Communication from Public

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March 13, 2026

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VIA E-MAIL

Los Angeles City Council
200 North Spring Street, Room 395
Los Angeles, CA 90012
c/o Los Angeles City Clerk

Re: Council File Nos. 26-0184, 26-002S7, 26-0198, 26-0290 and 25-1486 and other City Motions Introduced Specifically to Thwart State Law, the AB 2011 Housing Development Project proposal at 4868 N. Canoga Ave. (CPC-2025-6505-DB-DRB-SPPC-PR-VHCA [sic] and VTT-84949) and Other AB 2011 Projects

Dear Honorable City Councilmembers,

Our law firm represents RW WHCC, LLC (the "**Applicant**") regarding its proposed Housing Development located at the above referenced address on a 19.86 acre project site (the "**Project Site**") within a larger portion of a private golf club, known as the Woodland Hills Country Club (the "**Property**"). The Applicant is using the streamlined, ministerial process authorized by Assembly Bill ("AB") 2011, as amended first by AB 2243 and subsequently by AB 893 (collectively, "AB 2011"), to construct a Mixed-Income Housing project along a commercial corridor, utilizing Density Bonus incentives for 398 total dwelling units, of which 97 (24% of the total number of units) will be restricted to Low Income households ("**Mixed Income Housing Project**".)

Several recent motions and actions taken by the Los Angeles City Council ("Council") are in direct violation of applicable state law, opinions issued by the California Attorney General's ("AG") office, and (multiple) published memoranda by the California Department of Housing and Community Development ("HCD"). HCD is the state agency with the authority to regulate, enforce, and facilitate housing development and policy statewide. Specifically, HCD has enforcement authority over State housing laws, including Density Bonus Law, among other state housing laws, may review local government actions and inactions to determine consistency with these laws, and may notify the AG that the local government is in violation of state law. (Gov Code, § 65585, Subd. (j).)

The City is in the process of advancing certain items—redefining eligibility terms and manipulating criteria to exclude a certain commercial corridor—that would undermine AB 2011 and its applicability to specific properties. Most alarmingly, the Council is contemplating an Interim Control Ordinance ("ICO") that would directly violate existing state law, as explained by the AG in a prior legal opinion letter.

City's Attempt to Pass an Interim Control Ordinance Directly Violates State Law and Attorney General Legal Opinion Issued to All California Cities

On March 10, the Planning Land Use Management ("PLUM") voted 4-1 to approve a motion that instructs City Planning Department to prepare an ICO that would prohibit the issuance of approvals and permits associated with the demolition, building, use of land, grading and other applicable permits for public parking areas utilizing a Conditional Use Permit ("CUP") on parcels in the Agricultural (A) zone that are wholly or partially located in the Very High Fire Severity Zone or Hillside Areas.(Council File No. 26-0290.) This action is in direct violation of state law as specifically called out in a detailed, six-page letter dated July 17, 2023, addressed to "All Cities and Counties in California" signed by California Attorney General Rob Bonta. (*See* **Exhibit A**.)

This legal opinion letter specifically states, "Urgency ordinances provide a procedural tool to respond to current and immediate public health and safety threats, but *they do not provide an avenue to avoid the substantive application of relevant state law*." (*See* Exhibit A, Page 4.) Further, the legal opinion letter mandates that an urgency ordinance amending zoning regulations must be supported by written legislative findings that clearly show "there is a current and immediate threat to the public health, safety, or welfare…[**a]n urgency ordinance that is not supported by a sufficient showing of an immediate threat to public safety, health, or welfare is invalid as a matter of law**." (*See* Exhibit A, Page 2.) Importantly, the AG letter specifically declares that AB 2011 already contains the requisite mitigation measures that are codified under State codes for high severity fire zones, thereby eviscerating the claim that mitigation measures are not feasible; the AG concludes that AB2011, "...provisions allow jurisdictions to protect public health, safety and physical environment…"; and "A generalized urgency [control] ordinance in response to AB 2011 is unnecessary."

HCD has also evaluated numerous cases where a particular City's actions violated state law, and then furnished clear guidance to these local municipalities about proper interpretation and implementation. (Attached as **Exhibit B** is a direct example.) We have contacted HCD about the City's pending legislative actions and have asked the agency to provide legal direction to the City. We urge the City to suspend processing the ICO until such time HCD issues an opinion on the legality of the City's intended actions.

Council Motion to Redefine the Legal Definition of a "Vacant Site" is in Direct Contradiction to State Law and HCD's Published Definition

On March 4, 2026, Council passed a motion (Council File No. 26-0184) that instructs City staff to now define "Vacant Site" to include fully developed, functioning golf courses. The motion specifically requests City Departments to:

> "provide a definition in the Municipal Code (Chapter l and Chapter lA) of the term 'vacant site' under the *Affordable Housing and High Road Jobs Act of 2022* that includes golf courses within a Very High Fire Severity Zone, in the absence of any other contrary controlling definition authoritatively issued by the California Department of Housing and Community Development."

