COUNTY OF HUMBOLDT

Legislation Text

File #: 20-525, **Version:** 1

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Departmental

SUBJECT:
Consideration of Placing a Local Measure on the November 3, 2020, General Election Ballot Regarding the Development of Affordable Rental Housing and a Supplemental Budget to Transfer from Contingencies to Fund the Ballot Measure (4/5 Vote Required)

RECOMMENDATION(S):
That the Board of Supervisors:

1. Receive a report on submitting a measure to the voters for the development of housing for lower income persons and families, and persons with disabilities at the November 3, 2020 General Election, pursuant to Article XXXIV of the Constitution of the State of California;
2. Authorize the Planning Director to contract with the polling firm Fairbank, Maslin, Maullin, Metz & Associates ("FM3") for polling to increase the likelihood of the passage of a local Article XXXIV measure and select the type of desired polling;
3. Approve the transfer of $121,500 from General Fund Contingencies for the polling and ballot measure expenses (4/5 vote required);
4. Designate two members of the Board to work with the Planning and Building Director in providing any necessary direction to the selected polling firm; and
5. Direct staff to return on July 7, 2020 with the results of the polling and optional language for the ballot measure and a report on including the cities in the ballot measure.

SOURCE OF FUNDING:
The salary funding for preparing this staff report and managing the proposed ballot measure is included is in the General Fund contribution to the Advanced Planning budget unit 1100-282. The proposed supplemental budget of $121,500 to transfer from Contingencies will be funded by the General Fund. There will be no additional assessment or increase in taxes as a result of the proposed ballot measure. See below for further discussion.

DISCUSSION:
During public meetings for the 2019 Housing Element update, nearly everyone, including experienced

local builders and developers, expressed concerns that without public funding housing affordable to even moderate-income households will likely not be built in Humboldt County in the foreseeable future due to the high cost of land, building materials, labor and permitting, making it impossible to produce housing at affordable rates. The Housing Element identified Article XXXIV ("Article 34") of the California Constitution as a significant and unnecessary regulatory barrier to development of affordable housing because it keeps the county from funding or developing affordable rental housing. The Housing Element seeks to eliminate this barrier by placing a measure on the ballot which, when approved by a simple majority of the voters, will authorize the county to fund and develop affordable rental housing, enabling the county to take a more active role in affordable housing development. The paragraphs below provide more detailed information about the item.

What is Article XXXIV and how does it impact local jurisdictions?

Article 34 of the California Constitution (Attachment 2) prevents public bodies from developing, constructing, or acquiring in any manner "low-rent housing projects" until a ballot measure authorizing such activities is approved by a simple majority of qualified voters. Article 34 defines "public bodies" as any city, county, housing authority, or other subdivision or public body of the state. Article 34 applies not only to publicly owned low-income rental projects, but also to low-income rental projects developed by private persons and non-profit entities using certain types of public financial assistance.

In 1975 the Legislature enacted Public Housing Election Implementation Law (California Health and Safety Code Section 37000 et seq.) to clarify the requirements of Article 34. It exempted privately owned housing projects that receive no property tax exemption or provides for full reimbursement to all taxing entities within a specific period of time and, in general, those in which no more than 49% of the units are occupied by low-income persons. Additionally, it exempted housing intended for owner-occupancy rather than rental occupancy; housing leased by a state public body from a private owner. The statutory exemptions also include rehabilitation, reconstruction or replacement of an existing low rent housing project, or a project previously or currently occupied by lower-income households, and the acquisition, rehabilitation, reconstruction or improvement of a low-rent housing project subject to a contract for federal or state public body assistance for the purpose of providing affordable housing.

Even with the narrower scope, Article 34 significantly inhibits affordable housing development in the county. It also creates uncertainty for the jurisdiction and the developer, in addition to increasing administrative costs for the development of affordable housing projects. In *California Finance Agency* v. *Elliott* (1976) 17 Cal.3d 575, 588, the California Supreme Court held that where an agency "extensive[ly] participat[es]" or "closely participates, or assists, in the development of a low-cost housing project" it requires Article 34 authorization (81 Ops. Cal.Atty.Gen. 308 (1981)).

Consequently, when a local agency or developer seeks state funding for a housing project in the county, the funding application must be accompanied by an attorney prepared legal opinion documenting how the project's ownership, financing, agreements, and the nature and extent of involvement by the county are not subject to the local election requirement of Article 34, if the facts support this conclusion. The legal opinion must be detailed and supported by specific legal arguments grounded by the Constitution, statute and/or case law. Typically, the project proponent bears the costs

associated with the preparation of the opinion, which may be upwards of $50,000.

