Attachment A:

Memorandum from Barbara E. Kautz

RE: 2019 Housing Legislation

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memorandum

To

Mayor and City Council, City of Pasadena

From

Barbara E. Kautz

RE

2019 Housing Legislation

The City of Pasadena (the City) has asked that we describe key state housing legislation enacted in 2019 and its effects on the approval of housing developments in the City. Although dozens of bills related to housing production were adopted, this memo focuses on these three areas of legislation, which will have the most significant effects:

- SB 330, which modifies the Housing Accountability Act and the Permit Streamlining Act and adopts the 'Housing Crisis Act of 2019.'
- AB 1763, which provides a 'super density bonus' for affordable housing projects.
- Six bills that significantly modify standards affecting accessory dwelling units (ADUs).

A. SB 330: Processing Requirements and the Housing Crisis Act of 2019

SB 330 has two major provisions. The first part affects the processing of all housing development projects. The second part, the 'Housing Crisis Act of 2019,' limits the City's ability to downzone properties but also limits the ability of developers to replace existing housing with new housing. SB 330 is in effect only until January 1, 2025.

1. Processing of Housing Development Applications

The requirements of SB 330 affect the processing of all "housing development projects," which are defined as projects that include residential units only; mixed-use developments where at least two-thirds of the square footage is designated for residences; and transitional and supportive housing.

The key provisions are these:

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- **Preliminary application.** An applicant may elect to submit a 'preliminary application' that includes only information specified in the statute. The application is then subject only to the plans, ordinances, and fees in effect on the date that the complete preliminary application was submitted, with limited exceptions (such as the need to comply with the California Environmental Quality Act (CEQA)).

- **Complete application.** Within 180 days after a preliminary application was submitted, the applicant must submit all the other material needed to complete the application and must respond within 90 days if the application is not complete. If all of the required information is not submitted within the 90-day period, the preliminary application will have no further force or effect.

- **Historic determination.** The City must determine the historic significance of the site at the same time as the application is found to be complete. Although the statute states that this determination cannot change, it also states that nothing supersedes the requirements of CEQA, which could result in evidence being submitted during the CEQA process that requires a change in the historic determination.

- **Maximum five public meetings.** If a housing development project is consistent with all 'objective' standards, no more than five public meetings can be conducted by the City after the project is deemed to be complete. Continued hearings, appeals, and any meeting conducted by the City count as one of the five meetings. The limitation does not apply to legislative approvals, projects not consistent with all objective standards, meetings held before the project was deemed to be complete, and meetings needed to comply with CEQA.

We have discussed each of these provisions with the Community Development Department staff, which is prepared to implement them when they become effective in January.

2. The Housing Crisis Act of 2019

The Housing Crisis Act of 2019 applies only to 'affected cities,' including charter cities, which are defined as cities located in an urbanized area. While the Department of Housing and Community Development (HCD) is supposed to prepare a list of such cities by July 1, 2020, the City of Pasadena is certain to be included in the list of 'affected cities.' The key provisions are these:

- **Limitations on downzoning.** The City cannot change its general plan, specific plan, zoning ordinance, or subdivision ordinance to "lessen the intensity of housing" below that in effect on January 1, 2018 unless the City concurrently changes other standards to ensure that there is no net loss in residential capacity.

This limitation includes changes in development standards, such as reductions in height, density, or floor area ratios, that would "lessen the intensity of housing."

- No **moratorium** may be imposed on housing development except to protect against "an imminent threat to the health and safety for persons." HCD must approve the moratorium.

- **Design standards.** No subjective design standards adopted after January 1, 2020 may be enforced.

- **No new growth control provisions** may be adopted that limit the number of residential permits per year or act as a cap on the number of housing units in the City; the statute is ambiguous regarding whether existing growth control provisions can be adopted. However, a voter-adopted height limit or urban limit line adopted before January 1, 2020 may be enforced.

All of these limitations on local action included in the Act apply to the electorate acting through a referendum or initiative. However, the Act does not apply to a housing development project located within a very high fire hazard severity zone.

The City may adopt a development policy that imposes mitigation measures needed to comply with CEQA, and the Act does not supersede CEQA's requirements. The City may also limit short-term rentals, downzone a mobilehome park, adopt rent control and inclusionary measures, and otherwise take steps to preserve housing types, such as single-room occupancy units, that traditionally serve lower income households.

Required Replacement of Existing Housing. To prevent the loss of existing affordable housing, the Housing Crisis Act contains strict standards when a development proposes to demolish existing housing. These provisions apply to any housing development project found to be complete after January 1, 2020. In particular:

- **No reduction in number of units.** A housing development project must create at least the same number of units as those that will be demolished. If any 'protected' units exist on the site, the project must include at least as many units as existed on the site in the past five years.