That same day, the Council's Rules, Elections, and Intergovernmental Relations Committee took a similar action, adopting a resolution (Council File No. 26-0002-s7) requesting the Council support undrafted, potential legislation to update the legal definition of "Vacant Site".

Both this motion and resolution conveniently (or ignorantly) omit the fact that HCD has already "authoritatively issued" a "controlling definition" of "vacant site" applicable to AB 2011, Housing Element Updates, and various State Housing programs. City staff was aware of this definition, which was clearly spelled out in a letter our firm sent to the City Planning Department on October 28, 2025, wherein we cited the HCD June 10, 2020, Memorandum regarding the Housing Element Site Inventory Guidebook (Gov. Code Section 65583.2). Specifically, on page 24, HCD included ***an expanded definition of what constitutes a vacant site*** (See **Exhibit C**). Key provisions include the following:

> "A vacant site is a site without any houses, offices, buildings, or other significant improvements on it. Improvements are generally defined as development of the land (such as a paved parking lot, or income production improvements such as crops, high voltage power lines, oil wells, etc.) or structures on a property that are permanent and add significantly to the value of the property.
>
> Examples of Vacant Sites:
>
> - No improvement on the site (other than being a finished lot).
> - **No existing uses**, including parking lots.
> - **Underutilized sites are not vacant sites**.
> - Sites with blighted improvements are not vacant sites.
> - Sites with abandoned or unoccupied uses are not vacant sites."

Neither the Property nor the Project Site can be characterized as "Vacant" under HCD's published definition, as the land is a substantially graded, improved site with multiple structures, utilities, and constant use and disturbance by patrons and employees of the existing, functioning golf course 365 days a year. None of the abovementioned examples applies to the Property or the Project Site.

Neither the Property nor the Project Site can be defined as vacant per the Los Angeles Municipal Code ("LAMC"). Under LAMC §12.03 Definitions, a **Vacant Lot** is defined as "A lot on which no building, temporary or permanent, is erected." This definition was added by Ordinance No. 153,361, which went into effect on March 2, 1980. Further, under LAMC §12.03 Definitions, a **Building** is defined as "Any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels or property of any kind." As we stated in our previous letter to the City dated October 28, 2025, the Project Site is located within a fully improved portion of *an existing, fully operational golf course*. This area currently includes a beverage building, temporary structures for event space, concrete retaining walls, concrete pathways, an extensive concrete storm drain system and irrigation pipes throughout the Project Site, water fountains, electrical fans, and electrical conduit and wiring throughout the entire golf course. (See **Exhibit D** for pictures.) Any attempt to define any portion of the Property as "vacant" is unreasonable and defies logic.

City's Attempt to Vacate Portions of a Hillside Street to Negate the Project's AB 2011 Eligibility is Improper and Jeopardizes Public Safety

The February 13, 2026 Motion to vacate portions of Canoga Avenue (Council File No. 26-0198) was introduced solely to limit the eligibility of the proposed Mixed Income Housing Project. The rationale behind this Motion is as follows:

AB 2011 defines "Commercial Corridor" as any street that as a right-of-way between 70 and 150 feet in width. Currently Canoga Avenue between Dumetz Road and Saltillo Street—directly adjacent to the Property—has a designated right-of-way of 86 feet and a dedicated right-of-way of 80 feet. Because the City alleges "legitimate concerns about the intensity of development in Very High Fire Severity Zones, particularly in light of the Palisades and Eaton Fires in 2025…", the proposed solution by this motion appears to be to narrow the street! This is patently absurd, as narrowing a main evacuation route for the neighborhood would certainly endanger residents in the event of an emergency. Despite the pretext of public safety, the motion's intent is simply to elude state housing laws and thwart the development of an eligible Property under AB 2011. The motion is invalid as a matter of law, and we urge the Council to rescind it immediately.

City Should Be Focused on Compliance with State Housing Laws, Not Pursing Clever Ways to Circumvent Recent Legislation and Impede New Housing Development

On January 29, 2026, Council approved a motion to conduct a study to determine how many properties could utilize AB 2011 and other applicable state law given their location on a commercial corridor (Council File No. 25-1486). Seemingly benign, the motion's language to describe AB 2011—"Defining a commercial corridor in an overly broad way"; "Removing zoning

limits…effectively circumventing the goals"; "Creating a loophole"—appears to be focused on ways to circumvent state housing laws rather than on the City's strategies for compliance with new legislation to facilitate development and meeting the City's Regional Housing Needs Allocation goals.

