



City Council

Rich Tran, Mayor  
Marsha Grilli, Vice Mayor  
Garry Barbadillo, Councilmember  
Bob Nuñez, Councilmember  
Anthony Phan, Councilmember

**CITY OF MILPITAS - NOTICE OF SPECIAL MEETING**

***NOTICE IS HEREBY GIVEN*** that a Special Meeting of the Milpitas City Council has been scheduled for Wednesday, January 31, 2018 at 5:00 PM at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA in the Council Chambers on the second floor. The meeting agenda is as follows:

**SPECIAL MEETING AGENDA**

WEDNESDAY, JANUARY 31, 2018

5:00 PM

Milpitas City Hall – Council Chambers 2<sup>nd</sup> floor  
455 E. Calaveras Boulevard, Milpitas, CA

**I. CALL TO ORDER / ROLL CALL / PLEDGE OF ALLEGIANCE**

**II. PUBLIC FORUM** - *comments limited to 3 minutes or less*

**III. STUDY SESSION**

**Study Session concerning Affordable Housing Topics including an Update on Recent State Legislation. The City Council will be asked to provide guidance to Staff on possible elements of an Affordable Housing Ordinance. The Planning Commission has also been invited to attend the Study Session to hear the comments of City Council.**

**(Staff Contacts: Bradley Misner, 408-586-3273 and Chris Diaz, 408-586-3041)**

**IV. ADJOURNMENT**

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

Materials related to an item on this agenda submitted to the City Council after distribution of the agenda would be available for public inspection at the City Clerk's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas during normal business hours.

For more information on your rights under the Open Government Ordinance or to report a violation of the ordinance, contact the City Attorney at Milpitas City Hall, 455 E. Calaveras Blvd, Milpitas, CA  
E-mail: [cdiaz@ci.milpitas.ca.gov](mailto:cdiaz@ci.milpitas.ca.gov) / Phone 408/586-3040

*The Open Government Ordinance is codified in Milpitas Municipal Code as Title I Chapter 310 and is available at the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

## STAFF REPORT: AFFORDABLE HOUSING STUDY SESSION and LEGISLATIVE UPDATE

**Objective:** Tonight, staff will be presenting the City Council with information on new legislation that impacts affordable housing production, as well as potential policy options for the Council’s consideration to advance affordable housing production in the City. Staff is looking for guidance from the Council on discrete elements of this topic, with questions listed at the end of this report.

Previously, on April 18, 2017 and follow-up discussions, staff had presented to Council about the City’s existing affordable housing program. The presentations included an overview of the City’s affordable housing program, present efforts to increase affordable housing supply and future options. (Copies of the ARS for those meetings are attached as **Attachment A**.) One of the future options highlighted during the presentation involved the potential adoption of an Affordable Housing Ordinance. The guidance offered by the Council this evening will assist in crafting a draft ordinance for consideration.

**Background:** The availability of affordable housing has been problematic in California for many years. It is addressed at the state level through multiple measures. One such measure is the allocation, to each city around the state, of a certain number of housing units in varying income levels reflecting the anticipated housing need in that city during a given planning period. This is known as the Regional Housing Needs Assessment or RHNA. Each city is then responsible for making sites available, through zoning or other measures, to accommodate that RHNA number. For this planning period (2014-2022), the RHNA for Milpitas is 3,290 units, as divided into five income categories:

| Income Category   | Projected Need | Percent of Total | Units constructed (since 2015) |
|---|----------------|------------------|--------------------------------|
| Extremely Low Income (0-30% AMI)  | 502*           | 15.25%           |                                |
| Very Low Income (0-50% AMI)   | 502*           | 15.25%           |                                |
| Low (51-80% AMI)  | 570            | 17.3%            |                                |
| Moderate (81-120% AMI)  | 565            | 17.2%            |                                |
| Above Moderate (>120% AMI)  | 1151           | 35%              | 260                            |
| <b>TOTAL</b>  | <b>3290</b>    | <b>100%</b>      | <b>260</b>                     |
| <i>*‘Extremely low income’ is actually a subset of the ‘Very Low Income’ category, and may be computed as either the percentage of very low income households that qualify as extremely low, per U.S. Census figures, or by adopting the presumption that 50% of very low income households qualify as extremely low.</i> |                |                  |                                |

