needs Allocation (RHNA), including units affordable at very low, low, moderate, and above moderate-incomes. This bill would require that jurisdictions accommodate at least 25% of their RHNA for both moderate and above moderate-income households on sites zoned for at least two units but not more than 35 units per acre. Housing density of 35 units per acre is equivalent to RH-2 zoning, or two units on a typical 2,500 square foot San Francisco lot. Sites with an existing single-family home could be included in the sites used to satisfy this requirement.

SF Overview: AB 725 would be a departure from how San Francisco has approached RHNA in the past. Typically, San Francisco has accommodated its RHNA for all income levels by identifying sites zoned for multifamily housing that are currently less than 30% developed relative to the potential allowed by zoning. Most lots occupied by single family homes have been excluded from the RHNA sites because these lots rarely meet the 30% undeveloped threshold, even if an additional unit is allowed. Given the high cost of land and single family homes in San Francisco, as well as high construction costs, the assumption has been that it is economically challenging to convert or rebuild a single family home as a two unit building (an exception is a certain number of ADUs that are anticipated to be added to single family homes at relatively low cost). In addition, San Francisco requires a conditional use authorization to demolish an existing residential unit and neighborhood notification and project review for significant horizontal and vertical additions, which also affect the likelihood of adding units to an existing single-family home even if zoning allows. AB 725 would ensure that significantly more single-family home lots are included in San Francisco's RHNA sites, however, it is unclear whether AB 725 would make the addition of units to single family home lots more likely given other barriers. It is also unclear how AB 725 would interact with AB 3040 (described later in this memo). AB 3040

would allow jurisdictions to designate lots currently occupied by single family homes for development of up to four housing units and count these sites toward up to 25% of their moderate and above-moderate income RHNA.

AB 1279 (BLOOM) HOUSING DEVELOPMENT IN HIGH OPPORTUNITY AREAS

Bill Overview: AB 1279 would increase residential development capacity in high-opportunity areas while affirmatively furthering fair housing. It would require by-right approval of housing projects that meet specified (including affordability) requirements in high-opportunity, lower density areas that are not experiencing nor at risk of gentrification and displacement through local zoning overrides and other land use incentives. The bill is aimed at addressing the state’s housing shortage and exclusionary zoning practices that exacerbate racial and economic segregation.

AB 1279 requires the State’s Department of Housing and Community Development (HCD) to designate “high-opportunity” (H-O) areas by January 1, 2022 to allow for more dense and tall residential development on sites subject to “ministerial” approval. Ministerial development cannot occur if certain protected historic or sensitive land features exist or if the site occupied by rental housing within the last 10 years. HCD may remove the high-opportunity area designation in a jurisdiction that submits an appeal if HCD finds that the jurisdiction has adopted policies that permit higher density housing at similar levels of affordability. Housing projects within a H-O area, would become ministerial if the development meets specified inclusionary housing requirements and a) includes up to 50 residential units within a 40-foot or higher height limit; is zoned to allow residential uses; is located on a one-quarter (1/4) acre parcel or larger; and is either adjacent to an arterial road or within a central business district; OR b) includes up to 120 residential units within a 55-foot or higher height limit; is zoned to allow residential or commercial uses; is located on a one-half (1/2) acre or greater parcel; and is either adjacent to an arterial road or located within a central business district. If the development project is located on a site that does not allow residential uses, any rezoning required in conjunction with project approval shall not require any discretionary review or approval that would constitute a “project” for purposes of CEQA.

Affordability requirements would depend on the number of units and density increase the development project receives. Development projects with between 51 and 120 units would be required to provide 25% of units affordable at low incomes and 25% affordable at very low incomes (VLI). Development projects with between 11 and 50 units would be required to include units affordable at extremely low income (ELI) as well as additional units affordable at either VLI or low income. If a jurisdiction’s inclusionary rate is higher than the bill’s requirements, then the development project would need to meet both the requirements of the bill and the jurisdiction, however, units required by the bill at lower income levels than required by the jurisdiction would counted toward the jurisdiction’s total requirement. Development projects of 10 units or fewer could pay a fee to meet their affordability requirements. Development projects under the bill could be eligible for a density bonus or other incentives/concessions in the event they meet specified inclusionary requirements but the bonus would be capped and would include the additional density allowed by the bill.

