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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – UNLIMITED CIVIL JURISDICTION

YES IN MY BACK YARD, a California Nonprofit Corporation; and SONJA TRAUSS,

Petitioners and Plaintiffs,

vs.

CITY OF CULVER CITY; CITY COUNCIL OF THE CITY OF CULVER CITY; and DOES 1-25,

Respondents and Defendants.

CASE NO. 20STCV43253

PETITIONERS' OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE

Dept: 82
Judge: Hon. Mary Strobel
Hearing Date: February 22, 2022
Time: 9:30 a.m

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I. INTRODUCTION

California's housing shortage is "a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing." (Gov. Code § 65589.5(a)(2)(J).) To address this crisis, the California legislature enacted Senate Bill 330, the Housing Crisis Act of 2019, codified at Gov. Code § 66300 et al. ("SB 330"). SB 330 prohibits a local agency from enacting any ordinance that would "lessen the intensity of housing" below what was allowed under zoning ordinances in effect on January 1, 2018, including an explicit prohibition against any reduction in floor area ratio (FAR).[1]

On July 13, 2020, the City of Culver City enacted zoning changes in direct violation of state law. Culver City specifically set out to prohibit what it described as "excessive building" on single-family zoned parcels to protect "existing neighborhood character." The ordinance at issue reduced FAR on all 4,165 single-family parcels from 0.6 to 0.45, which results in a reduction of more than three million square feet of residential capacity.

This is the precise situation the California legislature sought to prevent. The ordinance at issue plainly lessens the intensity of housing in violation of SB 330, which will only exacerbate the housing crisis. In the face of this clear violation, the City invented a new justification for the ordinance three years into the process, arguing that the ordinance "incentivizes" the development of Accessory Dwelling Units (ADUs). However, this argument is not based on evidence or fact. The construction of ADUs was equally available both before and after the adoption of ordinance. The only effect of the ordinance is to lessen the intensity of housing and reduce residential capacity within the City by more than three million square feet. As such, the ordinance must be deemed void.

[1] FAR sets the allowable size of a building as a ratio vis-a-vis the size of a lot, e.g., a 0.50 FAR means 0.5 square feet can be built per 1 square foot of lot area. If a zoning district's FAR is reduced, less can be built on each lot.

II. STATEMENT OF FACTS

A. The City Conducts Research to Protect Neighborhood Character.

In response to residents' concerns about "mansionization"' in single-family residential zones of the City, the City retained John Kaliski Architects ("JKA") to conduct neighborhood studies to determine residents' opinions about single-family residential construction. (AR 66.) JKA held a series of community meetings that found residents felt houses "should not be built to maximize the existing zoning envelope and allowable floor area ratio (FAR)," and that "new homes were too large and allowed excessive building area on a parcel." (AR 67, 69; *see also* AR 29, 170, 207, 210, 212, 216, 218, 392, 539, 553.)

On May 8, 2019, the City held a Joint Study Session to discuss and provide direction on potential zoning changes for single-family homes. (AR 66.) In that session, JKA confirmed residents' opinions that "[h]ouses that maximize the existing zoning envelope and allowable [FAR] are consistently disliked across all neighborhoods." (AR 29.) Members of the Planning Commission and City Council discussed various zoning code amendments designed to "reign in incompatible bulk and mass," including a reduction of the existing 0.60 FAR standard to 0.50. (AR 171.)

The City Council and Planning Commission also directed staff to consider how accessory structures, such as garages and ADUs, contribute to lot coverage and FAR. (AR 70.) City Planning staff and JKA held an internal meeting following the joint session where staff members noted that exempting ADUs from FAR calculations "[o]ptically encourages" ADUs. (AR 79.)

B. The Planning Commission Recommends Zoning Changes to Reduce FAR.

On January 22, 2020, the Planning Commission held a meeting to address proposed changes to single-family zoning standards. (AR 167.) These changes included a reduction of the current FAR from 0.60 to 0.45; and the addition of definitions for the terms "dwelling unit," "attic," and "kitchen" in the R1 Zone. (AR 173, 181, 186.) The staff report confirmed the "intent of the proposed FAR reduction is to reduce bulk and mass of new structures as part of overall allowable square footage," and that residents "consistently asked for more restrictive FAR standards." (AR 168-70.)