A good example of Article 34 acting as a barrier to development of affordable rental housing in the county is with the county-owned property located at 2769 Lucas Street, Eureka, which would be an appropriate site for development of affordable housing because the property's land use and zoning both allow by-right development of multifamily development, it has public water and sewer nearby and is served by a paved road maintained by the county. It is also included in the county's Affordable Housing Inventory.

In the early 2000's the county received a grant to study the property's development potential and identify constraints. This study also included a property line survey, an appraisal, a phase I environmental site assessment, a wetland delineation, and two concept level development plans. Article 34 prevents the county from developing affordable rental housing on the site or even funding such a development. This ballot measure would make the development of affordable rental housing less daunting and more accessible to builders from both a regulatory and financial standpoint, especially in these uncertain times.

There have been several attempts to repeal Article 34 statewide. The most recent attempt was during the 2019 legislative session. Senators Allen and Wiener introduced a resolution proposing a repeal of Article 34, known as SCA-1. While SCA-1 passed unanimously in the Senate and was ordered to the Assembly, the measure failed to advance for a vote before the close of the 2019 legislative session. As of March 2020, the resolution still had not advanced in the Assembly. At this time, the county is not aware of any active statewide referendums or initiatives, or other campaigns seeking the repeal of Article 34. Given the current statewide health emergency it is not anticipated that SCA-1 will be placed on the statewide November 3, 2020 General Election ballot.

It is important to note that voter approval of a public agency's Article 34 does not relieve affordable housing projects from compliance with land use or building requirements of the local agency or those of the state or federal oversight agencies. In other words, a jurisdiction's general plan, zoning, and other land use regulations are not altered or diminished by an Article 34 authorization.

Who Would Vote?

A ballot measure exclusively for voters in the unincorporated area would limit the scope of the measure to projects in the county's unincorporated areas. If the Board wishes to open the scope of the ballot measure to voters county-wide its approval would enable more collaboration with incorporated cities. This is a decision-point for the Board. Staff has not engaged city staff or city officials specifically to assess their desire to collaborate with the county in this way but the county has discussed development of a Regional Housing Trust Fund with several cities and there is interest. It is suggested that the Board direct staff to assess the interest of cities and bring back a report to the Board on July 7, 2020 for the Board's consideration.

Options for an Article 34 Measure

Attachment 1 includes sample Article 34 ballot measures that were successful in other jurisdictions.

Jurisdictions usually seek general authority from the electorate to develop low income housing to avoid being required to return to the ballot box on a project-by-project basis, so Article 34 ballot measures normally do not specify what projects are going to be built. Case law and common practice strongly suggests that the measure should specify a maximum number of units that may be developed. There are several variations of how this can be done in an Article 34 measure:

1. The measure specifies a total maximum number of housing units.
2. The measure specifies the total maximum number of housing units on an annual basis.
3. The maximum number of housing units is calculated as a percentage of the existing housing stock or inventory.

Each of these approaches can be used separately or in combination. For instance, the City of Eureka's Article 34 authorization combines both the first and third ones in this list. The City of Stockton's Measures G and K on the other hand both established caps of 500 housing units annually. Approaches 1 and 2 offer the advantage of clarity and certainty for the voter. The third approach provides for an annual resetting of the maximum number of low-rent housing units that could be developed; and may better reflect changes in market conditions.

While not common, some jurisdictions incorporate a sunset date into their authorization. The City of Stockton's Measures G and K authorized up to 500 low-income rental housing units per year for *ten years*. Prior to Measure G's authorization expiring, in 2018 the voters were asked in increase the duration to *twenty years*. The 2018 measure became Measure K and passed at the ballot box.

Given the degree of flexibility and range of scenarios, staff recommends conducting polling of potential voters to determine the best elements for the ballot measure:

- How many housing units should the measure seek to have authorized?
- Should the number of housing units authorized be on annual basis or as lump sum? For example, "75 housing units annually" or "750 housing units".
- Should the measure include a sunset clause? If so, how long should the sunset clause be for, e.g., 10, 15 or 20 years?

As discussed in more detail below, the request to transfer funding from Contingencies is included in this item in the amount of $29,500 to $36,500 to contract for polling.

<u>Process and Timing for Placing a Measure on the Ballot</u>

To place the measure on the ballot requires a 2/3 vote of the Board. August 7, 2020 is the last day for placing an item on the ballot for the November 3, 2020 General Election. Before that date, the Elections Office needs an order from the Board to place the measure on the ballot, in addition to the language of the measure itself, an impartial analysis of the measure will need to be prepared for the voters' guide, and the Board may want to authorize the County Administrative Office to prepare and file a fiscal impact statement as provided by subdivision (c) of Section 9160 of the Elections Code. Both analyses are due August 21, 2020.