SF Overview: This bill would be applicable to substantial portions of the west side of San Francisco and would require ministerial approval of higher density residential development projects (up to 120 units in 55-foot height developments on sites that meet the established criteria) without requiring potentially time consuming and costly CEQA review. This would speed the entitlement process and limit the Department’s ability to apply design guidelines and conduct discretionary review. The site size requirements of the bill could limit the applicability to larger sites primarily found on major corridors in the city, since very few parcels in residential districts would meet the ¼ acre (over 10,000 square feet) or 1/2 acre (over 21,000 square feet) requirements.

AB 1436: TENANCY: RENTAL PAYMENT DEFAULT: STATE OF EMERGENCY: COVID-19

Bill Overview: This bill would prohibit a landlord from applying a security deposit or monthly rental payment for the satisfaction of an obligation other than the prospective month’s rent if the obligation accrued between the date a state of emergency relating to the COVID-19 pandemic was declared and either April 1, 2021, or 90 days after termination of the state of emergency, whichever is earlier, unless the payment or security is specifically designated by the tenant for the obligation. The bill would provide that a covered tenant, as defined, who failed to pay rent that accrued during that effective time period shall not be deemed to be in default and would prohibit any action for recovery of unpaid rent until 12 months after the effective time period. The bill would define “covered tenant” as a tenant who is unable to satisfy rent accrued during the effective time period due to a loss of income or increased expenses resulting from COVID-19 and who provides a written statement to that effect to their landlord, as specified. The bill would prohibit certain entities, including a housing provider, from using an alleged default in rent that accrued during the effective time period as a negative factor for the purpose of evaluating creditworthiness or for other specified purposes.

San Francisco Overview: This bill would protect eligible San Francisco residential tenants from being guilty of unlawful detainer if the alleged default in payment of rent accrued during the effective time period. These additional protections may help to stabilize tenants impacted by COVID-19. The potential negative impacts on property owners’ ability to pay debts associated with the rented property is unknown. If coupled with bills such as AB 2501 and AB 1079, which would allow for forbearance and adjustment of loan terms, the negative impact on property owners may be decreased.

AB 2345: (GONZALES AND CHIU) PLANNING AND ZONING: DENSITY BONUSES: ANNUAL REPORT: AFFORDABLE HOUSING.

Bill Overview: This bill would amend the State Density Bonus Law to provide additional options to qualify for State Density Bonus. Currently, a project may receive one, two or three incentives or concessions, depending on the amount and levels of on-site affordable housing. Projects providing 100% affordable housing may receive four incentives or concessions, but are not eligible for waivers given that density limits are waived. This bill would provide an option to receive four or five incentives and concessions when projects provide additional affordability as follows: three incentives or concessions for projects that include at least 30% of the total units

for lower income households, at least 12% for very low income households, or at least 30% for persons and families of moderate income in a common interest development; four or five incentives or concessions, as applicable, for projects in which greater percentages of the total units are for lower income households, very low income households, or for persons and families of moderate income in a common interest development. In addition, when providing the additional affordability specified above, the project is entitled up to a 50% bonus. The bill would also authorize an applicant to receive six incentives or concessions for projects in which 100% of the total units are for lower income units, as specified. This bill would also provide one incentive for Student Housing Projects that are 20% affordable. Finally, the Housing Element must include a report on the number of State Density Bonus projects.

San Francisco Overview: This bill would increase flexibility for the 100% affordable housing portfolio with regard to the availability of development waivers. Due to San Francisco's high inclusionary requirements, projects that provide onsite inclusionary housing may qualify for a larger bonus than 35%. A typical rental project would qualify for a 37.5% bonus and if located in a carve out area (North of Market Residential Special Use District, the Mission Area Plan, or the SOMA Neighborhood Commercial Transit District) may receive a 50% bonus.

AB 2580: CONVERSION OF MOTELS AND HOTELS: STREAMLINING

Bill Overview: This bill would allow a ministerial, streamlined conversion of non-residential hotels and motels into multifamily housing. Among its provisions, this bill would establish a process for use by cities and counties, including charter cities and counties, for the complete conversion of a non-residential hotel or motel into multifamily housing units that is streamlined, ministerial and not subject to a conditional use permit. Because conversion of non-residential hotels and motels into multifamily housing would be a ministerial approval, such conversions would not require CEQA.

