Attachment "E"

Background re SB 9 and 10 (2021-2022 legislative session)

SB 9 (Atkins): http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB9

This bill is a redo of SB 1120, Senate President pro Tempore Toni Atkins' controversial housing density bill that failed in the last minutes of the last legislative session (2019-2020). SB 9 (like SB 1120) would *mandate* local governments to *ministerially approve lot splits and/or development of 2 main residential units per parcel* in single-family residential zones throughout the state (4 houses if the lot is split, and, with additional allowed ADUs, potentially up to *8 units by right* unless banned by City Council), under specified conditions. Like its predecessors (SB 1120 and bills such as Sen. Weiner's failed SB 50 and SB 827[1]), SB 9 constitutes top-down mandated upzoning that ignores grass-roots democracy and the principle of local control and would "more or less erase single-family zoning" in California (a veteran journalist's take on SB 9's predecessor, in CalMatters: https://calmatters.org/commentary/2020/09/california-housing-shortage-crisis-goals/).

Among SB 9's concerning provisions:

- The bill – as did SB 1120 -- fails to contain *any* exemption for properties in the Very High Fire Hazard Severity Zone (VHFHSZ), where public safety due to crowded conditions during required emergency evacuations is put at serious risk from increased housing density (conditions that were made evident during this past year's catastrophic wildfires throughout the state).[2]
- The bill abolishes any requirement for local governments to hold hearings on applications for lot splits or Coastal Development Permits (CDPs/required by the California Coastal Act for non-exempt properties in the Coastal zone), i.e., the bill by pen-stroke makes approval of CDPs a ministerial function – eliminating rights to notice, hearing or opportunity to appeal – thus violating the Coastal Act.
- The bill exempts development projects from CEQA review by eliminating discretionary approval.
- The bill contains no requirement for *any* particular amount or level of affordable (low to moderate income/workforce) housing in development projects under the bill, instead creating a pathway for more market-rate/luxury housing, gentrification and displacement in low-income/disadvantaged areas – as pointed out by many critics of SB 1120 (CMs Bonin, Koretz & Wesson, Asm. Kamlager; *see, e.g.,* https://www.larchmontbuzz.com/featured-stories-larchmont-village/town-hall-meeting-addresses-downsides-to-sb-1120/).

SB 10 (Wiener): https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB10

This bill is a redo of SB 902, Sen. Scott Wiener's housing density bill that did not pass in the last legislative session. SB 10 is almost identical to SB 902, except that SB 10 adds a *conditional* exemption for properties in the VHFHSZ.[3] SB 10 would allow local governments (or, as many critics have noted, *a simple majority* of

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[1] WRAC previously opposed the latter two bills on the grounds (among others) that they represented "pen stroke, top-down planning" that "abolishes local input into land use planning and therefore constitutes an attack upon local democracy, upon neighborhoods, and upon the Neighborhood Councils and Community Councils in the City of Los Angeles." *See:* https://westsidecouncils.com/adopted-positions/

[2] Sen. Atkins was urged by Sens. Allen & Stern (Malibu/Calabasas), by Asm. Bloom, by CM Bonin, by PPCC & BCC, and by others during the last legislative session to include an unconditional exemption for the VHFHSZ in SB 1120, *to no avail.* Similarly, Sen. Wiener was also urged to include an unconditional VHFHSZ exemption last session in SB 902, to no avail (see FN 3 below). During this session (2021-2022), Sens. Allen & Stern have co-authored a new bill, SB 55, that would prohibit all "new development" in the VHFHSZ. It's unknown what effect, if any, SB 55 would have on SB 9 and 10.

[3] In the last iteration of SB 902, Sen. Wiener inexplicably removed (and then failed to replace, despite requests that he do so) an exemption for properties within the VHFHSZ. SB 10 now includes the *conditional* exemption set forth in some Government Code sections -- an "exception to the exception," allowing streamlined land use approval for development within the VHFHSZ that complies with "fire hazard mitigation measures." But, as has been explained to Sen. Wiener, even if a structure is built to be fire-resistant *(i.e.,* with fire hazard mitigation measures), a multi-unit housing project on a VHFHSZ parcel will add density (more dwelling units, more people living there). This in turn means many more people will need to flee during wildfire evacuations, clogging our narrow streets and making already-difficult evacuations – not to mention the difficulty of getting fire equipment into the area – even more difficult, thus risking to an even greater degree than is already present the lives and safety of residents and firefighters alike.

current or future City Council members who are so inclined) to pass an ordinance to upzone single-family residential properties in order to permit multi-family dwellings of *up to 10 units with streamlined/by-right approval* (discretionary review would be allowed for projects with more than 10 units), on parcels located in a "jobs-rich" area,[4] or a "transit-rich" area, or on an urban landfill site (as defined in the bill), notwithstanding any local restrictions on adopting zoning ordinances, including *restrictions enacted by voter initiatives*.