Despite Councilman Bob Blumenfield's repeated public pronouncements claiming he and City staff understand that the project benefits from AB 2011's streamlined, ministerial approval process, he has, nonetheless, proposed several deliberate efforts to circumvent state law and prevent the development of much needed affordable housing in an area of the City that needs it. These haphazard efforts are a misguided attempt to placate adjacent wealthy homeowners who do not want to lose their private golf course views, or share their neighborhood with new residents, some of whom will be low income. The new state laws were passed to help alleviate the current housing crisis affecting all Californians, especially in Los Angeles. Further, under SB 330, the current application for Mixed Income Housing Project is vested and any attempt by this Council to strip the Applicant of this protected right will be a violation of that State law.

Finally, we note that if the City takes action deemed to be in violation of state housing laws, it could risk its Pro-housing Designation from the State, which could affect certain funding for other affordable housing production and preservation and may subject the City to consequential fines. Rather, the Council should support new housing projects, and avoid taking any actions that violate State law, as clearly outlined by the AG and HCD. The abovementioned Council motions and resolution are ill advised, prejudicial, and legally baseless, and we urge the Council to abandon this effort to undermine AB 2011 and obstruct the ministerial processing of the Applicant's Mixed Income Housing Project.

Sincerely

Ellia Thompson

cc: Rob Bonta, CA Attorney General
California Department of Housing & Community Development
Karen Bass, Mayor Los Angeles
Hydee Feldstein Soto, Los Angeles City Attorney
Lisa Webber, Deputy Director, Los Angeles City Planning

EXHIBIT A

State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

July 17, 2023

To: All Cities and Counties in California

Dear Colleagues:

In recent years, the Legislature has passed several laws responding to California's housing crisis by mandating that local governments ministerially approve proposed housing developments under certain circumstances. Such laws include (but are not limited to) Senate Bill 9 (SB 9) (Gov. Code §§ 65852.21, 66411.7), which took effect January 1, 2022, and addresses lot splits and duplexes in single-family zoned neighborhoods, and Assembly Bill 2011 (AB 2011), which takes effect July 1, 2023, and addresses affordable housing permitting on commercial zoned land.

Following the enactment of SB 9, some local jurisdictions enacted "urgency zoning ordinances" aiming to restrict or impose additional requirements on projects that were otherwise subject to ministerial approval under SB 9. Interim urgency ordinances provide a procedural tool to quickly respond to an immediate threat to public health, safety, or welfare, and do not circumvent the substantive requirements of state housing laws such as SB 9 or AB 2011. This guidance reminds local jurisdictions of the strict state law requirements that apply to the enactment of urgency ordinances. The Attorney General encourages local jurisdictions to review their existing urgency ordinances for validity, and properly implement California's housing laws moving forward.

Analysis

A. Legal Requirements for Urgency Ordinances

1. "Current and Immediate Threat to Public Health, Safety, or Welfare"

Under limited emergency circumstances, local jurisdictions may pass urgency zoning ordinances that prohibit projects and land uses that conflict with a city's planning or zoning. (Gov. Code, § 65858, subds. (a)-(c); see also *216 Sutter Bay Associates v. County of Sutter*

(1997) 58 Cal.App.4th 860, 869.)[1] An urgency ordinance is initially valid for only 45 days, but can be extended for a total of two years, subject to the requirements discussed below. (§ 65858, subds. (a), (b).)

To be valid, urgency ordinances amending zoning regulations must be supported by written legislative findings that "there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare." (§ 65858, subd. (c).) Failure to make the showings required by Section 65858 renders an urgency ordinance invalid as a matter of law. (*California Charter Schools Assn. v. City of Huntington Park* (2019) 35 Cal.App.5th 362, 365.) Urgency ordinances must be adopted by a four-fifths vote. (§ 65858, subds. (a), (b).)

The legislative findings must establish a threat to the public health, safety, or welfare that is current and immediate. (§ 65858, subd. (c); *Building Industry Legal Defense* Foundation *v. Superior Court* (1999) 72 Cal.App.4th 1410.) Courts have generally found that the immediacy requirement is satisfied in "situations where local agencies were faced with immediate threats of development." (*Id.* at p. 1419, citing *216 Sutter Bay Associates v. County of Sutter* (1997) 58 Cal.App.4th 860; *Conway v. City of Imperial Beach* (1997) 52 Cal.App.4th 78; *Metro Realty v. County of El Dorado* (1963) 222 Cal.App.2d 508.) Urgency ordinances are intended to be limited "to situations where an approval of an entitlement of use was imminent." (*Building Industry*, *supra*, 72 Cal.App.4th at pp. 1418–1419; accord *California Charter Schools Assn., supra,* 35 Cal.App.5th at p. 370; *Crown Motors v. City of Redding* (1991) 232 Cal.App.3d 173, 179–180 [a pending permit application would constitute an immediate threat because, absent an urgency ordinance, the permit at issue would have been approved within 30 days].)