San Francisco Overview: San Francisco has approximately 34,000 hotel rooms in more than 200 hotels. In 2016, hotel occupancy was 85%. In the short-term, the conversion of hotel rooms to residential could bolster the stock of smaller, affordable units. However, as the economy recovers, the loss of hotel space could dilute or erode convention/tourist facilities in key locations near regional transit. Tenant protections may limit the ability to convert back to hotel to meet future needs. The approval process established by this bill would not require CEQA.

AB 3040: (CHIU) ALLOW CITIES TO PERMIT UP TO FOUR UNITS ON SINGLE FAMILY HOME PARCELS AND INCLUDE PARCELS IN RHNA SITES

Bill Overview: This bill would allow jurisdictions to rezone parcels currently occupied by single-family homes for ministerial approval of up to four housing units and to count these sites toward up to 25% of the housing units the jurisdiction must accommodate for its share of RHNA. Under the provisions of this bill, single family home parcels designated by the jurisdiction to allow four units by-right could be counted toward the moderate and above moderate income categories of RHNA at a rate of one unit per 10 single family parcels rezoned for four units. Because projects on these parcels would be designated for ministerial approval, CEQA review would not be required.; The projects would still be subject to design review, however, local

development standards applicable to the site can not impede the development of four dwelling units. Covenants or other private provisions that prohibit or restrict the number of units on would also be void. Single family home sites counted toward the RHNA site inventory as potential four-unit sites must have been certified for occupancy at least 15 years ago.

San Francisco Overview: This bill would enable San Francisco to allow four housing units in more of its single-family neighborhoods. Because projects on these parcels occupied by single-family homes would be designated for ministerial approval, CEQA would not apply. However, these would still be subject to design review and historic preservation protections. Currently over 40% of the city's residential land is zoned for single family homes (RH-1 zoning) and single family homes occupy lots in additional areas of the city. Four-unit buildings are common throughout San Francisco and can be found mixed with housing of various scales, including single family homes, in many of the city's neighborhoods. Under this bill, San Francisco would choose where to allow four-unit buildings on single family home parcels and could consider important factors like access to transportation, neighborhood services, parks, and schools as well as historic status. Allowing up to four units on single family home parcels could allow property owners to add units for family members or to create new rental and ownership opportunities. The probability of such development occurring may be low due to the fact that many such homes are owner-occupied and because single family homes are expensive. These facts combined with high construction costs could make conversion to four units financially challenging.

AB 3107: (BLOOM, TING) HOUSING ON COMMERCIAL ZONED LAND IF SUFFICIENT RHNA SITES HAVE NOT BEEN IDENTIFIED

Bill Overview: This bill would apply to jurisdictions that have not included sufficient sites zoned to accommodate their RHNA in their Housing Element and have instead included sites that require rezoning to accommodate sufficient housing. Until these jurisdictions complete the rezoning of sufficient sites, this bill would authorize housing development on commercially zoned sites as long as certain conditions are met. At least 20% of units in developments authorized by this bill would need to be affordable to lower income households and sites could not be adjacent to an industrial use. Heights for developments authorized by this bill would be the greatest of the following: the existing height limit for the site; the highest height allowed for commercial or residential use within one half mile of the site; or 36 feet. The floor area ratio of housing development would be 0.6 times the number of stories that can be accommodated by the height. The number of units allowed would be set by the greater of the following: the greatest density allowed for a mixed use or residential use within one-half mile or applicable density deemed appropriate to accommodate housing for lower income households per California law (30 units per acre in metropolitan jurisdictions such as San Francisco). Applicable design standards would apply as long as they do not inhibit the allowable height and density provided by the bill. Projects under this bill could use the state density bonus.