Note that cities are not required to actually build the housing units that will meet these RHNA numbers. Rather, the City must use its land use authority to make sites available to accommodate these anticipated housing units by, among other things, setting densities for land throughout the City that would allow for the construction of housing units in these income categories. Given the relatively high price of land, lower densities are not generally understood to be amenable to affordable housing production. Instead, in order to provide for housing in the lower income categories, the State has declared that jurisdictions had to select sites with densities that were generally able to accommodate 20 units or more per acre. (The State has found that a minimum density of 20 units per acre is sufficient enough density to support affordable housing projects.) Therefore, in the City Housing Element, sites with densities of 20 units or higher have been identified as appropriate to host affordable housing. Please see **Attachment B** for the list of sites.

The RHNA is not the only gauge of success in determining whether a city has met its affordable housing needs, but it is a statewide metric for which the City is accountable. Thus, Goal A in the City’s 2015-2023 Housing Element states: “Provide Adequate Sites. Maintain adequate sites to accommodate the City’s share of the regional housing need,

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including sites that are appropriate for the development of housing affordable to very low-, low-, moderate- and above moderate-income households.”

With these target numbers in mind, how does the City of Milpitas go about creating conditions conducive to realizing greater affordable housing production? Recent changes in state law may partially affect our array of choices, and are discussed below. In addition, however, other possible methods, such as the adoption of an inclusionary housing requirement or an impact fee, are also available. Those methods are explored at the end of this report.

**Recent Changes in State Law:** The package of 15 housing bills adopted at the end of the last Legislative session reflect the growing concern in Sacramento that more needs to be done at the local level to encourage, if not require, the production of affordable housing. As summarized in **Attachment C**, this legislation directly impacts how cities process residential development projects and affect the latitude cities enjoy in terms of evaluating residential projects that include affordable housing. Among other things, under this new legislation:

1. Cities are expressly authorized to adopt inclusionary housing requirements for residential rental projects (AB 1505, the “Palmer fix”);
2. New varieties of existing planning tools, such as zoning ordinances and specific plans, have been introduced to streamline affordable housing development. Cities can choose whether to adopt these new measures, which include Workforce Housing Opportunity Zones and Housing Sustainability Districts;
3. Developers are given the option to seek expedited, ministerial approval of qualifying housing development projects in cities that meet certain criteria (SB 35);
4. The Housing Accountability Act has been substantially bolstered to make it more difficult to deny low- and moderate-income housing development projects and to impose stiff fines on cities that cannot defend their rejection of qualifying affordable projects;
5. The No Net Loss Law has been amended to require that cities find sites for affordable housing in specific income categories if a site previously anticipated to host such housing is approved for the development of a project with fewer affordable units than previously projected;
6. The Department of Housing and Community Development (HCD) has been empowered to decertify approved housing elements if the Department determines the City is out of compliance with their housing element or one of a variety of state laws, and is authorized to refer such cities to the Attorney General;
7. City reporting requirements have been substantially increased to provide the state with more information on the number of affordable housing projects being proposed, approved or denied, and actually constructed; and
8. Additional regulations have been imposed on cities as they seek to identify adequate sites to accommodate their RHNA numbers.

Together, these bills represent a significant shift in the way in which residential development projects are processed by staff, evaluated by decision-makers, and reported to the state.

**Affordable Housing Tools:** In addition to the new tools and requirements set out in the 2017 Legislative housing package, there are a number of other tools and resources that can be used to encourage affordable housing production. These include:

1. **Federal Assistance.**
  - a. *Housing Choice Vouchers* – Also known as Section 8, housing choice vouchers are rental subsidies. The voucher holder pays a certain percentage of their income and the voucher is used to “fill the gap” between Voucher holder’s payment and the market rate rental price of the unit. Vouchers are provided by HUD which provides either project-based vouchers or tenant-based vouchers. Project-based vouchers are provided for units of a specific development while a tenant-based voucher is used by individual households that choose their own housing units and then use their voucher to pay for their

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rent. There are a number of households with tenant based vouchers residing throughout the City. The City is not involved in either procuring or dispensing housing choice vouchers.

- b. *Community Development Block Grant (CDBG)* – The CDBG program is a federal program administered by the Department of Housing and Urban Development (HUD). The City receives approximately \$400,000 per year through the CDBG program, and the funds can be used for a variety of community development activities. The CDBG process begins in January, and the Council approves CDBG funding recommendations in April.