- **Replacement of all 'protected' units.** The project must 'replace' all existing or demolished 'protected' units on the site. 'Protected units' include any that were restricted to lower income households, occupied by lower income households, or subject to rent control in the past five years or that were withdrawn from rental under the Ellis Act in the past 10 years. Note that because new state laws subject most rentals more than 15 years old to rent control, it is likely that most projects proposing to demolish existing housing will contain protected units.

- **Tenant protections.** Any existing occupants of the units must be allowed to remain until six months before construction starts. Occupants of any protected units must be provided state relocation benefits and given a right of first refusal for a comparable unit in the new development.

- **Replacement requirements.** The project must provide the same number of low income and very low income units of equivalent size as are occupied, or were formerly occupied, by low and very low income households. If the developer does not know the tenants' current income, it is assumed (in Pasadena) that 39 percent of the tenants have very low incomes, and 15 percent have low incomes.

- **Replacement of rent-controlled units**. For rent-controlled units, the City may either require that *all* of the units be replaced by units affordable to low-income households or require that the units be replaced in compliance with any City rent control ordinance.

The net effect of the Housing Crisis Act is to limit the City's ability to reduce residential density but also to make it more difficult and expensive for developers to build more dense housing on sites containing existing housing.

B. AB 1763: Super Density Bonus for Affordable Housing

AB 1763 provides a 'super' density bonus for 100 percent affordable lower income housing, excluding managers' units, but allows up to 20 percent of the units to be affordable to moderate-income households. These projects are entitled to the following:

- **Super density bonus.** All of these projects are entitled to a density bonus of 80 percent of the number of lower income units. *No* density limit may be imposed on qualifying projects within one-half mile of a major transit stop (defined as a rail station or intersection of two bus routes with a service interval of 15 minutes or less during the morning and afternoon peak commute periods).

- **Concessions and incentives.** Qualifying projects may request four incentives and concessions rather than the maximum three. A project with no density limit is also entitled to a three-story or 33-foot height increase but cannot request additional waivers.

C. Bills Affecting Accessory Dwelling Units

At least six bills related to ADUs were adopted by the Legislature and signed by the Governor. Three of the bills (SB 13, AB 68, and AB 881) amended the same code section, and as a consequence some language is conflicting and ambiguous. The description below, and the effects on the City's existing ordinance, represent our considered analysis of the bills, but the Legislature is rumored to be considering "clean-up" legislation in 2020.

If the City's ordinance is inconsistent with State law, it is null and void. If the City elects not to adopt its own ordinance, only the provisions in State law will govern the construction of ADUs. Any adopted ADU ordinance must be provided to HCD within 60 days of adoption, and HCD is given new authority to review ADU ordinances and to refer deviations from State law to the Attorney General.

Below are the provisions that will require amendments to Pasadena's ADU ordinance. The staff has also prepared a detailed table showing these changes.

1. ADU Types.

A junior accessory dwelling unit (JADU) is a type of accessory unit that cannot exceed 500 sq. ft. and must be located within an existing or proposed single-family home. Functionally it is like an ADU except that it may share a bath with the primary residence.

Pasadena's ordinance does not currently allow construction of JADUs but must now permit them.

2. ADU Location.

The City can designate locations where ADUs are permitted, but now based *only* on the availability of water and sewer and on the impact of ADUs on traffic flow and public safety. However, the City cannot establish a minimum lot size required for ADUs and will need to eliminate those requirements. Additionally, ADUs must now be permitted on sites containing existing multi-family residences as well as sites permitting single-family residences.

State law requires that the following types of ADUs be permitted in *all* residential zones and in any mixed-use zone that permits residences:

- **'Interior' ADUs and JADUs** contained within an existing or proposed single-family home so long as they have separate exterior access and side and rear setbacks adequate for fire and safety.[1] An expansion of up to 150 sf may be allowed only to provide ingress and egress.

- **JADU within an existing or proposed single-family home *and* new detached ADU** up to 800 sq. ft. so long as its height does not exceed 16 feet, and it has 4-foot side and rear setbacks. Effectively this allows three units on each single-family lot.

- **ADUs in existing multifamily structures.** Existing non-habitable space in an existing multifamily structure may be converted to ADUs, so long as it meets

[1] This provision conflicts with another provision that states that no additional setbacks can be required if an ADU is contained within, or rebuilds, an existing structure.

building code standards, and the number of ADUs does not exceed 25 percent of the number of existing units. Alternatively, two detached ADUs may be constructed if their height does not exceed 16 feet, and they have 4-foot side and rear setbacks.

Practically, these limitations mean that the City may only regulate the location of attached ADUs and detached ADUs larger than 800 sq. ft.

3. Parking.

If a garage, carport, or covered parking structure is converted to an ADU, no replacement parking can be required.

Additionally, the limitation on parking within one-half mile of public transit has been clarified to provide that no parking can be required for an ADU within one-half mile *walking distance* of "public transit," which has been defined as a location such as a bus stop where the public may access forms of transportation that charge set fares and run on fixed routes.