San Francisco Overview: Currently most of San Francisco's commercial zoning allows multifamily residential development at densities greater than 30 units per acre (roughly equivalent to the City's RH-2 zoning on a typical 2,500 square foot parcel) so, even if applicable, the impacts of the bill could be minimal in terms of allowing more residential development. The provisions of this bill would only apply if San Francisco is not able to identify sufficient sites

zoned to accommodate its RHNA as part of the 2022 Housing Element Update. While San Francisco's RHNA is likely to be significantly larger than in the past (the recently released Regional Housing Need Determination is 2.35 times the prior number of units but San Francisco's share has not yet been set), the city has not had a problem providing sufficient sites to accommodate its RHNA in the past. The city has a large pipeline of already approved housing development, additional multifamily zoned sites, and recent policies such as 2019's Proposition E that expand where affordable and educator housing can be built, which make it likely that the city can provide sufficient sites to meet its RHNA. In addition, San Francisco can take action to make sufficient sites available before the adoption of the 2022 Housing Element should the need arise.

Selected Housing Bills in the State Senate

SB-288 (WIENER) FURTHER STATUTORY EXEMPTIONS UNDER CEQA FOR TRANSPORTATION PROJECTS

Bill Overview: Under CEQA, statutory exemptions generally require only one determination step; that is, to determine if the project meets the exemption definition. CEQA currently includes statutory exemptions for projects for the institution or increase of passenger or commuter services. This bill would further statutorily exempt from CEQA certain projects related to bus, rail and light rail services and it would require those exempt projects to meet additional specified criteria. This bill would also statutorily exempt from CEQA zero-emission fueling stations and chargers and pedestrian and bicycle facilities projects. Before granting a statutory exemption, the lead agency will be required to certify that the project will be completed by a skilled and trained workforce.

CEQA currently statutorily exempts bicycle transportation plans for restriping of streets and highways, bicycle parking and storage, signal timing to improve street and highway intersection operations, and related signage for bicycles, pedestrians, and vehicles under certain conditions until January 1, 2021. This bill would extend this exemption until January 1, 2030. Above-noted transportation projects shall meet all of the following criteria: (1) A public agency is carrying out the project and is the lead agency for the project; (2) The project is located in an urbanized area or connects two or more urbanized areas; (3) For a project exceeding one hundred million dollars (\$100,000,000), (i) the project is in a regional transportation plan, general plan, or other plan that has undergone a programmatic-level environmental review under CEQA within 10 years of the approval of the project; and (ii) an independent peer review of the project was completed, including cost-benefit and equity analysis, planning, engineering, design, financing plan, and project management or project risk controls; (4) The project does not add new automobile capacity to an existing public right-of-way; (5) The project shall strive to avoid the demolition of affordable housing units and prevent the direct displacement of tenants. For any project that involves the demolition of affordable housing, the lead agency shall replace the demolished affordable housing within five years from approval of the notice of exemption and provide displaced tenants of the demolished affordable housing with assistance finding a comparable housing unit within one mile of the demolished property and assistance with the cost of relocation and rental assistance.

San Francisco Overview: Categorical exemptions under CEQA require two determination steps: 1) if the project meets the exemption definition; and 2) if the project does not trigger an exception to application of the exemption. Under current conditions, a number of SFMTA’s pedestrian, bicycle, and transit projects meet the definition of categorical exemptions. These projects sometimes require detailed analysis and revisions to demonstrate they would not be subject to an exception that would negate application of the categorical exemption, pursuant to CEQA Guidelines Section 15300.2, and Public Resources Code, Section 21084. For example, SFMTA projects may require a quantitative transit delay analysis or revisions to the project to consider loading issues. Under current conditions, some SFMTA projects require higher levels of environmental review under CEQA, such as an EIR. This includes transportation projects in San Francisco such as Central Subway, Better Market Street, Transit Effectiveness Project, and the proposed Potrero Bus Yard. These projects require a public process; evaluation and mitigation of environmental impacts such as construction-related impacts and shadow, wind, and historic resources impacts; identification of alternatives; and statement of overriding considerations. Higher levels of environmental review under CEQA have schedule and budget implications for San Francisco’s transportation projects.