### 2. County Assistance.

- a. *Measure A funding* – In November 2016, Santa Clara County voters passed Measure A, a \$950 million affordable housing bond. \$700 million is dedicated to the extremely-low income population, \$100 million for low income and the remaining \$150 million for moderate income households. Three affordable housing projects in Milpitas, two proposed and one existing, have submitted applications for Measure A funding. The City can seek additional Measure A funds for qualifying projects.

### 3. Local Tools.

- a. *Inclusionary housing (Resolution No. 841)* – In June 2015, the City Council approved Resolution No. 841, which required any development of 5 units or more to provide 5% of the total units to be affordable to low or very low income qualified households. The developer would also have the option of providing an in-lieu fee equivalent to 5% of the total construction costs of the project. This requirement was only made applicable to ownership projects, as a 2009 decision (*Palmer/Sixth Street Properties v. City of Los Angeles*) had made the application of inclusionary requirements unavailable for rental developments. This year, AB 1505 has expressly granted cities the ability to include such a requirement for rental projects once more, but any such obligation must be in the form of an ordinance. The City could chose to enact a new ordinance and consider inclusionary housing requirements that would apply to ownership and/or rental housing development projects.
- b. *Zoning Incentives* – Though not currently in place, the City could adopt certain zoning incentives to encourage the production of affordable housing. For example, projects offering a certain percentage of affordable housing could be offered decreased setbacks, a greater number of stories, relaxed parking requirements, or other such inducements.
- c. *Density Bonus* – Under the State Density Bonus law (Government Code § 65915, et seq.) developers are entitled to additional density in exchange for qualifying percentages of affordable (or otherwise eligible) units being constructed in the development. The law also requires cities to provide “concessions,” “incentives,” and “waivers,” in certain circumstances, which provide some regulatory relief from the zoning requirements. If a development qualifies for a density bonus, the law requires it to be provided, up to a maximum of 35% increased density. However, cities have the option of approving even greater density bonuses (and authorizing additional concessions, incentives, or waivers) if they chose to do so.
- d. *Fee Waivers* - The City collects various fees for new developments. These fees could be waived or paid in whole or in part by the City for certain affordable housing developments.

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- e. *Impact Fees* – The concept of affordable housing impact fees is based on the understanding that new market rate residential and/or commercial development generates the need for new services. Typically, service-related employment occupations tend to offer lower wages, and these workers need affordable housing. For example, if a new market rate 100 unit condominium complex were to be approved and constructed, those new households would generate additional need for retail services, restaurants, child care, et cetera. Since many service workers earn lower wages, market rate housing is often unattainable for these workers, who would need affordable housing.

An affordable housing impact fee thus seeks to capture the impact of a new residential or commercial project on the resulting need and recover the cost of that impact from developers as part of the project entitlement process. In April 2015, the City, along with other Santa Clara County and Alameda County jurisdictions, began participating in the preparation of an Affordable Housing Impact Fee nexus study to examine an affordable housing impact fee. The study evaluates the nexus between new housing and commercial developments and the impacts these developments have on the demand for affordable housing. The remainder of this report examines the findings of that study.

### **Affordable Housing Impact Nexus Study**

In December 2016, Keyser Marston Associates, a third-party consultant well-versed in nexus studies on affordable housing impact fees, delivered its Affordable Housing Impact Fee nexus study to the City (see **Attachment D**). As detailed above, the study evaluates the nexus between new housing and commercial developments and the impacts these developments have on the demand for affordable housing. The nexus study provides a financial analysis to determine the maximum fee that could be collected to help address the resulting affordable housing demand.

The final draft of the nexus study was released for public review on November 3, 2017, for a 30 day review. Copies were provided at City Hall and at the Library, with electronic versions available on the City website. City staff conducted a number of community meetings with the public to present the findings of the nexus study and to solicit input about City affordable housing issues. Notices of the community meetings were sent out via Next Door, Facebook and via email. In addition, City staff met with the Building Industry Association (BIA) the Commercial Real Estate Development Association (known as NAIOP) to receive their comments about the Nexus Study. Comments from stakeholders have been summarized in **Attachment E**.

