Yes In My Back Yard

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Via Email

We respectfully request that this letter be promptly provided to all members of the Chico City Council, and included in the agenda packet for the deliberations of the Council concerning the proposed General Plan Amendments affecting residential development rights within the Corridor Opportunity Sites Overlay Zone.

Re: Amendments to Title 19 of the Chico Municipal Code and the Chico 2030 General Plan Regarding Corridor Opportunity Site Zoning Overlay Districts.

Dear Council Members:

Yes in My Back Yard submits this letter to confute some of the staff's depictions of the above captioned proposal. We think staff has mischaracterized what the current zoning and General Plan provide, and how they will be impacted by the proposed amendments. We also think the staff is attempting to give the impression that these zoning amendments are compelled by recent changes in state law, when in fact they are not. This letter references the staff report provided to the Planning Commission in advance of their October 17th 2019 meeting.

The second paragraph of the Staff Report provided to the Planning Commission states that the proposed amendments will make the General Plan and Chico Municipal Code (CMC) more compliant with current state law and housing policy. That is not true.

The General Plan and CMC are already compliant with current state law and housing policy. They achieve the goal of state law and housing policy by providing "by right" development opportunities for relatively high density residential development in the Downtown Core. This type of regulatory certainty was part of the stated goals of the 2030 General Plan, to help incentivize mixed use residential development in the

Downtown and –COS zones. The current transit oriented zoning regulations are exactly what our current state law and housing policy seek to encourage.

What the newly proposed amendments to the General Plan and CMC intend is to actually subvert the extent to which the current the General Plan and CMC support state law and housing policy. The amendments will repeal the increased height standards that currently exist "by right" for mixed use development in the Downtown and –COS zones. They also reduce, by more than 50%, the residential densities that that those projects can obtain under a "by right" development. They represent a substantial repeal of General Plan and zoning policies that support "growing up versus out", and the densification of the Downtown core.

We provided the Planning Commission a letter which explained that the EIR prepared for the 2030 General Plan is not an appropriate CEQA evaluation of the repeal of the height and density standards being sought. The zone changes require a thorough review of possible impacts and mitigation because they are not consistent with the land use policies that the General Plan intends and which its EIR evaluated.

Our letter resulted in a Staff Report Addendum, which claims that no additional CEQA analysis is required because the staff disagrees that the amendments will reduce allowable residential density or structure height. The Staff Report Addendum attempts to support this claim by claiming that the City always intended to apply broad subjective criteria that could deny developments that otherwise satisfied the General Plan and Zoning Code's objective criteria. However, nowhere does the EIR state any expectation that subjective criteria would substantially diminish the amount of housing permitted by the current height and density standards.

Any decision about whether further CEQA evaluation is required must be based on a properly understood "baseline" of the existing environmental and regulatory standards. That baseline does not presently include extensive subjective powers to deny projects, even if such powers did exist. Such powers do not exist, due to the requirement of the Housing Accountability Act, passed in 1982, that cities approve zoning and general plan compliant housing projects at their initially proposed density.

The proper baseline to evaluate the environmental impacts of these amendments is the current status of the law, including the existing CMC and General Plan, *as it would be implemented under existing state law*. Therefore, despite statements in the Staff Report, these amendments will substantially change the potential future development from that which was analyzed in the EIR for the 2030 General Plan. Repealing the "by right" enhancements to height and density is not a "refinement of the General Plan adoption process" that the Staff Report asserts it is.

You may also consider whether the extent of "design review" standards that the Staff Report asserts were intended by the 2030 General Plan is something that you support. Quality of design, evaluation of materials and colors, other design elements, and

landscaping elements are all subjective design review elements that state law allows to be applied, and will continue to be applied if the proposed zoning amendments do not pass. Any subjective standard that **does not** reduce the ability of the project to propose housing is permitted under state law.

When your Council voted to increase the "by right" height and density standards for the Downtown and –COS zone projects, did it intend that the staff or the Architectural and Historic Preservation Review Board, should use a "design review" tool to mandate reductions in the height or density of residential development projects? We believe you understood the importance of these new standards. You should reiterate your support for these environmentally friendly, anti-sprawl, sustainable and compact development strategies by rejecting these proposed amendments.

The Staff Report includes much discussion about state law changes in 2017 and 2019. An extensive portion of that Report includes copies of those statutes. We appreciate that the Council is being briefed about these important aspects of state housing policy. Those laws reinforce the fact that allowing "design review" to diminish the density and production of critical housing supply is creating a crisis for our residents.