4. Setbacks, Size, Height.

While the City can apply its normal zoning standards such as lot coverage, setbacks, height, and floor area ratio (FAR), practically the statute limits their effect:

- Side and rear setbacks cannot exceed four feet.

- No lot coverage, floor area ration, and open space standards can be applied that prevent the construction of an 800 sq. ft. ADU with 4-foot side and rear setbacks no more than 16 feet high.

  The City currently limits the height of ADUs (except those attached to two-story homes) to 12 feet at the top plate and 17 feet to the highest ridgeline and requires greater setbacks.

- The City must allow a maximum size of 850 sq. ft., or 1,000 sq. ft. for an ADU with two or more bedrooms (but those larger than 800 sq. ft. can be required to comply with normal City zoning standards). A minimum efficiency unit of 150 sq. ft. must also be allowed.

  Currently the City allows ADUs of 800 square feet on parcels of less than 10,000 square feet and 1,200 square-foot ADUs on larger parcels. However, it also limits the size of ADUs to 50 percent of the area of the primary dwelling. The amendments require that an 800 sq. ft. ADU be allowed despite this limitation.

- No setback can be applied if the ADU is within an existing structure or reconstructed within the footprint of an existing structure.[2]

5. Owner-Occupancy and Short-Term Rentals.

The City cannot impose any owner-occupancy requirements on ADUs until January 1, 2025, but owner-occupancy is *required* for JADUs unless the home is owned by a government agency, nonprofit, or land trust.

No short-term rentals (less than 30 days) may be allowed in the types of short-term rentals allowed in all districts (listed in #2 above). Beyond this restriction, the City may elect to ban short-term rentals entirely in ADUs, or to allow them in attached ADUs and larger detached ADUs.

6. Fees.

Impact Fees and Parkland Dedication Fees. If the ADU is smaller than 750 sq. ft., no impact fees or parkland dedication (Quimby Act) fees can be charged. For ADUs larger than 750 sq. ft., the fees must be proportional to the size of the ADU in relation to the primary residence. For instance, if the ADU is 800 sq. ft. and the single-family home is 1,600 sq. ft., impact fees may only be half of those that would be charged to the single-family home.

This limitation on fees applies to fees established by cities, counties, special districts, and water corporations, but not to school facility fees.

Sewer and Water Fees. No sewer or water connection fees or capacity charges may be charged to an 'interior' ADU, nor can a separate utility connection be required, unless the ADU is constructed along with a new dwelling unit. For other ADUs, a separate utility connection may be required, but connection fees or capacity charges must be based on either the square footage of the unit or fixture units.

7. Enforcement.

An ADU owner may request a **five-year delay in enforcement** of any housing code violation if the unit was built before January 1, 2020. This must be granted if it is found, after consultation with building and fire, that correcting the violation is not necessary to protect health and safety. Correction of **nonconforming zoning conditions** cannot be required as a condition for construction of an ADU.

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[2] Note that this conflicts with another provision stating that setbacks must be adequate for health and safety.

Fire sprinklers cannot be required in an ADU unless they are required for the primary residence.

CC&Rs in single-family zoned areas cannot "effectively prohibit or unreasonably restrict" ADU or JADU construction.

8. Processing.

An ADU must be processed ministerially within 60 days of submittal of a complete application; the current requirement is within 120 days of submittal. If the City does not act within this time, the ADU will be "deemed approved." No hearing or discretionary review may be required.

Conclusion: What Discretion Is Left for Local ADU Ordinances?

The package of ADU amendments adopted in 2019 leaves little room for local regulation of ADUs. Possible additional local provisions are largely limited to these:

- Adoption of landscaping, design, privacy, historic, and similar standards that can be reviewed ministerially. For instance, the City could require that the ADU be constructed of the same materials as the primary residence.

- Requiring compliance with all zoning standards, except that open space, lot coverage, and floor area ratio standards must be waived if they do not allow an 800 sq. ft. ADU with four-ft. rear and side yard setbacks no more than 16 feet high.

- For attached and detached ADUs, prohibiting heights above 16 feet and setting a maximum size of 850 sq. ft. for studio and one-bedroom ADUs and 1,000 sq. ft for ADUs with two or more bedrooms.

- Limiting the location of detached ADUs larger than 800 sq. ft. and attached ADUs of any size, if justified by traffic flow, public safety, or water and sewer availability.

- Prohibiting short-terms rentals of less than 30 days in all ADUs.

- Adopting provisions that are more generous than required by State law.

In general, the housing amendments adopted this year continue to reflect the Legislature's view that local controls on housing development are a major cause of the state's housing shortage and continue to reduce local discretion in planning and zoning. Most of these provisions were proposed by the building industry and housing advocates, with limited input from local government. It will be of interest to see the extent to which these changes are successful in increasing housing production in California.