Thus, under this bill, stakeholder input could be completely disregarded and the will of constituents as reflected in a voter initiative would be meaningless. Even if a majority of *current* Los Angeles lawmakers were not inclined to ignore constituent input and/or to override a voter initiative in order to pass an upzoning ordinance under this bill, *there is no guarantee that a future Council would not do so if such an outcome were permitted* (as it would be under SB 10). This result would be antithetical to principles of democracy and true local control (again, principles that WRAC supports, based on its past positions on SB 50 and 827).

Additional serious flaws in the bill include:

- The provision allowing local governments (City Councils) to override voter initiatives is clearly ***unconstitutional*** under Art. II, Sec. 10(c) of the California Constitution:
  ". . . the general rule is that amending an initiative requires the passage of another initiative, unless the prior initiative allows amendment by the Legislature." https://californiaglobe.com/section-2/how-can-prop-24-be-amended ;
  ". . . California [has] actually made it illegal to change an initiative substantively without putting it back to the voters." https://www.bloomberg.com/news/articles/2018-10-12/where-the-people-s-vote-can-be-negated-by-legislators.
- As noted, the bill fails to include an *unconditional* VHFHSZ exemption, thus potentially putting at risk the public safety of thousands of residents.
- Also as noted, the bill provides no process (democratic or otherwise) for local community input as to the important triggering determination of the "jobs-rich" status of local areas – with decisions on status to be made solely by unelected officials at state agencies, with no public scrutiny.
- The bill contains no exemption for properties in the Coastal zone, while providing for streamlined (non-discretionary) approvals of projects of up to 10 dwelling units in areas rezoned under the bill, without regard to whether the projects are located in the Coastal zone – thus violating the Coastal Act.
- The bill preemptively declares that an upzoning ordinance under the bill's provisions is not a "project" under CEQA, thus eliminating the need for discretionary review and consideration of whether the ordinance would cause a "direct or reasonably foreseeable indirect change in the environment," as required under caselaw *(case cited in the proposed motion may be found at https://scholar.google.com)*.
- The bill encourages "spot zoning" without consideration of whether upzoning a single-family residential property would be of substantial benefit to the public in a given case – thus arguably circumventing caselaw and increasing the burden on ordinance opponents or preventing a good faith argument that the ordinance is of no benefit *(cases cited in the proposed motion may be found at https://scholar.google.com)*.
- The bill contains no requirement for *any* particular amount or level of affordable (low to moderate income/workforce) housing in development projects under the bill, instead creating a pathway for more market-rate/luxury housing, gentrification and displacement in low-income/disadvantaged areas.

While it's widely acknowledged that California has an affordable housing crisis, there is lack of consensus on the total amount of housing (including market-rate) that is *actually needed* and *where it's needed* (see CalMatters article linked on p.1 above; RHNA calculations in dispute). What about pandemic impacts, e.g., increase in remote working and/or residents permanently departing the state? See also Platkin / CityWatch article: https://citywatchla.com/index.php/cw/los-angeles/20977-the-failed-logic-of-planning-in-los-angeles-full-speed-into-the-rocks. SB 9 and 10 do not directly address these issues, nor does either bill actually target the *affordable housing* crisis, despite claiming in each case that the goal is "ensuring an adequate supply of affordable housing."

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[4] The bill provides that two Sacramento agencies (unelected officials)– the Dept. of Housing & Community Development and the Office of Planning & Research – *alone* would determine and maintain a controlling map of all so-called "jobs-rich" areas throughout the state; there would be no transparency or public scrutiny and no process is provided for input by local communities on the decision as to which local areas would be deemed "jobs-rich" and thus trigger the bill's provisions.

Meanwhile, Councilmember Koretz has introduced two resolutions in City Council, calling for the City of Los Angeles to oppose both SB 9 and SB 10:
CF 21-0002-S18: https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=21-0002-S18
CF 21-0002-S21: https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=21-0002-S21

Chris Spitz (WRAC Vice-Chair; PPCC Secretary & past Chair)/Jan. 2021

Proposed Motion regarding SB 9 (Atkins) – recommended by WRAC LUPC

Whereas, Senate Bill 10 violates the California Constitution (Art. II, Sec. 10(c)) and principles of democracy and local control by purporting to allow local governments to adopt ordinances to upzone single family residential properties under defined circumstances, notwithstanding any local restrictions on adopting zoning ordinances, *including restrictions enacted by voter initiatives;*

Whereas, Senate Bill 9 violates the California Coastal Act (Public Resources Code §§30000 et seq.) by failing to exempt parcels within the Coastal zone, by purporting to eliminate hearings for Coastal Development Permits, and by requiring by-right/expedited approval of all projects permitted under the bill, including projects within the Coastal zone which otherwise require discretionary review, including hearings, under the Coastal Act;