Local jurisdictions must provide evidence documenting the immediacy of the threat to public health, safety, or welfare. In *California Charter Schools Assn. v. City of Huntington* Park, Huntington Park enacted an urgency ordinance that temporarily barred development of new charter schools while the City considered amending its zoning code. (*California Charter Schools Assn. v. City of Huntington Park* (2019) 35 Cal.App.5th 362, 365.) Huntington Park claimed that new charter schools would increase traffic and prevent the development of commercial tax-generating properties, which posed an immediate threat to public health, safety, or welfare. (*Id.* at p. 366.) As evidence for its claim, Huntington Park proffered "at least five inquiries" it had received requesting charter schools and "several serious sit down discussions" it had conducted with charter school representatives. (*Id.* at p. 369.) Upon reviewing this evidence, the Court concluded that "mere inquiries, requests, and meetings do not constitute a current and immediate threat within the meaning of [section 65858,] subdivision (c)." (*Id.* at p. 371.) Local jurisdictions are therefore required to show an actual imminent threat to the public health, safety, or welfare and make specific supportive factual findings. An urgency ordinance that is not supported by a sufficient showing of an immediate threat to public safety, health, or welfare is invalid as a matter of law. (*Id.* at p. 365.)

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[1] Statutory references that follow are to the Government Code unless otherwise stated.

An urgency ordinance's findings must also document the nature of the threat to public health, safety, or welfare. In *216 Sutter Bay Associates v. County of Sutter*, the County justified its urgency ordinance by showing that a proposed amendment to the general plan would create a new 140,000-person community in a county of only 65,000, and that an urgency ordinance was needed to preserve a countywide vote on the proposed amendment. (*216 Sutter Bay Associates*, *supra*, 58 Cal.App.4th at p. 864.) The Court of Appeal in *Sutter Bay* held that the County's showing that the amendment "could alter—in a radical and fundamental manner—the current way of life for Sutter County residents" satisfied the findings required by Section 65858. (*Id.* at p. 868.) By contrast, statements about the uncertainty of implementation of a new state housing law or generalized concerns about visual or aesthetic standards are insufficient to support an urgency ordinance.

2. Extension of Urgency Ordinance Beyond Initial 45 Days: "Objective, identified written public health or safety standards, policies, or conditions"

An urgency ordinance that "has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing," defined as one-third of the total square footage of the project, is subject to additional requirements upon its extension. (§ 65858, subds. (c), (h).) Such ordinances may not be extended beyond the initial 45 days except upon written findings adopted by the legislative body, supported by substantial evidence in the record, of a "specific, adverse impact upon the public health and safety," which is defined as "a significant, quantifiable, direct, and unavoidable impact based on objective, identified written public health or safety standards, policies, or conditions" existing at the time that the urgency ordinance is adopted. (§ 65858, subd. (c)(1)). The findings must further demonstrate that there is no feasible alternative that would mitigate or avoid the adverse impact "as well or better, with a less burdensome or restrictive effect," than the urgency ordinance. (§ 65858, subd. (c)(3).) In addition, a city must "issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance" at least ten days before its extension. (§ 65858, subd. (d).)

This provision applying to urgency ordinances that would deny multifamily housing development would likely apply to interim ordinances responding to SB 9 and AB 2011. SB 9's provisions allowing for duplexes would entail multifamily development and AB 2011 is specifically directed to multifamily housing.

Local jurisdictions must make these findings with enough specificity to support an adverse impact. In *Hoffman Street, LLC. v. City of West Hollywood*, developer petitioners sought a writ of mandate against West Hollywood for enacting an urgency ordinance that barred petitioners from developing a condominium project. (*Hoffman Street, LLC. v. City of West Hollywood* (2009) 179 Cal.App.4th 754.) West Hollywood's urgency ordinance, which limited permitting in certain zones to increase density and affordability, was based on the claim that "'the significant unmet need for smaller affordable housing units [is] posing a current and immediate threat to the public health, safety and welfare.'" (*Id.* at pp. 760–761.) The Court noted that the requirements for urgency ordinances limiting multifamily development under subsection (c)(1) of section 65858 are "more extensive and more specific than the findings required upon the adoption or extension of any interim ordinance." (*Id.* at p. 771.) The Court held that West

Hollywood's findings "failed to identify 'a *specific,* adverse impact on the public health or safety." (*Id.* at p. 772, emphasis added.) West Hollywood's findings also "failed to identify any 'written public health or safety standards, policies, or conditions' on which such an impact would be based." (*Ibid.*, citing § 65858, subd. (c)(1).)

Therefore, the findings supporting an urgency ordinance extension that affects multifamily housing must be specifically targeted to the issues arising on particular parcels that create the adverse public health and safety impact.

B. Recently Enacted State Housing Laws Limiting Local Discretion

Urgency ordinances provide a procedural tool to respond to current and immediate public health and safety threats, but they do not provide an avenue to avoid the substantive application of relevant state law. The passage of laws like SB 9 and AB 2011 does not, in and of itself, pose a current and immediate threat to public health, safety, or welfare. Accordingly, the enactment of such a law generally cannot — standing alone — support an urgency ordinance.