The nexus study studied the impacts of both residential and commercial development on affordable housing. Through its analysis, it determined a maximum impact fee for a number of residential and commercial types of development. The consultant, Keyser Marston and Associates, using an employment generator model, determined how many lower wage jobs would be generated by the new development types. Based on the new employee creation, the demand for affordable housing can be determined. Multiplied by the construction costs for certain housing types, the overall costs for the affordable housing demand can be calculated. Fees can be adopted on either a per-unit or per square footage basis.

Below is a summary of the maximum fees that can currently be supported for residential and commercial development in Milpitas, according to the nexus study. The fees listed are the maximum fee as determined by the nexus study. The Council is not obligated to approve any fee, let alone a fee at the maximum level.

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**Table 1  
Maximum Supported Residential Impact Fees**

|                      | Ownership Units           |          |             | Rental Units            |                          |
|----------------------|---------------------------|----------|-------------|-------------------------|--------------------------|
|                      | Single Family Development | Townhome | Condominium | Apartment (Low Density) | Apartment (High Density) |
| Per Market Rate Unit | \$69,900                  | \$52,700 | \$39,400    | \$35,000                | \$40,800                 |
| Per Square Foot      | \$30.50                   | \$53.00  | \$43.80     | \$31.90                 | \$45.40                  |

In addition, the study also analyzed the impacts of new commercial development and the demand for affordable housing generated by the new development. The study analyzed five different types of commercial development. Adoption of a commercial impact fee can be done in conjunction with a residential impact fee, in the absence of a residential impact fee, or not at all, as the Council pleases. As with the maximum supported residential impact fees, the figures listed in Table 2 below are maximum supportable fees, not suggested figures for final adoption.

**Table 2  
Maximum Supported Commercial Impact Fees**

|                 | Office   | Retail   | Hotel    | Light Industrial | Warehouse |
|-----------------|----------|----------|----------|------------------|-----------|
| Per Square Foot | \$142.70 | \$268.00 | \$128.70 | \$149.60         | \$47.80   |

As a reference, this table shows the commercial impact fees collected by other nearby jurisdictions.

**Table 3  
Commercial Impact Fees in Nearby Cities (Per Square Foot)**

| City                           | Office                   | Retail                   | Hotel   | Light Industrial          |
|--------------------------------|--------------------------|--------------------------|---------|---------------------------|
| Santa Clara (effective 7/1/18) | \$3.33 (<20,000 sq. ft.) | No fee (<5,000 sq. ft.)  | \$1.67  | \$1.67 (<20,000 sq. ft.)  |
|                                | \$6.67 ≥ 20,000 sq. ft.) | \$1.67 (≥ 5,000 sq. ft.) |         | \$3.33 (≥ 20,000 sq. ft.) |
| Mt. View                       | \$25.00                  | \$2.68                   | \$2.68  | \$25.00                   |
| Cupertino                      | \$20.00                  | \$10.00                  | \$10.00 | \$20.00                   |
| Palo Alto                      | \$19.85                  | \$19.85                  | \$19.85 | \$19.85                   |
| Sunnyvale                      | \$15.00                  | \$7.50                   | \$7.50  | \$15.00                   |
| Fremont                        | \$4.00                   | \$4.00                   | \$4.00  | \$1.00                    |
| San Jose                       | N/A                      | N/A                      | N/A     | N/A                       |

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**Request for Direction:** Staff understands that the Council would like to consider a revised Affordable Housing Ordinance that utilizes some of the tools addressed in this report. In that vein, staff seeks direction as to whether the Council wishes to entertain:

1. Further exploration of any of the new or revised tools addressed in the 2017 Legislative housing package (such as, for example, development of a Workforce Housing Opportunity Zone or Housing Sustainability District);
2. Revisions to the current inclusionary housing requirement of 5% of ownership residential units being set aside for affordable housing (or 5% of total construction costs being paid in lieu);
3. Adoption of an inclusionary housing requirement for rental residential units;
4. Adoption of an affordable housing impact fee, as was studied by Keyser Marston. If so, does the Council wish to look at residential impact fees, commercial impact fees, or both?
5. Further discussion of other possible measures to encourage affordable housing production, such as zoning incentives or increased density bonus offerings?

With this direction, staff can begin putting together a responsive program for Council consideration.

**Environmental Review:** No environmental review of this information is necessary, as the City Council's receipt of this material has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and thus is not a "project" under CEQA, per 14 CCR § 15378(a).

**Fiscal Impact:** None.

**Recommendations:** Receive staff presentation and provide staff direction.