SB 288 would reduce CEQA review and expense for certain San Francisco transportation projects, such as pedestrian and bicycle facilities, and projects for the institution or increase of public mass transit, passenger or commuter service on high-occupancy vehicle lanes or existing roadway shoulders, including the modernization of existing stations. These projects include a wide variation of scale, including projects costing up to \$100,000,000 dollars. While in the long-term these transportation projects usually benefit the environment, there may be implications to applying an exemption to such large projects. For instance, it would limit public engagement on transportation projects even though they are meant to serve the public and it would not include an evaluation of alternatives. It should be noted that there is an independent peer review stipulation included in the bill that could assess project alternatives. It is also likely that SFMTA will conduct these public meetings as part of good planning practice. San Francisco has also an adopted policy to coordinate excavation between two or more city agencies whenever they propose major infrastructure work in the same block within a five-year period (Public Works section 2.4.11). This coordination may lead to joint excavation for coordinated SFMTA, Public Works, and SFPUC projects on the same street to be carried out concurrently, instead of independently within a five-year span. While this is good planning, joint coordination for excavation may prevent these projects from meeting this bill’s statutory exemption definition under CEQA.

SB 899 (WEINER, CABALLERO): PLANNING AND ZONING: HOUSING DEVELOPMENT: HIGHER EDUCATION INSTITUTIONS AND RELIGIOUS INSTITUTIONS

Bill Overview: The Bill would allow educational and religious institutions to partner with qualified developers to construct 100% affordable housing projects. The Bill provides ministerial approval for eligible projects on sites owned by said institutions that are at least one quarter acre or greater in size. Eligibility criteria are similar to the criteria set forth in SB 35, except that the demolition of residential units is not expressly prohibited; instead, projects that demolish residential uses are subject to replacement provisions. Sites must allow development of at least

30 units per acre; if a locality's density is greater, then greater density shall apply. The State Density Bonus can be used for these projects. Units must be 100% affordable for a period of 55 years as rental or 45 years as ownership. 80% of the units must be restricted to lower income levels with up to 20% restricted to moderate income, exclusive of manager units.

San Francisco Overview: This bill would provide another alternative for the development of affordable housing on eligible lots. This alternative prohibits construction in Article 10 and Article 11 Districts.

SB 902 (WEINER, ATKINS): HOUSING DEVELOPMENT: DENSITY - ALLOW CITIES TO PERMIT UP TO 10 UNITS ON INFILL SITES IN TRANSIT-RICH OR JOB-RICH AREAS

Bill Overview: This bill would enable local governments to zone parcels for multifamily housing of up to 10 units in transit-rich areas, in jobs-rich areas, or on urban infill sites. Adoption of a local ordinance under the provisions of this bill would not constitute a "project" for the purposes of CEQA. A "Transit-rich area" would be defined as a parcel within one-half mile of a major transit stop (an existing rail or bus rapid transit station, a ferry terminal served by bus or rail, or the intersection of two or more bus routes with frequency of service of 15 minutes or less during peak commute periods) or a parcel on a high-quality bus corridor (a fixed route bus service that has average service intervals of no more than 15 minutes during the peak commute, weekday hours, and minimum required service on weekends and weekday mornings). A "Jobs-rich area" means an area identified by Department of Housing and Community Development (HCD) in consultation with the Office of Planning and Research that is high opportunity and either is jobs rich or would enable shorter commute distances. An "urban infill site" means a site that is located in a city in an urbanized area as designated by the US Census Bureau that is zoned for residential use or mixed-use development.

San Francisco Overview: This bill would facilitate the passage of local ordinances by San Francisco's elected officials to allow multifamily buildings with up to 10 units on qualifying parcels. This bill would not require any changes to existing zoning but could allow for faster passage of ordinances by removing the need for potentially time consuming and costly CEQA review. A large portion of the city's parcels would likely qualify for rezonings under this bill should the city's elected officials choose to pass them. The process of selecting parcels for zoning changes would be completely subject to local decisions and planning processes. Allowing more multifamily housing units of up to 10 units could help to meet housing needs in different areas of the city.