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In that meeting, JKA explained that in order "to reduce mass and bulk," reductions would need to be made "from the amount of square footage that one could build . . . ." (AR 322.) Neighbors applauded the proposed changes, agreeing that the reduction of the current 0.60 FAR limit would address the "monstrosities" being built. (AR 346.) The staff report confirmed that the City had previously considered a FAR reduction to 0.50, but, "Since the Joint Study Session was held, new State laws were adopted that removed local jurisdictional ability to count ADU square footage towards FAR developments standards . . . . This results in total square footage in exceedance of 0.60 FAR that is in place today, undermining the original intent of the recommended FAR responsive to community feedback." (AR 170.) As a result of the State law, the City now proposed to further reduce FAR to 0.45 "in order to maintain the intent of community feedback." (*Id*.)

JKA explained that the proposed changes to the definition of "attic" were to address residents' concern that people were "getting the ability to bootleg extra square footage, extra rooms, et cetera, into attic spaces . . . ." The proposed changes to the definition of "dwelling unit" arose from residents' concern that "people were building lots of kitchens in units and, in essence, were creating internal apartment buildings . . . ." (AR 321-22.) JKA described the definitions as "simply being tightened up" to ensure that people do not create "internal apartment buildings." (*Id*.)

The Planning Commission voted to recommend that the City Council adopt the new definitions of attic, dwelling unit and kitchen, and approved a reduction of FAR from 0.60 to 0.50 (rather than 0.45 as originally proposed). (AR 450.)

C. The City Council Votes to Further Reduce FAR.

On May 26, 2020, the City Council held a meeting to discuss the draft zoning changes. (AR 510.) The draft of the Ordinance stated that "[t]he proposed Zoning Code Amendment is intended to reduce incompatible mass and bulk of single-family housing [in] Culver City." (AR 519.)

During the meeting, Michael Allen, the Planning manager, explained that the "driving force" behind the proposed changes was "residents' concerns of the size and scale of new construction . . . and the changing character of the single-family neighborhood." (AR 664.) Mr. Allen noted that the Planning Commission recommendation was to reduce FAR from 0.60 to 0.50—rather than to 0.45 so as "to not unnecessarily restrict development." (AR 665.) Mr. Allen again confirmed that, as a result

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of the State ADU law that exempts ADUs from FAR calculations, staff was recommending the FAR be further reduced to 0.45. (AR 666-67.)

The Council extensively discussed whether to support the staff recommendation of 0.45 FAR or adopt the Planning Commission recommendation of 0.50. (AR 750-768.) Vice Mayor Fisch explained that the difference between 0.45 versus 0.50 FAR "is about 250 to 270 square-feet" for the majority of lots in the City, which "does provide a little extra wiggle room. That's one extra bedroom . . . ." (AR 750.) Mayor Eriksson explained that 0.50 FAR would provide 250 square feet to "add another room for the kids" or "a good size office." (AR 756.) Councilmember Sahli-Wells also acknowledged that that the debate between 0.45 and 0.50 FAR "had to do specifically with the ADUs," and because ADUs do not count toward FAR, "we kind of lose some ground in terms of the original goals of the mansionization ordinance." (AR 762-763.) The Council ultimately moved to introduce the Ordinance, with an amendment further reducing FAR to 0.45 (as opposed to 0.50 as recommended by the Planning Commission). (AR 768.)

D. Culver City Creates Entirely New Justification for the Ordinance.

After the May 26, 2020 meeting, petitioner YIMBY was apprised of the City's action and submitted a letter to inform the City Council that the Ordinance would violate SB 330, which forbids the City from enacting zoning changes that reduce the intensity of residential development, including an express prohibition against reductions in FAR. (AR 854-55.) In the face of this quandary and clear violation of state law, the City now needed to create an entirely new justification for the proposed FAR reduction. Perhaps harkening back to the realization that exempting ADUs from FAR calculations "*[o]ptically* encourages" ADUs (AR 79), Planning staff stated *for the very first time in three years* that they "believed the proposed zoning code amendment would create opportunities for new housing stock through Accessory Dwelling Units" (AR 906). As a result of this new legal issue that had not previously been considered, the City Council postponed adoption of the Ordinance. (AR 907.)

Just minutes after adoption was postponed, Planning Manager Michael Allen emailed the California Department of Housing and Community Development ("HCD") with questions about the new zoning standards. (AR 952.) Mr. Allen told HCD that "a significant portion of the standards

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were geared towards creating space that could/would facilitate ADU/JADUs" (AR 953), even though there was no evidence in the record to support that statement, and Mr. Allen had just told the City Council that the "driving force" behind the proposed changes was "residents' concerns of the size and scale of new construction." (AR 664.)

E. The Ordinance is Adopted without Supporting Evidence.

On July 13, 2020, the City Council held a meeting to again consider adoption of the zoning amendments. (AR 980.) This time, the staff report included an entirely new section to address the purported new justification for the proposed Ordinance, that the Ordinance "further advances City initiatives to build additional housing" by "incentivizing" ADUs, which was completely at odds with the past three years of reports, statements, and meetings. (AR 981-83.)

Just days before the hearing, one concerned resident emailed City staff to explain how the FAR reduction would impact her ability to house her disabled father, reduce the resale value of her home, and impact her ability to secure a construction loan. (AR 961-62.) When City staff responded that she could just build an ADU instead, she replied that she "explored the ADU route" but that she "can't afford to install a kitchen, bath, run plumbing, increase the electrical, and install a separate HVAC for what winds up being a separate house." (AR 961.) City staff did not respond.

YIMBY exchanged calls and emails with City staff, wherein YIMBY repeatedly requested evidence to support the City's position that reducing FAR would "incentivize" the production of ADUs. (AR 1133, 1334, 1356, 1359, 1365, 1368, 1371.) YIMBY explained that on the vast majority of lots, there would still be ample space to construct an ADU with the original 0.60 FAR. (AR 1133-1136.) Although the City stated that staff "have additional information and a more in depth analysis to support the City's position," the City attorney needed to "determine what other information we may be able to provide." (AR 1357) Ultimately, the City did not provide any additional information or analysis to support its position. Regardless, the City Council unanimously adopted the Ordinance. (AR 1079.)

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III. ARGUMENT

A. Standard of Review.

A writ of mandate is the appropriate procedure whereby an aggrieved party may challenge the enactment of a local ordinance. (Civ. Proc. Code § 1085; *Western States Petroleum Ass'n v. Sup. Ct.* (1995) 9 Cal. 559, 556-558.) Challenges involving the interpretation and applicability of a statute raise questions of law that are reviewed de novo and require an "independent determination by the reviewing court." (*Harroman Co. v. Town of Tiburon* (1991) 235 Cal.App.3d 388, 392.) In construing a statute, a court must "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Dubois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387.) However, "[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature . . . ." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) Moreover, "significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose." (*People v. McCart* (1982) 32 Cal.3d 338, 342-343.) Statutes must also be considered "in the context of the entire statutory system" to achieve harmony and further legislative intent. (*People v. Woodhead* (1987) 43 Cal. 3d 1002, 1009.)

B. SB 330 Prohibits Any Ordinance That Lessens the Intensity of Housing.

In enacting SB 330, the Housing Crisis Act of 2019, the Legislature found and declared that "adequate housing, in light of the severe shortage of housing at all income levels in this state, is a matter of statewide concern and is not a municipal affair." (Housing Crisis Act of 2019, SB 330, § 14.) In response to this statewide concern, SB 330 places significant limitations on a local agency's ability to enact any ordinance that would "lessen the intensity" of housing. SB 330 prohibits, inter alia:

> Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B).
>
> For purposes of this subparagraph, "less intensive use" includes, but is

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> not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.
> (Gov. Code § 66300(b)(1)(A).)

SB 330 broadly defines "less intensive use" to mean any reduction or constraint on the space available on a parcel where housing could potentially be built and specifically includes a reduction in FAR. In other words, the goal of SB 330 is to make *more* room for housing on every parcel, not less. SB 330 further states that "[a]ny development policy, standard, or condition enacted on or after the effective date of this section that does not comply with this section shall be deemed void." (Gov. Code § 66300(b)(2).)

C. Culver City Violated SB 330 by Enacting Ordinance No. 2020-010.

1. SB 330 Prohibits Any Reduction in FAR.

SB 330 states that a local agency shall not enact a development policy, standard, or condition that would result in changing a parcel's zoning "to a less intensive use or reducing the intensity of land use" below what was allowed and in effect on January 1, 2018. SB 330 provides a precise definition of the term "less intensive use," which includes "reductions to height, density, ***or floor area ratio***, . . . or anything that would lessen the intensity of housing." (Gov. Code § 66300(b)(1)(A).)

When the language of a statute is clear and unambiguous, "there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; *see also Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1073.) The City argues that SB 330 was only intended to apply to regulations that lower density or reductions in FAR that would have the same effect as lowering density. (AR 1124.) But the City's interpretation directly conflicts with the plain language of the statute. SB 330 applies to regulations that would result in a "less intensive use," and the statute provides a specific definition of "less intensive use" that include any reduction in FAR, not just reductions that result in a lower density. The language of SB 330 is clear and unambiguous, and that should be the end of the inquiry.

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Second, when construing a statute, "significance should be given to every word, phrase, sentence and part of an act." (*People v. McCart* (1982) 32 Cal.3d 338, 342-343.) SB 330 defines "less intensive use" to include "reductions to height, density, ***or*** floor area ratio." The City's interpretation fails to give any significance to the words "floor area ratio." Moreover, the definition is written with the disjunctive "or," which courts infer to mean that *only one* of the listed requirements need be satisfied. (*FCC v. Pacifica Foundation* (1978) 438 U.S. 726, 740 (explaining that words written in the disjunctive imply "that each has a separate meaning"); *see also Kray Cabling Co. v. County of Contra Costa* (1995) 39 Cal.App.4th 1588, 1592.) Here, the definition of "less intensive use" includes a reduction in density ***or*** a reduction in floor area ratio, meaning that a reduction in density alone, or a reduction in FAR alone, constitutes a "less intensive use."

Statutes must also be considered "in the context of the entire statutory system." (*People v. Woodhead* (1987) 43 Cal. 3d 1002, 1009.) The Legislature "is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof." (*People v. Harrison* (1989) 48 Cal.3d 321, 329; *see also People v. Quintana*, (2001) 89 Cal.App.4th 1362, 1368.) The Legislature knows how to say "density" when it means "density." For example, the Housing Accountability Act, codified at Gov. Code § 65589.5 et al., *which was amended as part of SB 330,* prohibits a local agency from requiring a housing development project to be developed at a "lower density." The HAA defines "lower density" to include "any conditions that have the same effect or impact on the ability of the project to provide housing." (Gov. Code § 65589.5(h)(7).) If the Legislature had intended for SB 330 to only apply to zoning changes that would lower density, or have the same effect as lowering density, it would have used the term "lower density" in the same manner as in the Housing Accountability Act. It did not.

Finally, Gov. Code § 66300(f)(2) explicitly states, "It is the intent of the Legislature that this section be broadly construed so as to maximize the development of housing within this state." The Legislature has provided a clear direction that any question of interpretation should land on the side of more protections for housing. The City here is suggesting that "less intensive use" should be construed narrowly to only mean a reduction in housing density and not other reductions in

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residential capacity. A narrow interpretation defies the clear direction of the Legislature to interpret SB 330 broadly to maximize housing, and, therefore, the City's interpretation must be rejected.

2. Ordinance No. 2020-010 Reduces FAR in Violation of SB 330.

Prior to enacting Ordinance No. 2020-010, the existing FAR limit for R-1 parcels in Culver City was 0.60. Approximately 82% of R-1 parcels in Culver City are over 5,000 square feet, with a majority falling between 5,000 and 6,000 square feet. (AR 426-27.) An FAR of 0.60 on a typical 5,000 square-foot lot allowed for a 3,000 square-foot residence. In addition, state ADU law exempts ADUs from FAR regulations and requires the approval of a maximum of one 1,200 square-foot ADU per lot. Thus a typical 5,000 square-foot R-1 parcel in Culver City allowed for a total of 4,200 square feet of residential capacity – an effective FAR of 0.84.

Ordinance No. 2020-010 reduced FAR for the primary residence from 0.60 to 0.45. An FAR of 0.45 on a typical 5,000 square-foot lot would only allow for a 2,250 square-foot residence. With a 1,200 square-foot ADU, a typical 5,000 square-foot R-1 parcel in Culver City now only allows for a total of 3,450 square feet of residential development, an effective FAR of 0.69 and a reduction of 750 square feet of residential capacity on a typical lot.

The City states that approximately 4,165 parcels are subject to the Ordinance. (AR 1133.) Thus, at a minimum, Ordinance No. 2020-010 would result in a reduction of over *3 million square feet of residential capacity.*[2] The City vigorously debated whether to impose a 0.45 FAR or 0.50 FAR, which the Council acknowledged was a difference of 250 square feet that could be used to "add another room for the kids." (AR 756.) Ultimately, the Council adopted the *smaller* 0.45 FAR standard, a decision that reduced residential capacity by 1 million square feet more than the 0.50 FAR standard – or over 4,000 250-square-foot bedrooms.

[2] Assuming all 4,165 parcels are 5,000 square feet, a 750 square-foot reduction per lot multiplied by 4,165 parcels equals a total reduction in residential capacity of 3,123,750 square feet. Because a significant portion of the parcels are larger than 5,000 square feet, this figure likely underestimates the total reduction. (AR 23.)

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The reduction in FAR is particularly problematic in the face of a newly enacted state law, SB 9, which goes into effect January 1, 2022. SB 9 seeks to increase development on single-family parcels by requiring local governments to ministerially approve lot-splits, as well as the construction of two units per single-family lot. (Senate Bill 9, ch. 162, 2021 Cal. Stat.) The legislative analysis of the bill specifically referenced the potential to impact housing in the L.A. region, stating that "if one in five single-family lots were re-zoned to hold two homes, the local housing stock could be boosted by 775,000 homes." (*Senate Committee on Housing Senate Bill 9 Analysis*, April 15, 2021, at 7.)

Ordinance No. 2020-010 will negatively impact the effectiveness of SB 9. If an owner tried to construct two units on one 5,000 square-foot lot and both units count toward the 0.45 FAR standard, an owner could only construct two 1,125 square-foot dwellings, *which is smaller than the size of an ADU that is already allowed per state law.* Similarly, on a typical 5,000 square-foot lot split into two 2,500 square-foot lots, an FAR of 0.60 would allow the construction of a 1,500 square-foot home, while an FAR of 0.45 would only allow the construction of a 1,125 square-foot home – which again is smaller than the size of an ADU. The Ordinance violates SB 330 and thwarts the goals of SB 9, and is therefore void.

3. Ordinance No. 2020-010 Does Not "Incentivize" ADUs.

Ordinance No. 2020-010 has no impact on the ability of a property owner to construct an ADU or JADU. The prior 0.60 FAR limit did not preclude or discourage the development of ADUs, and the only impact of the Ordinance is to reduce residential capacity within the City by over 3 million square feet. The City appears to suggest that the existing FAR limit physically precludes the development of ADUs and that Ordinance No. 2020-010 fixes this "problem" by "preserving buildable area on the lot." (AR 951-52.) However, this "problem" is not based on evidence or fact.

The municipal code requires a rear setback of 15 feet for the primary dwelling (AR 884), but only a two-foot rear setback for an accessory structure (AR 684). A typical 5,000 square-foot lot is 50 feet wide. (AR 278.) This means that there is an approximately 598 square-foot building area for an accessory structure that has absolutely no overlap with the building area for the primary dwelling. State law requires local governments to allow an ADU of 16 feet in height, which allows

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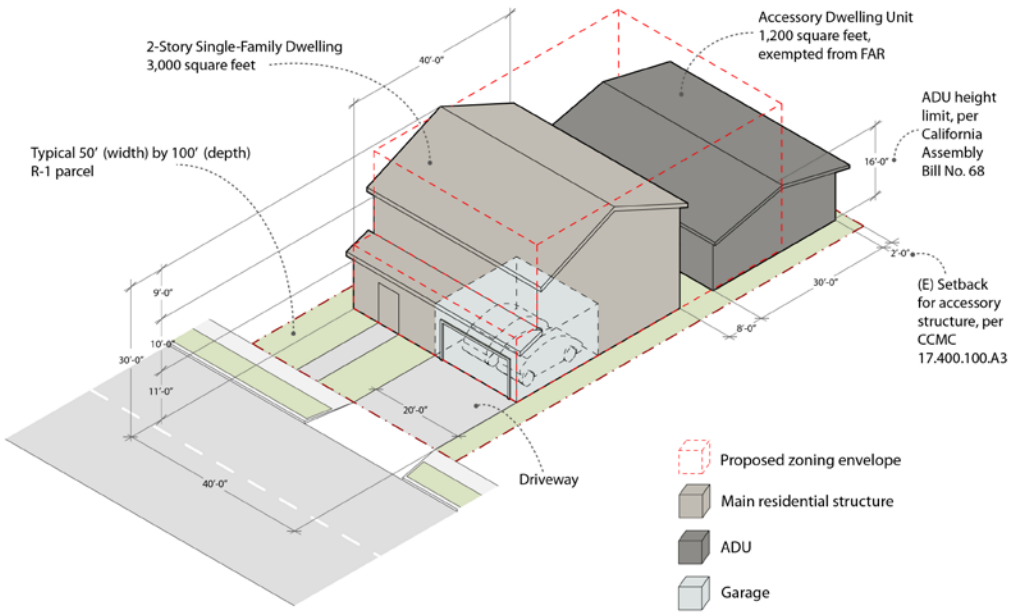
for a two-story structure.[3] Hence, if a property owner used every square inch of buildable area for the primary residence, he or she could still build a 1,196 square-foot ADU, just four square feet shy of the maximum.

This also assumes that a primary residence utilizes every square inch of buildable area for the primary dwelling, which is only possible if a property owner maximizes FAR while constructing a one-story structure – not the "typical" development pattern within the City. The City's own architectural consultants showed the City what the "typical" 0.60 FAR primary dwelling, with a 1,200 square-foot ADU, on a 5,000 square-foot lot looks like under the existing zoning, as shown in the consultants' diagram below. (AR 296.)



(AR 296.)

The City clearly understood that a 1,200 square-foot ADU with a 3,000 square-foot home was entirely possible under the existing zoning. Additionally, the City Council further reduced FAR from 0.50 to 0.45 because state law exempted ADUs from FAR calculations, thwarting the City's

[3] The California Residential Building Code allows for ceiling heights of as little as seven feet, making a two-story structure entirely feasible with a 16-foot height limit. (Cal. Residential Code, Tit. 24, Part 2.5 § R305.)

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attempt to lessen the intensity of housing on single-family parcels – not to "incentivize" the development of ADUS as they now claim. (AR 666-667.) As demonstrated during the three-year process leading up to the enactment of Ordinance No. 2020-010, the sole purpose of the Ordinance was to lessen the intensity of housing on single-family parcels "by reducing bulk and mass" for the "maintenance of existing single-family neighborhood character." (AR 519.)

The City also argues that the Ordinance incentivizes ADUs by reducing costs and providing property owners "a potential income source to offset their own housing costs and provide additional housing supply to multigenerational family members." (AR 982.) First, Ordinance No. 2020-010 has no impact on the ability of a property owner to construct an ADU or JADU on their property, and any supposed "cost reductions" are premised on the flawed assumption that the Ordinance somehow made the construction of ADUs easier. That is simply not the case.

Moreover, the City provides no evidence that the development of ADUs is a more cost-effective option for homeowners than maximizing the FAR of an existing primary dwelling unit. Ordinance No. 2020-010 may actually *increase* the costs of a housing project by limiting a property owner's ability to add additional habitable space to an existing home. As one resident explained in an email to City staff, she had "explored the ADU route" to provide housing for her disabled father but "can't afford to install a kitchen, bath, run plumbing, increase the electrical, and install a separate HVAC for what winds up being a separate house." (AR 961.) She also explained that the FAR reduction reduced the resale value of her home and impacted her ability to secure a construction loan. (AR 962.) Prior to the Ordinance, an owner could build a 3,000 square-foot primary dwelling or construct an ADU, *or both*. After the Ordinance was enacted, the only choice for an owner is to construct an ADU, but for those who cannot afford the added expense of an ADU the Ordinance leaves them with *no option to construct additional housing at all.*

The Ordinance also added definitions to the term "kitchen" and "dwelling unit" to explicitly prohibit more than one kitchen per unit to address concerns that "people were building lots of kitchens in units and, in essence, were creating internal apartment buildings . . . ." (AR 321-22.) The Ordinance makes it *harder* for families to utilize existing space to house multi-generational families without incurring the additional expense of constructing an entirely separate ADU.