As described below, California's housing laws generally empower local jurisdictions to regulate or deny projects on a case-by-case basis based on specific health or safety grounds, without an urgency ordinance. For example, SB 9 expressly allows local agencies to deny permits upon written objective findings addressing public health and safety and AB 2011 allows jurisdictions to exempt some parcels from its requirements under specified conditions. Urgency ordinances are unsupportable when public health and safety concerns arising from a permit application can be addressed without an urgency ordinance.

1. SB 9

SB 9, which took effect on January 1, 2022, enacted Government Code sections 65852.21 and 66411.7. Together, these sections allow property owners to build duplexes on single-family lots and split single-family lots in two. Importantly, both sections expressly bar SB 9's application to potentially dangerous areas such as very high fire hazard severity zones, special flood hazard areas, and earthquake fault zones. SB 9 incorporates these safety exemptions from SB 35, another housing law requiring ministerial approval of some housing applications that was passed in 2017. (§§ 65852.21(a)(2), 664117(a)(3)(C) [incorporating the requirements of § 65913.4, subds. (a)(6)(B)-(a)(6)(K)].)

a. Section 65852.21 (Duplexes)

Government Code section 65852.21 provides that proposed housing projects of two residential units located on a single-family residential zone will be reviewed ministerially, without discretionary review, if they meet specific criteria, such as being located within a city. (§ 65852.21.) Local jurisdictions may impose on such projects objective zoning, subdivision, and design review standards, defined as standards devoid of "personal or subjective judgment by a public official" and that "are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal." (§ 65852.21, subd. (i)(2).)

Local jurisdictions may deny housing project applications under SB 9 if they make a "written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact … upon public health and safety or the physical environment." (§ 65852.21, subd. (d).) Central to this power to deny is the "specific, adverse impact," which is defined by Government Code section 65589.5 as "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed completed." (§ 65589.5, subd. (d)(2), incorporated by reference in § 65852.21.)

In light of the fact that section 65852.21 authorizes local jurisdictions to deny individual duplex applications based on findings that the project would have an adverse impact on health and safety or the environment, an urgency ordinance seeking to restrict all such projects across the board cannot be justified.

b. Section 66411.7 (Lot Splits)

Government Code section 66411.7 requires local jurisdictions to ministerially review requests to split urban single-family lots into two approximately equal parcels, if those lots meet specific requirements. (§ 66411.7.) Lots created in this manner shall be exclusively for residential purposes. (§ 66411.7, subd. (f).) Local jurisdictions may impose objective zoning, subdivision, and design standards on such projects unless such standards "physically preclude[e] the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet." (§ 66411.7, subd. (c)(1)(2).)

As with duplexes, local jurisdictions may deny requests to split lots when the relevant official makes written objective findings that the lot split would have a specific and adverse impact on public health and safety or the physical environment. (§ 66411.7, subd. (d).) Thus section 66411.7, like section 65589.21, offers local jurisdictions a case-by-case instrument for preserving their public health, safety, and physical environment and there can be no justification for an urgency ordinance with a broad exemption.

2. AB 2011

AB 2011 requires ministerial review for affordable housing projects located in commercial zones. Specifically, it provides ministerial approval for two types of projects: (1) projects that provide entirely (100%) affordable multifamily housing and are in an urban infill area that is zoned commercial (§ 65912.114), and (2) projects that provide mixed-income housing, with a certain percentage of affordability, and are located along commercial corridors in urban infill areas (§ 65912.124).

Like SB 9, AB 2011 is not applicable in potentially dangerous areas such as very high fire hazard severity zones, special flood hazard areas, and earthquake fault zones. (§§ 65912.111, subd. (e), 65912.121, subd. (g).) Like SB 9, these sections accomplish this by incorporating the requirements of section 65913.4, subdivisions (a)(6)(B) through (a)(6)(K). In addition, AB 2011 provides specific requirements to assess and mitigate environmental hazards. (§§ 65912.113,

subd. (c), 65912.123, subd. (f).) Also, a local jurisdiction may exempt parcels from AB 2011 if it makes available other replacement parcels for development, at specified densities and subject to other provisions of AB 2011, and makes findings that the replacement results in no net loss of total zoned capacity or zoned capacity for affordable units and affirmatively furthers fair housing. (§§ 65912.114, subd. (i), 65912.124, subd. (i).) AB 2011 delayed operation of its provisions for nine months, which provided local jurisdictions ample opportunity to utilize this exemption before applying AB 2011 to project applications. All these provisions allow jurisdictions to protect public health, safety, and physical environment, provided that they contribute to increasing California's housing supply and affirmatively further fair housing. A generalized urgency ordinance in response to AB 2011 is unnecessary.

