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YIMBY LAW

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Palo Alto City Council
250 Hamilton Avenue
Palo Alto, CA 94301

Re: SB 79 Compliance, Agenda Item 23

To the City Council of Palo Alto,

YIMBY Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California. YIMBY Law sues municipalities when they fail to comply with state housing laws, including the Housing Element Law. Should the City fail to follow the law, YIMBY Law is prepared to file suit to ensure that the law is enforced.

Under the false pretense of an "emergency", this Council is contemplating illegal urgency ordinances that would immediately suspend SB 79's transit-oriented development standards from going into effect in Palo Alto. This "emergency" is nothing more than SB 79 going into effect on July 1 and is self-made, as the Council has continued consideration of the items *twice* this year without any opportunity for public comment. Now that time has run out, the staff are recommending urgency ordinances that are clearly out of compliance with state and even the City's own law.

The City Council should reject the staff's recommendation to adopt the urgency ordinances and instead follow the law and use the normal legislative process to consider the ordinances. This will give Palo Alto's residents the appropriate time to consider and comment on these ordinances, including whether blanket suspension of SB 79 makes

sense for the City, as it works towards meeting its state-mandated housing production goals.

An urgency ordinances is only allowable where it:

> **contains 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. In addition, **any interim ordinance** adopted pursuant to this section **that has the effect of denying** approvals needed for the development of projects with a significant component of **multifamily housing may not be extended except** upon written findings adopted by the legislative body, **supported by substantial evidence** on the record...

CA Gov Code § 65858(c), emphasis added.

The urgency findings contained in the draft ordinances are so sparse and without evidence as to be utterly meaningless. The threat is unnamed, uncertain, and inappropriate to justify obstruction of a state housing law addressing the statewide housing crisis. Stating vaguely that projects that *might* endanger historic resources or "result in increased demands on public infrastructure" poses no certain threat to public safety. The "threat" cannot be certain or immediate when you don't know what the threat is, can identify no local regulations that it violates, and will last for an uncertain period. PMC 2.04.270, the only referenced section of local regulation, also calls for specific explanations of the threat to "the public peace, health or safety."

The draft ordinances identify no specific threat to the public peace, health, or safety for a reason: there is none. It's pure speculation to say that historic resources will be impacted at all. Speculating that a project might use SB 79 does not present an immediate threat sufficient to authorize an emergency ordinance, according to state law and Palo Alto's own regulations. Notably if there were actually projects in process, the law grants stricter protections against denying them. Because the draft urgency ordinances would pre-emptively deny *all* such projects within the affected areas, the protections are likely triggered automatically.

California Courts have already weighed against this kind of blatant obstruction. The findings for urgency ordinances, especially where they would preclude multifamily housing, must cite "specific significant, quantifiable, direct, and unavoidable impact

upon the public health or safety that would result from continued development approvals, and objective, written public health or safety standards, policies, or conditions on which that impact is based". *Hoffman St., LLC v. City of W. Hollywood,* 179 Cal. App. 4th 754, 771 (2009) (internal citations omitted). Specifically for the *Hoffman* case, a blatant finding that affordable housing created a current and immediate threat was rightly dismissed as insufficient justification for an urgency ordinance. The prospect of slightly less wealthy people being able to afford living in Palo Alto is not the threat you think it is. At least not as far as the law is concerned.

SB 79's passage followed a string of reforms at the state level to address a systemic, ongoing shortage of housing across the state. YIMBY Law has sued to enforce many of those reforms, and remains very well prepared to continue that work. Any section of the alternatives before you which institute urgency ordinances without substantial evidence to the immediacy they speak to must be discarded. We urge you to follow the law and adopt an alternative plan or allow SB 79 to come into effect as intended, within the City.

Sincerely,



Sonja Trauss
Executive Director
YIMBY Law