



September 1, 2023

Hon. Rob Bonta  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Anabel Renteria  
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative regarding local land use planning and zoning (A.G. File No. 23-0011).

## **Background**

***State-Local Responsibilities.*** The state, counties, and cities generally have different responsibilities, and fund and administer different services. Cities are responsible for local needs, such as planning, to accommodate needed housing, police and fire protection, and local roads. Counties provide similar services in areas outside of cities—unincorporated areas. Counties also administer countywide services on behalf of the state, such as health and human services programs, jails, and elections. Cities and counties provide these services using a combination of local, state, and federal funding. In some cases, such as for many human services programs operated by counties, the state provides certain revenue sources to local governments. In other cases, such as some housing programs, the state sets aside grant funding for cities and counties based on varying programmatic requirements.

***Authority of General Law and Charter Cities and Counties.*** The State Constitution allows for city and county local affairs to be governed under either the general laws of the state or under a charter adopted by local voters. Charter cities for local matters generally, and charter counties only for certain local matters, have authority to adopt their own laws which generally supersede state law. Although the State Constitution does not define local affairs, case law suggests that they include local elections, and local government contracting and employees. Despite a charter, cities and counties are subject to the U.S. Constitution, federal laws, the California Constitution, and state laws regarding matters of statewide concern. In contrast, general law cities and counties have less authority to act locally as local actions must be consistent with state law. Of

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California's 58 counties, 14 currently are charter counties. Of California's 482 cities, 121 are charter cities.

***Zoning, Land Use, and Housing.*** Both general law and charter cities and counties in California make most decisions about when, where, and what type of housing will be built. Cities and counties enact zoning ordinances to set property-specific land use requirements. A community's zoning ordinances typically determine how land can be used—such as for single-family homes, multifamily homes, or commercial buildings. In addition, zoning ordinances also set the rules for the size and design of buildings. As a result, zoning controls how much housing a community can build.

***State Has Special Jurisdiction Over Land Use Decisions in Areas of Statewide Concern.*** Currently, the local affairs rule does not prohibit the state from regulating zoning or land use when necessary to address a statewide concern. For example, state law requires cities and counties to carry out certain planning exercises that attempt to ensure they can accommodate needed home building. In addition, recent housing legislation requires, in some limited cases, local governments to streamline housing approvals and build more dense housing. This legislation declares that ensuring access to affordable housing is a matter of statewide concern and not a local affair. In recent years, the state increasingly has seen issues of zoning and land use as matters of statewide concern. Nevertheless, local governments retain significant control over zoning, land use, and housing.

***Local Vote Requirement for Certain Affordable Housing Developments.*** Article 34 of the California Constitution requires development, construction, or acquisition of publicly funded “low rent housing projects” to be approved by a majority of local voters. Not all affordable housing developments qualify as a low rent housing project and therefore may be developed without voter approval. State law establishes specified exclusions from the definition of low rent housing project that do not require Article 34 voter approval. For example, housing developments that are privately owned, receive no property tax exemption, and do not have more than 49 percent of housing units occupied by low-income residents, as defined, are exempt from Article 34. In order to comply with this requirement applicants seeking state funding for affordable housing development must demonstrate that their project is either (1) exempt from Article 34 or (2) that it has satisfied the vote requirement.

## **Proposal**

***Specifies Local Laws Related to Land Use Planning and Zoning Generally Prevail Over Conflicting State Laws.*** This measure would amend the California Constitution to specify that city or county laws related to land use planning and zoning would be a local affair and generally prevail over conflicting state laws. This would apply to both charter and general law cities and counties, and would include state laws that (1) restrict local governments' discretion to establish or change the zoning designation of a parcel and (2) impose any restriction on the ability of local governments to deny a development project or subdivision of a parcel. Consequently, under the measure, local laws that currently conflict with state law generally would become enforceable. While the state could continue to enact legislation related to land use planning and zoning, rather

than follow state law, cities and counties could enact conflicting laws. These local laws generally would prevail over state law.

***Identifies Areas of Statewide Concern Where State Law Could Continue to Prevail.*** The measure identifies certain areas and circumstances where state laws would continue to prevail over local laws—known as covered state statutes. This authority extends to state statutes enacted on or after January 1, 2016 that relate to specified issues, including rent control, fair housing matters, emergency response to natural disasters and disaster planning and recovery, major infrastructure projects, and the coastal zone that address a matter of statewide concern. However, unlike current practice where a general declaration of statewide concern is sufficient for legislative action, a matter to be of statewide concern pursuant to the measure would require the Legislature to list specific goals, purposes, and objectives of the statute. State statutes enacted before January 1, 2016 could continue to prevail with a general declaration of statewide concern.

***Limits State’s Discretion When Appropriating State Funds.*** The measure amends the California Constitution to specify that the state could not modify how it appropriates state funding as a result of this measure. State funding appropriated *after* this measure takes effect could not discriminate in favor of, or give preference to, a city or county that voluntarily complies with a state land use planning and zoning law. State funding appropriated *before* this measure were to take effect could not be modified due to a city or county adopting or enforcing a law that preempts a state land use planning and zoning law. Specifically, the state could not deny funding to cities or counties that opt to enact zoning or land use laws that conflict with state law. Furthermore, the state could not provide a preference in appropriating state funding to local governments that choose to conform with state law related to zoning or land use.

***Eliminates Local Vote Requirement for Certain Affordable Housing Developments.*** This measure repeals Article 34 of the California Constitution so that development, construction, or acquisition of publicly funded low rent housing projects would no longer need approval by a majority of local voters.

## **Major Fiscal Effects**

***Some Existing State Allocations to Local Governments Likely Would Need to Change.*** Some funding provided by the state to local governments is based on local governments’ progress toward meeting state goals for housing. Because the measure could restrict the state’s ability to distribute funds in this manner, the state likely would need to reallocate funding among local governments differently.

***May Enable Additional Flexibility for Affordable Housing Development.*** The repeal of Article 34 could result in some administrative efficiencies at the state and local level, including no longer requiring a local election or verification that an affordable housing project is exempt.

***Broader Fiscal Effects of the Measure Unknown.*** The measure would make significant changes to state and local authority over land use planning and zoning decisions. In some cases, previously unenforceable laws could become operative at the local level immediately. In other cases, local governments could enact new laws. State laws enacted since 2016 that would be affected by this measure aimed to reduce barriers to housing development. If cities and counties adopt zoning and land use laws that restrict housing development, housing costs could increase

and potentially constrain economic growth. Alternatively, if cities and counties adopt laws that spur housing development, economic growth could accelerate. The ultimate fiscal effects of the measure on the state and local governments will depend on decisions by the state's 482 cities and 58 counties.

*Summary of Fiscal Effects.* We estimate that this measure would have the following major fiscal effects.

- Fiscal effects of the measure depend on future decisions by the cities and counties and therefore are unknown.

Sincerely,

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for Gabriel Petek  
Legislative Analyst

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for Joe Stephenshaw  
Director of Finance