C. Conclusion

Where state housing laws expressly authorize local governments to deny specific proposed projects based on health and safety concerns, as SB 9 does, or exempt specific properties from its ambit, as AB 2011 does, it is unclear how the high bar for an urgency ordinance can be satisfied. The mere fact that a state law provides for a ministerial — as opposed to discretionary — review process does not, standing alone, establish the type of immediate threat to public health, safety, or welfare required to justify an urgency ordinance. Further, an interim urgency ordinance is a procedural tool to expeditiously adopt local regulations pending a city's contemplated plan adoption or zoning ordinance. Such an ordinance must comply with the substantive requirements of state housing laws and cannot be used in an attempt to circumvent substantive legal requirements.

Local jurisdictions are urged to review any existing urgency ordinances for compliance with the requirements of section 65858, and repeal urgency ordinances that do not comply with these standards. Where needed, jurisdictions are encouraged to use their existing authority under state housing laws to review individual projects on health and safety grounds, rather than enacting overly broad and legally unjustifiable urgency ordinances. If implementation of a ministerial housing approval statute poses an immediate, current, and substantiated public health and safety threat, local legislative bodies must make the requisite written findings to justify an urgency ordinance. Given that such an ordinance likely would impact multifamily housing, findings supporting an extension must also satisfy the heightened standards applicable under Section 65858(c)(1)-(3) of establishing "a significant, quantifiable, direct, and unavoidable impact based on objective, identified written public health or safety standards, policies, or conditions." Developers, property owners, and permit applicants are advised that jurisdictions with insufficiently supported urgency ordinances are vulnerable to legal challenge under existing case law.

Sincerely,

ROB BONTA
Attorney General

EXHIBIT B

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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February 9, 2024

Sarah Molina-Pearson, Principal City Planner
City of Los Angeles
200 North Spring Street, Suite 525
Los Angeles, CA 90012

Dear Sarah Molina-Pearson:

RE: City of Los Angeles Density Bonus Law Implementation – Letter of Technical Assistance

HCD received a request for technical assistance from Joel Miller of Cal-Planning Consultants (CPC) on November 7, 2023, regarding the application of the State Density Bonus Law (SDBL) (Gov. Code, § 65915 et seq.). The SDBL allows qualifying housing developments to obtain increases in allowable density, incentives/concessions, development standard waivers, and reductions in parking requirements. This letter provides technical assistance for the benefit of both the City of Los Angeles (City) and CPC regarding eligibility under the law.

Project Description and Background

HCD understands the proposed project, located at 6800 Sunset Boulevard, would provide 384 housing units, including 80 affordable to very low-income seniors, a 115-room hotel, approximately 23,000 square feet of commercial retail space, and 500 parking spaces. Portions of the development would be distributed across three clusters of parcels, with two of the clusters being across Leland Way from the main cluster at the intersection of Sunset Boulevard and Highland Avenue. Among other incentives, the applicant seeks to use the SDBL to allow the shared parking garage (which will serve both residents and commercial tenants/customers) to be located in the residentially zoned portion of this site. This is because the City classifies a parking facility that serves commercial uses to be a commercial parking land use for the purposes of the Zoning Code. The City's position is that the project is not contiguous for the purposes of SDBL eligibility because two parcel clusters are separated by Leland Way from the main cluster, and that the applicant is not allowed to request the parking concession because it is related to the regulation of land uses. CPC subsequently submitted a request for technical assistance to HCD on the issues of parcel contiguity and parking concession eligibility.

Topic 1: Parcel Contiguity

<u>Question</u>: Is the subject project site ineligible under the SDBL because it is divided by a street or alley?

The SDBL provides that when calculating density bonuses, residential units must be on contiguous sites that are part of one development application, but the units do not have to be based upon individual subdivision maps or parcels. Although the word "contiguous" is not defined in the SDBL, the plain language reading of the word "contiguous" found in the definition of "housing development" (Gov. Code, § 65915, subd. (i)) indicates that parcels that make up a project site may need to share a parcel line to be eligible for the benefits and protections of the SDBL.

However, considering the broader context of California's housing crisis and the need to harmonize the application of multiple housing laws, HCD recommends that the City voluntarily, both in this case and as a matter of practice, consider sites divided by streets and alleys to meet the definition of "housing development" under the SDBL. The reasons are as follows:

First, although contiguity is not defined in the SDBL, other state laws address this issue. Government Code sections 65913.4 (codified by Senate Bill (SB) 35 of 2017), 65912.100 et seq. (codified by Assembly Bill (AB) 2011 of 2022), and 65852.24 (codified by SB 6 of 2022) extend eligibility to sites where parcels "are only separated by a street or highway."[1] In SB 35 and AB 2011, the standard is also used to determine if the projects adjoin urban uses – another key eligibility qualifier. This is particularly instructive as it reflects the Legislature's view on what constitutes adjoining parcels in the context of urban infill, such as the subject project. Allowing projects on parcels only separated by a street to be contiguous for SDBL eligibility would recognize the challenge of infill development, especially lot assembly for larger projects. It would also sync the City's processing procedures for SDBL applications to those of SB 35 and AB 2011, both of which are intended to be implemented together with the SDBL in a single project. (Gov. Code, §§ 65913.4, subd. (a)(4)(C), (a)(5); 65912.114, subd. (f); 65912.124, subd. (f).)