Interestingly, the Staff Report discusses the fact that it is getting a future grant from the California Housing and Community Development Department to implement elements of the 2017 state law. That is good. However, it is not true that this grant funding was provided or used to develop the current amendment proposals. That may be an implication of the Staff Report, which describes these amendments as "Phase I" of a two phased project (though only Phase II is supported by the grant funds).

The proposed amendments intend to specifically avoid the consequences of the 2017 and 2019 laws, not to implement them. They do that by proposing to rush these amendments for adoption, without appropriate environmental evaluation, before the 2019 law becomes effective. That is because the 2019 law will prohibit exactly the types of amendments that are being presently proposed. These amendments and their timing seek to subvert the intended application of the 2017 state laws. HCD grant funds are not being provided to support such a subversion of the state housing laws.

The Staff Report states that a repeal of the previously adopted "by right" height and density standards will have no impact on the attainment of the 2030 General Plan goals, because the amendments reserve the potential for those density standards. It suggests that all one needs to do is satisfy the new subjective evaluation criteria. However, by definition, the subjective criteria these amendments seek to impose are criteria that will reduce the residential density of the proposed project.

Any subjective criteria that don't decrease residential density are already allowed under current law. If planning staff feels a law change is needed in order to facilitate

application of subjective standards, then they are proposing subjective standards that reduce residential density.

For example, one of the new proposed subjective criterion is a requirement of finding that the height of a mixed use residential project does not "unnecessarily block views from other structures." It is not conceivable how a policy that seeks to increase average building height in Downtown can be implemented if the policy can be stymied by a claim that a building is unnecessarily blocking some other building's views.

Whether such blockage is "unnecessary" will depend entirely on the judgment of one or two staff members, and two or three ARHPB members. Their judgments will be provided only after tremendous investment has been made in securing rights to property and developing substantial architectural and engineering documents. Even if the staff, the ARHPB and the Planning Commission implements these new subjective criteria consistent with your vision, this new regulatory arrangement will open up a potential floodgate of NIMBY litigation. NIMBY litigants will be newly empowered to challenge the evaluations and determinations of policy makers regarding those criteria. These are exactly the types of barriers that mixed use development faces, which were acknowledged in the 2030 General Plan, and which that Plan and its implementing code provisions were attempting to redress.

In addition, the criteria include a new limit on higher density residential development, which was never part of any prior subjective design review. These amendments propose to disallow the new height and density standards to any project that has 20 percent of its units that exceed three bedrooms. This aspect of the Staff proposal creates barriers for development of housing that generally supports families with children. Such familial status discrimination is subject to regulatory scrutiny based on fair housing laws.

Another undisclosed intention of the amendments is to substantially repeal the reduced on-site parking standards that are presently available for Downtown and –COS mixed use projects. That is because the proposed new subjective approvals to obtain the existing height and density standards will involve a new "entitlement".

Under the proposed new zoning code, this opens up the potentiality that the project will have subjective parking ratios imposed by the Public Works Department. That Department, and its recent efforts to modify the extent of the In-Lieu Parking Benefit Area Boundary, has demonstrated its hostility to the reduced parking ratio standards that the General Plan and zoning code adopted. This facet of the proposal is another circumstance where the amendments will change the 2030 General Plan implementation arrangements beyond those acknowledged in the Staff Report.

This is a hurried proposal by staff to avoid the consequences of state housing laws. It is a substantial retreat from environmentally responsible height and density

standards that the 2030 General Plan intended for Downtown and the –COS zone. This hurried effort is being driven by the pending effective date of recent state law.

This proposal is in no way an effort to implement that law, or make the existing planning standards more compliant with current state law and housing policy. Nor is this effort supported by grants from the state housing policy regulators. Further, you should not seek to reserve architectural review when it is wielded to diminish the height and density standards that are a primary part of the land use policies intended to support the 2030 General Plan's sustainability purposes. Appropriate review of the quality of project design has not been affected by either the 2017 or 2019 state laws.

We urge you to reject the proposed amendments that repeal important aspects of your General Plan and zoning code.

Yes In My Back Yard is a 501(c)3 non-profit corporation whose mission is to increase the accessibility and affordability of housing in California.

Sincerely,



Sonja Trauss
Executive Director
Yes In My Back Yard