SB-995 (ATKINS): ENVIRONMENTAL QUALITY: JOBS AND ECONOMIC IMPROVEMENT THROUGH ENVIRONMENTAL LEADERSHIP ACT OF 2011: HOUSING PROJECTS

Bill Overview: This bill would expand and extend the application of CEQA litigation streamlining provided by AB 900 (leadership act) from 2011 till 2024. It would also broaden the application and utilization of the Master Environmental Impact Report (MEIR) process, which is intended to facilitate cities in their forward planning and help streamline housing project approvals on an individual project level. (AB 900'S leadership act has generated 10,573 housing units and created nearly 47,000 jobs since 2011.) This bill would: 1) require a lead agency to

prepare a master EIR for a general plan, plan amendment, plan element or specific plan for housing projects where the state has provided funding for the preparation of the master EIR; 2) extend the Governor’s authority to certify a leadership project up to January 1, 2024, and repeals AB 900 on January 1, 2025; and 3) make infill housing projects that meet certain requirements, including a minimum investment in California, affordable housing requirements, and labor requirements, eligible for leadership project certification. This bill requires eligible projects to result in no net additional emissions of greenhouse gases, in addition to meeting other requirements. The bill would revise and recast the labor-related requirements for projects undertaken by public agencies and for projects undertaken by private entities. The bill would continue to specify that the time period for the final resolution of any judicial action is 270 business days after the filing of the record of proceedings with the court. The bill would provide that the certification expires and is no longer valid if the lead agency fails to approve a certified project before January 1, 2025 and would repeal the leadership act on January 1, 2025. Because the bill would extend the obligation of the lead agency to prepare concurrently the record of proceedings, this bill would impose a state-mandated local program.

San Francisco Overview: SB 995 expands the applicability of AB 900 and extends AB 900 through 2024. Logistically, SB 995 increases Planning Department and City Attorney Office’s administrative burdens (related to staff time and costs) by expanding applicability provisions and the date of CEQA litigation streamlining through the expansion of the prior AB 900. The Planning Department has previously expressed concerns about the additional administrative burden related to expansion of the prior AB 900 law to those projects that are unlikely to be sued and in need of the bill’s judicial streamlining provisions. SB 995 certification of projects would indeed provide for streamlined and shortened CEQA litigation; however, the proposed SB 995 leadership certification process (similar to the prior AB 900) has the unintended consequence of prolonging the EIR schedule of certified projects, as well as all other projects in a local jurisdiction’s pipeline. This is at odds with San Francisco’s Mayoral Executive Directive for Housing Projects to more quickly process permits for much-needed residential projects. Moreover, for projects not at risk of CEQA litigation, the AB 900 certification process creates additional cost and staffing burdens needlessly. Specifically, compliance with the proposed SB 995 would redirect substantial city staff time and resources away from non-AB 900-certified projects (including housing projects) towards SB-995-certified projects, in order to keep abreast with the procedures and paperwork required for maintaining SB 995 compliance for certified projects. Simplifying implementation of the proposed SB 995—i.e., by relaxing the rules of how often the Record of Proceedings has to be updated and only requiring that it be published at the time of Final EIR publication (and not also at the time of Draft EIR publication as proposed) as well as clarifying the materials that need to be provided in the Record of Proceedings—would uphold the spirit of the law and substantially decrease administrative burdens on local jurisdictions.

SB 995’s requirement to prepare a Master EIR for the Housing Element would have limited use for San Francisco. Our Housing Element EIR is envisioned to be a standard, non-Master EIR that is estimated to cost about \$2 million to produce. Master EIRs must include “specific information about subsequent project approvals.” To convert San Francisco’s Housing Element EIR into a “Master EIR” would require more detailed work and added expense. SB 995 requires projects to result in no net additional emissions of greenhouse gases including from

employee transportation. Even if San Francisco prepared a Master EIR for the Housing Element, it still seems that future housing projects tiering off the Housing Element would have a hard time qualifying for litigation streamlining under this bill (since many of these projects would likely not be able to meet the “no net new GHG emissions” requirement). Further, Master EIRs have an expiration date of approximately 5 years per CEQA Guidelines 15175. Also, unless SB 995 was extended, it would only be in effect for the first two years of the city’s updated Housing Element. For these reasons, the Planning Department would not anticipate producing a Master EIR for the Housing Element nor would Planning anticipate taking advantage of SB 995 for the Housing Element, if SB 995 were to be approved. Most private developments with 25 units or more in San Francisco would be eligible to use SB 995 as the threshold of 15% permanently affordable housing is higher than San Francisco’s Inclusionary Requirements for projects with 25 or more units. While SB 995 would create an incentive for affordable housing at the state level, in San Francisco this expedited judicial review would be widely available. If the use of SB 995 were widespread, as the state’s analysts points out, there could be “diminishing returns” for projects.