Second, California is experiencing a housing crisis, and the provision of housing remains of the utmost priority. Recognizing this, Government Code section 65915, subdivision (r), states that the SDBL should be "interpreted liberally in favor of producing the maximum number of housing units," while subdivision (u)(2) expresses the Legislature's intent to "further incentivize the construction of very low, low-, and moderate-income housing units." A liberal reading of parcel contiguity favors maximizing housing units and incentivizes the construction of very low-income housing units in this instance. Further, courts have backed local governments that have chosen to

[1] Gov. Code, §§ 65852.24, subd. (b)(6)(B)(ii); 65912.111, subd. (c); and 65913.4, subd. (a)(2)(B).

implement the SDBL in ways that are more generous or permissive than established in statute.[2]

Topic 2: Concession to Modify Commercial Parking Land Use

<u>Question 2.1</u>: Can the City prohibit an applicant from requesting an incentive/concession?

No, the City must consider all requests for incentives/concessions pursuant to the SDBL. There is no mechanism in the SDBL that would allow the City to categorically reject a specific concession request prior to consideration by the review authority. Incentives/concessions may be denied if at least one of the three statutorily defined findings of denial can be made (Gov. Code, § 65915, subd. (d)(1)). Unlike development standard waivers, which are narrowly defined under the SDBL, an incentive/concession presents a much broader potential to modify regulations. They do this by applying not only to development standards but also to "zoning code requirements." (Gov. Code, § 65915, subd. (k)(1).)

<u>Question 2.2</u>: Can an SDBL concession be used to allow the mixed-use project's parking garage to be located in the residentially zoned portion of the site given that the garage will serve commercial uses in addition to residential uses?

Yes, for the following reasons.

First, the SDBL does not distinguish between requirements for land uses and development standards, and concessions can modify not only development standards but also "zoning code requirements."[3] The proposed project is a mixed-use project, containing both residential and commercial floor area. It relies on a single, centrally located parking structure to provide parking. The structure that will contain the parking facility does not include any commercial floor space and provides six housing units. Given the challenges of infill development, especially when it is necessary to assemble multiple smaller parcels to create a sufficiently large project site, it appears the applicant has located the residential/parking structure to navigate site and logistical constraints. To do so requires a degree of flexibility regarding the zoning code requirements, and as such represents a typical use of SDBL incentives/concessions. The requested concession may be denied only if the City can make at least one of the three statutorily defined findings of denial.

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[2] *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807.
[3] See HCD technical assistance letter to the City of Santa Ana on April 27, 2023: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/SantaAna-TA-04272023.pdf, pages 3-4.

Second, as described above in the context of the first issue, the statute directs practitioners to read the SDBL liberally in order to maximize the production of affordable housing units. Allowing a shared parking facility in a residential zone would further this, provided the incentive would result in identifiable and actual cost reductions to provide affordable housing units. (Gov. Code, § 65915, subd. (k)(3).)

Conclusion

HCD reminds the City that HCD has enforcement authority over SDBL, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a local government's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law. (Gov. Code, § 65585, subd. (j).)

HCD remains committed to supporting the City of Los Angeles in facilitating housing at all income levels and hopes the City finds this technical assistance helpful. If you have questions or need additional information, please contact David Ying at david.ying@hcd.ca.gov.

Sincerely,

Shannan West
Housing Accountability Unit Chief

EXHIBIT C

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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June 10, 2020

MEMORANDUM FOR: Planning Directors and Interested Parties

FROM: Megan Kirkeby, Acting Deputy Director
Division of Housing Policy Development

SUBJECT: **Housing Element Site Inventory Guidebook**
Government Code Section 65583.2

The housing element of the general plan must include an inventory of land suitable and available for residential development to meet the locality's regional housing need by income level. The purpose of this Guidebook is to assist jurisdictions and interested parties with the development of the site inventory analysis for the 6th Housing Element Planning Cycle and identify changes to the law as a result of Chapter 375, Statutes of 2017 (AB 1397), Chapter 958, Statutes of 2018 (AB 686), Chapter 664, Statutes of 2019 (AB 1486), and Chapter 667, Statutes of 2019 (SB 6). The Guidebook should be used in conjunction with the site inventory form developed by the California Department of Housing and Community Development (HCD). These laws introduced changes to the following components of the site inventory:

- Design and development of the site inventory (SB 6, 2019)
- Requirements in the site inventory table (AB 1397, 2017 AB 1486, 2019)
- Capacity calculation (AB 1397, 2017)
- Infrastructure requirements (AB 1397, 2017)
- Suitability of nonvacant sites (AB 1397, 2017)
- Size of site requirements (AB 1397, 2017)
- Locational requirements of identified sites (AB 686, 2018)
- Sites identified in previous housing elements (AB 1397, 2017)
- Nonvacant site replacement unit requirements (AB 1397, 2017)
- Rezone program requirements (AB 1397, 2017)

The workbook is divided into five components: (Part A) identification of sites; (Part B) sites to accommodate the lower income RHNA; (Part C) capacity analysis; (Part D) non-vacant sites; and (Part E) determination of adequate sites.