Whereas, Senate Bill 9 violates the California Environmental Quality Act (Public Resources Code §§ 21065 and 21080) and shortcuts required CEQA review by declaring preemptively that a project permitted under the bill is not a "project" under CEQA, without regard to the test established by controlling caselaw, that is, whether the ordinance in a given case is "capable of causing a direct or reasonably foreseeable indirect change in the environment" *(Union of Medical Marijuana Patients, Inc. v. City of San Diego (California Coastal Commission, Real Party in Interest)*, (2019) 7 Cal.5th 1171);

Whereas, Senate Bill 9 compromises public safety and puts the lives and property of thousands of California residents in the Very High Fire Hazard Severity Zone (VHFHSZ) at risk from increased density by failing to provide any exemption for parcels within the VHFHSZ;

Whereas, Senate Bill 10 prevents public scrutiny and bypasses democratic process by providing that state agencies alone, without local community input, would define, identify and maintain a controlling map of so-called "jobs-rich" areas throughout the state;

Whereas, Senate Bill 9 fails to address the state's affordable housing crisis or to further the purported goal of "ensuring an adequate supply of affordable housing" by not specifying or requiring *any* particular amount or level of affordable housing (low to moderate income/workforce housing) in projects permitted pursuant to the bill;

Whereas, Councilmember Paul Koretz has introduced a resolution in Los Angeles City Council, CF 21-0002-S18, calling for the City of Los Angeles to oppose Senate Bill 9;

Therefore, the Westside Regional Alliance of Councils (WRAC) opposes Senate Bill 9 (Atkins) and supports the resolution in CF 21-0002-S18 (Koretz) calling for the City of Los Angeles to oppose Senate Bill 9.

Contact: Chris Spitz
January 2021

Proposed Motion regarding SB 10 (Wiener) – recommended by WRAC LUPC

Whereas, Senate Bill 10 violates the California Constitution (Art. II, Sec. 10(c)) and principles of democracy and true local control by allowing local governments (i.e., a majority of the current or future City Council) to upzone single family residential properties and speed approval processes for increased density/multi-unit housing, without stakeholder involvement and by overriding community-driven local restrictions on adopting zoning ordinances, *including restrictions enacted by voter initiatives;*

Whereas, Senate Bill 10 violates the California Coastal Act (Public Resources Code §§30000 et seq.) by failing to exempt parcels within the Coastal zone and by allowing by-right/expedited approval of development projects with up to 10 dwelling units on properties that are upzoned under the bill, including projects within the Coastal zone which require discretionary review under the Coastal Act;

Whereas, Senate Bill 10 violates the California Environmental Quality Act (Public Resources Code §§ 21065 and 21080) and shortcuts required CEQA review by declaring preemptively that an ordinance by a local government (i.e., a majority of the current or future City Council) to upzone a single family residential property pursuant to the bill is not a "project" under CEQA, without consideration of whether the ordinance in a given case is "capable of causing a direct or reasonably foreseeable indirect change in the environment" *(Union of Medical Marijuana Patients, Inc. v. City of San Diego (California Coastal Commission, Real Party in Interest)*, (2019) 7 Cal.5th 1171);

Whereas, Senate Bill 10 potentially compromises public safety and may put the lives and property of thousands of California residents in single family residential areas that are also in the Very High Fire Hazard Severity Zone (VHFHSZ) at risk from increased density by failing to provide for an unconditional exemption from upzoning under the bill for properties in the VHFHSZ;

Whereas, Senate Bill 10 prevents public scrutiny and bypasses democratic process by providing that state agencies alone, without local community input, would identify and maintain a controlling map of so-called "jobs-rich" areas throughout the state for purposes of upzoning single family residential properties under the bill;

Whereas, Senate Bill 10 circumvents controlling caselaw by, in effect, allowing for "spot zoning" by local governments (i.e., a majority of the current or future City Council) without consideration of whether upzoning a single family residential property would be of substantial benefit to the public in a given case *(Foothills Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302);

Whereas, Senate Bill 10 fails to address the state's affordable housing crisis or to further the purported goal of "ensuring an adequate supply of affordable housing" by not requiring *any* particular amount or level of affordable (low to moderate income/workforce) housing in development projects to be built on properties that are upzoned under the bill;

Whereas, Councilmember Paul Koretz has introduced a resolution in Los Angeles City Council, CF 21-0002-S21, calling for the City of Los Angeles to oppose Senate Bill 10;

Therefore, the Westside Regional Alliance of Councils (WRAC) opposes Senate Bill 10 (Wiener) and supports the resolution in CF 21-0002-S21 (Koretz), calling for the City of Los Angeles City to oppose Senate Bill 10.

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January 2021