Below is the timeline for major milestones for placing a measure on the November 3 ballot:

May 28	Contract signed with polling firm
June 1-23	Polling firm surveys voters and prepares final report
July 7	Board receives report of polling results; makes decision on measure and language of measure
July 7-10	Staff drafts measure for Board adoption
July 28	Resolution for Board adoption to consolidate election and to submit measure to the electorate
Aug 7	Last day for the governing body of a district, city, school or other political subdivision to file a request for consolidation with the November 2020 election with the Humboldt County Office of Elections.
Nov 3	Election Day

This timeline is extremely tight, so staff recommends the Board designate two of your members to work with the Planning Director to provide the selected polling firm with assistance or other directions if needed.

Supplemental Budget to Transfer from Contingencies in Fiscal Year (FY) 2019-20

Before deciding to place an item on the ballot, the Board may wish to conduct polling to determine the likely outcome of such a ballot measure. While this is a discretionary expenditure, given the total cost to place the measure on the ballot is approximately $121,500 (as detailed below) and if polling indicates the measure is unlikely to pass, it may not be worth spending the money. Polling results may also help the Board inform the measure's language.

Staff received an estimate for professional services from Fairbank, Maslin, Maullin, Metz & Associates ("FM3") (Attachment 3) which presents another decision point for the Board: a 15 minute survey involving both phone and online queries is the least expensive option ($29,500); a 20 minute survey based on phone calls only is the most expensive option ($36,500). The request to supplement the Advanced Planning budget through a transfer from Contingencies in Attachment 4 targets the most expensive option, however any unspent funds will be returned to the General Fund.

The county used FM3 on three previous occasions: 2014 for Measure Z, 2016 for Measure S, and 2018 for Measure O. In addition to the short timeline, the County Administrative Officer (CAO) recommends contracting with FM3 for polling based on previous experience and their familiarity with Humboldt County and its electorate. The purchasing team in the CAO's Office have preliminarily approved sole sourcing with FM3 for the polling professional services.

There are two other expenditures for placing the measure on the ballot in November (# 2 is discretionary):

1. The cost for placing the measure on the ballot. The Humboldt County Elections Manager estimated this cost to be approximately $35,000 based on similar county-wide measure in 2018; and

2. Preparation and distribution of voter information should the measure be submitted to the electorate. The associated cost is estimated to be less than $50,000 based on similar work done in 2018.

Staff inquired with the Department of Housing and Community Development (HCD) about allocating a portion of its Local Early Action Planning (LEAP) program funds for items 1 and 2. HCD responded that the county may apply to use LEAP funds to reimburse the county for those expenses but it is uncertain if these would be eligible uses under this funding program.

Given the uncertain outcome of the ballot measure, the Planning and Building Department is requesting a supplemental General Fund allocation in the FY 2019-20 budget in the amount of $121,500 to proceed with evaluating the ballot measure. Should the county be able to use LEAP funds for ballot placement and/or voter information, upon receipt of the state LEAP funds appropriated for this activity the General Fund will be reimbursed.

FINANCIAL IMPACT:
A supplemental budget request to transfer from Contingencies for this expense is contained in Attachment 4. For FY 2019-20, the Planning and Building Department requests a supplemental budget of $121,500 for the expenditures listed above, which may be reimbursed by the LEAP program if the ballot measure is successful. Funding unspent in the current fiscal year will be carried forward at First Quarter in FY 2020-21, with any unspent funding being returned to the General Fund. Staffing time for 1.0 full-time equivalent (FTE) Senior Planner to conduct work across both fiscal years is already filled and allocated, and no additional staff is needed.

STRATEGIC FRAMEWORK:
This action supports your Board's Strategic Framework by protecting vulnerable populations; creating opportunities for improved safety and health; and facilitating public/private partnerships to solve problems.

OTHER AGENCY INVOLVEMENT:
County Administrative Office and the Office of County Counsel.

ALTERNATIVES TO STAFF RECOMMENDATIONS:
Board discretion.

ATTACHMENTS:
1. Samples of successful Article XXXIV ballot measures from other jurisdictions
2. a. Article XXXIV of the California Constitution; and Health and Safety Code Section 37000 b. Public Housing Election Implementation Law
3. Bid from the polling firm FM3
4. Supplemental Budget to Transfer from Contingencies for Housing Ballot Measure

PREVIOUS ACTION/REFERRAL:
Board Order No.: N/A

Meetings of: N/A
File No.: N/A