If you have any questions, or would like additional information or technical assistance, please contact the Division of Housing Policy Development at (916) 263-2911.

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BACKGROUND AND PURPOSE

Housing Element Site Inventory Requirements

Scarcity of land with adequately zoned capacity is a significant contributor to increased land prices and housing development costs. A lack of adequately zoned sites exacerbates the already significant deficit of housing affordable to lower income households. An effective housing element provides the necessary conditions for conserving, preserving and producing an adequate supply of housing affordable at a variety of income levels and provides a vehicle for establishing and updating housing and land-use strategies to reflect changing needs, resources, and conditions. Among other things, the housing element establishes a jurisdiction's strategy to plan for and facilitate the development of housing over the five-to-eight year planning period by providing an inventory of land adequately zoned or planned to be zoned for housing and programs to implement the strategy.

The purpose of the housing element's site inventory is to identify and analyze specific land (sites) that is available and suitable for residential development in order to determine the jurisdiction's capacity to accommodate residential development and reconcile that capacity with the jurisdiction's Regional Housing Need Allocation (RHNA). The available and suitable sites are referred to as "adequate sites" throughout this Guidebook. The site inventory enables the jurisdiction to determine whether there are sufficient adequate sites to accommodate the RHNA by income category. A site inventory and analysis will determine whether program actions must be adopted to "make sites available" with appropriate zoning, development standards, and infrastructure capacity to accommodate the new development need.

Sites are suitable for residential development if zoned appropriately and available for residential use during the planning period. If the inventory demonstrates that there are insufficient sites to accommodate the RHNA for each income category, the inventory must identify sites for rezoning to be included in a housing element program to identify and make available additional sites to accommodate those housing needs early within the planning period.

Other characteristics to consider when evaluating the appropriateness of sites include physical features (e.g., size and shape of the site, improvements currently on the site, slope instability or erosion, or environmental and pollution considerations), location (e.g., proximity to and access to infrastructure, transit, job centers, and public or community services), competitiveness for affordable housing funding (e.g., Low Income Housing Tax Credit scoring criteria), and likelihood or interest in development due to access to opportunities such as jobs and high performing schools[1]. When determining sites to include in the inventory to meet the lower income housing need, HCD recommends that a local government first identify development potential in high opportunity neighborhoods. This will assist the local government in meeting its requirements to affirmatively further fair housing and ensure developments are more competitive for development financing.

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[1] Please Note: Significant increases in the housing capacity of the residential land inventory of the housing element could also warrant planning for updating of other elements, including the land use, safety, circulation elements and inclusion of an environmental justice element or environmental justice policies. The housing element must include a program describing the means by which consistency will be achieved with other general plan elements and community goals (GC 65583(c)(8)).

PART D: NONVACANT SITES

Local governments with limited vacant land resources or with infill and reuse goals may rely on the potential for new residential development on nonvacant sites, including underutilized sites, to accommodate their RHNA. Examples include:

- Sites with obsolete uses that have the potential for redevelopment, such as a vacant restaurant.
- Nonvacant publicly owned surplus or excess land; portions of blighted areas with abandoned or vacant buildings.
- Existing high opportunity developed areas with mixed-used potential.
- Nonvacant substandard or irregular lots that could be consolidated.
- Any other suitable underutilized land.

Local governments can meet other important community objectives to preserve open space or agricultural resources, as well as assist in meeting greenhouse gas emission-reduction goals, by adopting policies to maximize existing land resources and by promoting more compact development patterns or reuse of existing buildings.

Definition of a Vacant Site

A vacant site is a site without any houses, offices, buildings, or other significant improvements on it. Improvements are generally defined as development of the land (such as a paved parking lot, or income production improvements such as crops, high voltage power lines, oil-wells, etc.) or structures on a property that are permanent and add significantly to the value of the property.

Examples of Vacant Sites:

- No improvement on the site (other than being a finished lot).
- No existing uses, including parking lots.
- Underutilized sites are not vacant sites.
- Sites with blighted improvements are not vacant sites.
- Sites with abandoned or unoccupied uses are not vacant sites.

If the inventory identifies nonvacant sites to address a portion of the RHNA, the housing element must describe the realistic development potential of each site within the planning period. Specifically, the analysis must consider the extent that the nonvacant site's existing use impedes additional residential development, the jurisdiction's past experience converting existing uses to higher density residential development, market trends and conditions, and regulatory or other incentives or standards that encourage additional housing development on the nonvacant sites.

EXHIBIT D