SB 1085: (SKINNER, CABALLERO) DENSITY BONUS LAW: QUALIFICATIONS FOR INCENTIVES OR CONCESSIONS: STUDENT HOUSING FOR LOWER INCOME STUDENTS: MODERATE-INCOME PERSONS AND FAMILIES: LOCAL GOVERNMENT CONSTRAINTS

Bill Overview: This bill modifies the State Density Bonus Law by requiring planning agencies to count units designated to satisfy an inclusionary housing requirement in the total number of units on which a density bonus and the number of concessions or incentives are based. The bill also modifies existing law by increasing the maximum bonus from 35% to 40% if the project will provide 11% of the units at very low income. The bill creates a new category of projects that are eligible to receive a bonus. Currently, there are seven specific types of affordable housing that qualify for a bonus including: very low income, low income, senior housing, student housing, 100% affordable housing, moderate income housing in a common interest development, and transitional youth or veterans housing. The new category created by this legislation is for households of low or moderate incomes. The rent for these units is 30% below the market rate for the city, county, or city and county in which the housing development is located. The applicant shall provide the city, county, or city and county with evidence to establish that the units meet the requirement of this clause. This category receives a maximum of 35% bonus if 20% of the units meet the above definition and is afforded one incentive or concession. If 30% of the units meet this definition, two incentives or concessions may be granted, and if 40% of the units meet this definition, three incentives or concessions may be granted. In addition, this bill would prohibit the imposition of affordable housing impact fees, including inclusionary zoning fees, in-lieu fees, and public benefit fees, from being imposed on a State Density Bonus housing development’s affordable units or bonus units.

San Francisco Overview: This bill would prohibit imposition of the Affordable Housing Fee on the affordable units or bonus units of State Density Bonus Projects. Currently San Francisco applies the Affordable Housing Fee on State Density Bonus Projects and provides a credit for the on-site inclusionary units. If this bill passes, the City would no longer be able to impose the Affordable Housing Fee on units in State Density Bonus Projects that are meeting the on-site

inclusionary requirements. On June 16th, 2020, the Board of Supervisors adopted a resolution of opposition to this bill.

SB-1120 (Atkins, Caballero, Rubio, and Wiener) Subdivisions: tentative maps

Bill Overview: This bill would amend the Subdivision Map Act to enable ministerial approvals of either or both 1) a housing development of 2 units and/or 2) subdivision of a parcel into two equal parcels. To use this bill, the subject parcel would need to be zoned for residential uses and in a single-family zoning district. Certain hazardous, protected parcels or currently occupied parcels could not take advantage of this bill. Projects could not result in the demolition of 25% or more of existing exterior walls; a parcel smaller than 1,200 square feet; nor provide short-term rentals. CEQA would not be required. Objective requirements may be applied, provided the requirements do not prohibit the project.

SF Overview: In San Francisco, approval processes for subdivisions and for new housing are discretionary and as such, require CEQA review. By making these projects ministerial, CEQA would not be required and the projects would be approved upon meeting the objective requirements. This would speed the entitlement process and limit the Department's ability to apply design guidelines. This bill would enable this ministerial path only in single-family districts and could create an incentive to rezone single-family districts to a higher density zoning district to regain discretionary and CEQA review.

SB 1385:(CABALLERO, RUBIO) HOUSING AND COMMERCIAL ZONES

Bill Overview: This bill would allow residential development on lots otherwise zoned for office and retail uses. The bill would allow residential density deemed appropriate to accommodate housing for lower income households per California law (30 units per acre in metropolitan jurisdictions such as San Francisco) or greater density if already allowed by local zoning. A housing development authorized by this bill would be subject to local zoning, parking, design, and other ordinances applicable in the zone closest to the site that meets the housing density allowed by the bill. Developments built under this bill could not include any hotel uses and housing units could not be rented for less than 30 days.

SF Overview: As mentioned in regard to AB 3107, most of San Francisco's commercial zoning allows multifamily residential development at densities greater than 30 units per acre (roughly equivalent to the City's RH-2 zoning on a typical 2,500 square foot parcel) so this bill appears to have limited applicability in San Francisco.

REQUIRED COMMISSION ACTION

No official Commission action is required, as this is an informational item.