CALIFORNIANS FOR HOMEOWNERSHIP

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VIA EMAIL

City Council
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RE: February 8, 2021 City Council Meeting, Agenda Item 11

To the City Council:

Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using impact litigation to address California's housing crisis. I am writing as part of our work monitoring local policies that unlawfully restrict housing development.

At your February 8 meeting, you will discuss updates to the City's historic preservation ordinance. This letter follows up on our January 11, 2021 letter, which expressed concerns about these updates. At the time of our prior letter, the City's proposed policy had not been reduced to specific ordinance language. Now it has, and unfortunately our concerns have only multiplied.

Our key concern relates to the ordinance's treatment of undesignated but "eligible" properties. In various contexts, the draft ordinance limits the development of both sites that are designated *and* sites that are eligible for designation. For example:

- The amendments define "historic resource" to include eligible but undesignated resources: "A district, landscape, object, sign, site, or structure significant in American archeology, architecture. culture, engineering, or history that is either designated *or eligible for designation* under City, State, or national significance criteria."

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- The ordinance defines "Project (Major)" to include the demolition of a historic resource, whether actually designated or merely eligible.

- The Category 2 review procedures defined in the ordinance apply to all "eligible or potentially eligible historic resource(s)."

- The ordinance appears to *criminalize* the demolition or alteration of an undesignated resource.

The ordinance's provisions regarding these sites is incomprehensibly vague. The ordinance does not provide most property owners any meaningful guidance regarding how to determine whether a property is "eligible," therefore limiting development on that property. Nor does it identify procedures or a decision-maker for determining whether a site is "eligible or potentially eligible," subjecting projects on that site to the City's Category 2 review procedures.

The ordinance *does* provide specific procedures for structures and objects over 45 years old. But, for the reasons explained below, these procedures are unlawful.

SB 330

In 2019, the Legislature passed SB 330, which significantly limits local restrictions on housing development projects. Under SB 330:

> For purposes of any state or local law, ordinance, or regulation that requires the city or county to determine whether the site of a proposed housing development project is a historic site, the city or county shall make that determination at the time the application for the housing development project is deemed complete. A determination as to whether a parcel of property is a historic site shall remain valid during the pendency of the housing development project for which the application was made unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

Gov. Code § 65913.10 (a) (emphasis added). This limitation is in place until at least 2025.

As to housing development projects, the City's proposed procedure for reviewing structures over 45 years old violates this restriction, because it would have the City make the relevant assessment *after* the City receives a completed application to develop housing. Although the City's proposed procedures for other "eligible" but undesignated sites are so incomprehensible that it is difficult to say for certain, they appear to violate this provision as well.

Housing Accountability Act

The Housing Accountability Act generally requires the City to approve a housing development project unless the project fails to comply with "applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete." Gov. Code § 65589.5(j)(1). To count as

"objective," a standard must "involve[e] no personal or subjective judgment by a public official and be[] 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." Gov. Code § 65589.5(h)(8).

The standards set forth in the proposed ordinance are not objective, and therefore cannot be used to reject a housing development project, including demolition permits necessary to enable such a project.

Void for Vagueness

The ordinance criminalizes violations of its provisions. For the reasons explained above, the ordinance is so vague that these criminal provisions violate the "void for vaguenss" doctrine under criminal law.

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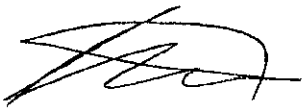
This ordinance needs more work. We urge you to continue this item or refer the ordinance to the Planning Commission so that its text can be given the additional specificity it needs.

Sincerely,



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