



October 15, 2021

Hon. Rob Bonta
Attorney General
1300 I Street, 17th 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 (A.G. File No. 21-0016, Amendment #1).

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.

Local Initiatives. Local voters generally have the authority to enact initiatives that override laws passed by local legislative bodies—city councils or boards of supervisors. Laws enacted by voters through a local initiative can only be modified by subsequent voter approved local initiatives, except if the initiative allows otherwise. Although local initiatives can override laws passed by local legislative bodies, they do not override state laws.

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 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 ordinance typically defines how each property can be used and its form. Use dictates the category of development that is permitted on the property—such as single-family residential, multifamily residential, or commercial. Form dictates building height and width, the share of land covered by buildings, and the distance of buildings from neighboring properties and roads. Rules about use and form effectively determine how many housing units can be built on a particular site. A site with one- or two-story height limits and requirements for large distances from surrounding properties typically can accommodate only single-family homes. Conversely, a site with height limits over 100 feet and relatively smaller required distances between properties can accommodate higher-density housing such as multistory apartments. By dictating how many sites housing can be built on and at what densities, zoning controls how much housing a community can accommodate.

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.

Proposal

Specifies Local Laws Related to Zoning or Land Use Generally Prevail Over Conflicting State Laws. This measure would amend the California Constitution to specify that actions by a charter city or county related to zoning, development, or land use—hereafter referred to as local laws—would be a local affair and prevail over conflicting state laws. The measure also specifies that zoning and land use laws in general law cities and counties would prevail over conflicting state general law. Consequently, under the measure, local laws that currently conflict with state law generally would become enforceable. Moreover, local initiatives related to zoning or land use not only would prevail over laws passed by local governing bodies but also state law. While the state could continue to enact legislation related to local zoning and land use, 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 in which courts could determine whether state laws could continue to prevail over local laws. This authority extends to zoning or land use in: (1) the coastal zone; (2) the siting of a power plant that can generate more than 50 megawatts of electricity; or (3) the development of water, communications, or transportation infrastructure projects that the state declares are matters of statewide concern. These same exemptions apply to general law cities and counties, although no court ruling is necessary.

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. 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.

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.

Broader Fiscal Effects of the Measure Unknown. The measure would make significant changes to state and local authority over zoning and land use decisions. In some cases, previously unenforceable laws could become operative at the local level immediately. In other cases, local governments could enact new laws. 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,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance