

# **Attachment A**

Resolution No. 2021-120

## **RESOLUTION NO. 2021-120**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, EXPRESSING SUPPORT FOR INITIATIVE NO. 21-0016 TO AMEND ARTICLE XI OF THE CALIFORNIA CONSTITUTION TO PROVIDE THAT LOCAL LAND USE AND ZONING LAWS OVERRIDE CONFLICTING STATE LAWS**

**WHEREAS**, the Legislature of the State of California in recent years has proposed, passed, and signed into law a number of bills addressing a range of land use planning and housing issues;

**WHEREAS**, the majority of these bills usurp the authority of local jurisdictions to determine for themselves the land use policies and practices that best suit each city and its residents and instead impose “one-size-fits-all” mandates that do not take into account the unique needs and differences of local jurisdictions throughout the State of California;

**WHEREAS**, the ability of local jurisdictions to determine for themselves which projects require review beyond ministerial approval; what parking requirements are appropriate for various neighborhoods; what housing plans and programs are suitable and practical for each community; and what zoning should be allowed for residential properties, rather than having these decisions imposed upon cities without regard for the unique circumstances and needs of each individual community, is a matter of critical importance to the City of Newport Beach (“City”) and many other municipalities focused on local zoning and housing issues;

**WHEREAS**, the City Council of the City of Newport Beach finds that local governments are best able to assess and respond to the unique needs of their respective communities and hereby objects to the proliferation of state legislation, including Senate Bills (SB) 9 and 10, that deprives the City of that ability; and

**WHEREAS**, Initiative No. 21-0016, would amend the California Constitution to restore local control of land use and zoning matters.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council opposes the adoption of legislation that overrides the zoning and land use authority of local government and inhibits the ability of local government to effectively plan for and implement policies to stimulate the efficient production of affordable housing.

**Section 2:** The City Council supports Initiative No. 21-0016, attached hereto as Exhibit A and incorporated herein, to ensure that zoning and land use authority rests with the local governmental entities that represent the communities in which their residents reside, and to allow local government to participate in solving affordable housing issues through solutions that effectively address the unique needs and conditions of each local community.

**Section 3:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 4:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 5:** The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 6:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

**ADOPTED** this 30th day of November, 2021.

\_\_\_\_\_  
Brad Avery  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachment: Exhibit A – Initiative 21-0016

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**PROVIDES THAT LOCAL LAND-USE AND ZONING LAWS OVERRIDE**

**CONFLICTING STATE LAWS. INITIATIVE CONSTITUTIONAL AMENDMENT.**

Provides that city and county land-use and zoning laws (including local housing laws) override all conflicting state laws, except in certain circumstances related to three areas of statewide concern: (1) the California Coastal Act of 1976; (2) siting of power plants; or (3) development of water, communication, or transportation infrastructure projects. Prevents state legislature and local legislative bodies from passing laws invalidating voter-approved local land-use or zoning initiatives. Prohibits state from changing, granting, or denying funding to local governments based on their implementation of this measure. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: **Fiscal effects of the measure depend on future decisions by the cities and counties and therefore are unknown.**

(21-0016A1.)

SECTION 1. The people of the State of California find and declare all of the following:

- (a) The circumstances and environmental impacts of local land use decisions vary greatly across the state from locality to locality.
- (b) The infrastructure required to maintain appropriate levels of public services, including police and fire services, parklands and public open spaces, transportation, water supply, schools, and sewers varies greatly across the state from locality to locality.
- (c) Land use decisions made by local officials must balance development with public facilities and services while addressing the economic, environmental, and social needs of the particular communities served by those local officials.
- (d) Thus, it is in the best interests of the state and local communities for these complex decisions to be made at the local level to ensure that the specific, unique characteristics, constraints, and needs of those communities are properly analyzed and addressed.
- (e) Gentrification of housing adjacent to public transportation will reduce or eliminate the availability of low or very low income housing near public transit, resulting in the loss of access by low or very low income persons to public transit, declines in public transit ridership, and increases in vehicle miles travelled.
- (f) The State Legislature cannot properly assess the impacts upon each community of sweeping centralized and rigid state land use rules and zoning regulations that apply across the state without regard to community impacts and, as a result, statewide land use and zoning will do great harm to local communities with differing circumstances and concerns.
- (g) Community development should not be controlled by state planners, but by local governments that know and can address the needs of, and the impacts upon, local communities. Local initiatives approved by voters pertaining to land use and zoning restrictions should not be nullified or superseded by the actions of any local or state legislative body.
- (h) Numerous state laws that target communities for elimination of zoning standards have been enacted, and continue to be proposed, that eliminate or erode local control over local development and circumvent the California Environmental Quality Act ("CEQA"), creating the potential for harmful environmental impacts to occur.
- (i) The purpose of this measure is to ensure that all decisions regarding local land use controls, including zoning law and regulations, are made by the affected communities in accordance with applicable law, including but not limited to CEQA (Public Resources Code § 21000 et seq.), the California Fair Employment and Housing Act (Government Code §§ 12900 – 12996), prohibitions against discrimination (Government Code § 65008), and affirmatively furthering fair housing (Government Code § 8899.50). This constitutional amendment would continue to provide for state control in the coastal zone, the siting of a power plant that can generate more than 50 megawatts of electricity, or the development or construction of water, communication or transportation infrastructure projects which the Legislature declares are matters of statewide concern and are in the best interests of the state. For purposes of this measure, it is the intent that a transportation infrastructure project shall not include a transit-oriented development project that is residential, commercial, or mixed-use.

SECTION 2. Section 4.5 is added to Article XI of the California Constitution, to read:

SEC. 4.5. (a) Except as provided in subdivision (b), in the event of a conflict with a state statute, a county charter provision, general plan, specific plan, ordinance or a regulation adopted pursuant to a county charter, that regulates the zoning, development or use of land within the boundaries of an unincorporated area of the county shall be deemed a county affair within the meaning of Section 4 and shall prevail over a conflicting state statute. No voter approved local initiative that regulates the zoning, development or use of land within the boundaries of any county shall be overturned or otherwise nullified by any legislative body.

(b) A county charter provision, general plan, specific plan, ordinance or a regulation adopted and applicable to an unincorporated area within a county, may be determined only by a court of competent jurisdiction, in accordance with Section 4, to address either a matter of statewide concern or a county affair if that provision, ordinance, or regulation conflicts with a state statute with regard to only the following:

- (1) The California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.
- (2) The siting of a power generating facility capable of generating more than 50 megawatts of electricity and the California Public Utilities Commission has determined that a need exists at that location that is a matter of statewide concern.
- (3) The development or construction of a water, communication or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this paragraph, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed-use.

(c) No modification to appropriations for state funded programs shall occur, and no state grant applications or funding shall be denied as a result of the application of this section. No benefit or preference in state appropriations or grants shall be given to an entity that opts not to utilize the provisions of this section.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 3. Section 5.5 is added to Article XI of the California Constitution, to read:

SEC. 5.5. (a) Except as provided in subdivision (b), in the event of a conflict with a state statute, a city charter provision, general plan, specific plan, ordinance or a regulation adopted pursuant to a city charter, that establishes land use policies or regulates zoning or development standards within the boundaries of the city shall be deemed a municipal affair within the meaning of Section 5 and shall prevail over a conflicting state statute. No voter approved local initiative that regulates the zoning, development or use of land within the boundaries of any city shall be overturned or otherwise nullified by any legislative body.

(b) A city charter provision, general plan, specific plan, ordinance or a regulation adopted pursuant to a city charter, may be determined only by a court of competent jurisdiction, in accordance with Section 5, to address either a matter of statewide concern or a municipal affair



if that provision, ordinance, or regulation conflicts with a state statute with regard to only the following:

- (1) The California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.
  - (2) The siting of a power generating facility capable of generating more than 50 megawatts of electricity and the California Public Utilities Commission has determined that a need exists at that location that is a matter of statewide concern.
  - (3) The development or construction of a water, communication or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this paragraph, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed-use.
- (c) No modification to appropriations for state funded programs shall occur, and no state grant applications or funding shall be denied as a result of the application of this section. No benefit or preference in state appropriations or grants shall be given to an entity that opts not to utilize the provisions of this section.
- (d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 4. Section 7 of Article XI of the California Constitution is amended to read:

SEC. 7. (a) A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations ~~not that are not, except as provided in subdivision (b), in conflict with general laws. A county or city may not supersede or otherwise interfere with any voter approved local initiative pertaining to land use or zoning restrictions.~~

(b) A county or city general plan, specific plan, ordinance or regulation that regulates the zoning, development or use of land within the boundaries of the county or city shall prevail over conflicting general laws, except for only the following:

(A) A coastal land use plan, ordinance or regulation that conflicts with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.

(B) An ordinance or regulation that addresses the siting of a power generating facility capable of generating more than 50 megawatts of electricity and the California Public Utilities Commission has determined that a need exists at that location that is a matter of statewide concern.

(C) An ordinance or regulation that addresses the development or construction of a water, communication or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this subparagraph, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed-use.



(c) No modification to appropriations for state funded programs shall occur, and no state grant applications or funding shall be denied as a result of the application of this section. No benefit or preference in state appropriations or grants shall be given to an entity that opts not to utilize the provisions of this section.

(d) The provisions of this subdivision are severable. If any provision of this subdivision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.