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Regardless, even if the reduction in FAR somehow incentivized the construction of ADUs, the reduction would still be prohibited by SB 330 because a reduction in FAR constitutes a less intensive use. The driving force behind SB 330 is to make the development envelope larger, not smaller. If the City wants to make ADUs easier to build, there are many potential "more intensive" options that could have been enacted to achieve this goal. The City could eliminate the 20-foot front setback and five-foot side setback for the primary dwelling, freeing up 1,500 square feet per parcel for residential development. The City could raise the ADU height limit to make two-story ADUs more desirable. The City could raise the height limit of the primary dwelling to allow for three-story structures. The City chose none of these options, because more intensive residential development was not the City's goal. The City wanted to reduce residential development on single-family parcels and change the single-family zoning to a less intensive use, which is exactly what SB 330 prohibits.

4. Ordinance No. 2020-010 Effectively Lowers Density.

SB 330's definition of "less intensive use" includes a list of specific changes that constitute a less intensive use, such as reductions in density or FAR. However, the definition also provides a catchall provision that includes "*anything* that would lessen the intensity of housing." (Gov. Code § 66300(b)(1)(A).) The Legislature's intent is clear: "less intensive use" should be interpreted broadly to include any zoning trick that a local agency may try in order to reduce residential capacity.

Although the density allowed within the R1 District is limited to one primary dwelling, the record demonstrates that the existing zoning allowed for multiple kitchens within a single unit, which in effect allowed an owner to create multiple independent living spaces within a single unit. Ordinance No. 2020-010 added definitions to the term "kitchen" and "dwelling unit" to explicitly prohibit more than one kitchen per unit. The definitions were added to address concerns that "people were building lots of kitchens in units and, in essence, were creating internal apartment buildings . . . ." (AR 321-22.) In other word, the definitions were added to prohibit an owner from creating multiple independent living spaces within a single unit, which was entirely permissible prior to the enactment of the ordinance. The practical effect of this zoning change was to lower the potential density within the R1 District, making it harder and more costly to create housing for

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multigenerational families without constructing a separate ADU. In short, limiting kitchens to one per unit lessens the intensity of housing and is therefore prohibited by SB 330.

5. None of SB 330's Exemptions Are Applicable to Ordinance No. 2020-010.

SB 330 contains three exemptions to its prohibition against zoning ordinances that change parcels to less intensive uses. (Gov't Code § 66300(i).) One exemption is only applicable to the City of San Jose, and one is only applicable to mobilehome parks – neither of which applies here. The final exemption states that SB 330 "does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county ***concurrently*** changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity." (Gov. Code § 66300(i)(1) (emphasis added).)

The City has suggested that subsequently enacted regulations somehow cancel out Ordinance 2020-010's violation of SB 330. (AR 1381-1383). This is simply not the case. SB 330 only allows for regulatory changes enacted "concurrently" to potentially offset a change to a less intensive use, not regulations enacted subsequently or even proactively.[4] Even if subsequent regulations were allowed to offset changes to a less intensive use, the City has provided no evidence that any housing regulations it has enacted adequately offset the three million square-foot reduction in residential capacity caused by Ordinance No. 2020-010 to ensure "no net loss in residential capacity." As such, this exemption is not applicable to Ordinance No. 2020-010.

IV. CONCLUSION

In the midst of a housing crisis, Culver City specifically set out to prohibit what it described as "excessive building" on single-family zoned parcels to protect "existing neighborhood character." Ordinance No. 2020-010 reduced FAR on all 4,165 single-family parcels within the City, which

[4] SB 330 only permits the City of San Jose to "proactively" change zoning to a more intensive use and to subsequently use the additional capacity to offset future changes to less intensive uses, but only under strict rules that include annual reports to the Legislature. (Gov. Code § 66300(i)(2)(A-D).)

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results in a reduction of up to three million square feet of residential capacity, in direct violation of SB 330. The Ordinance plainly lessens the intensity of housing on single-family parcels, which violates SB 330 and will only further exacerbate the housing crisis. Petitioners seek an order enjoining Respondents from enforcing Ordinance No. 2020-010 and declaring the Ordinance null and void.

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Respectfully submitted,

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