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Subject: SB 10 Should Be Vetoed: PCL's View Explained



SB 10 Should Be Vetoed PCL's View Explained

PCL appreciates the continued efforts of Senator Wiener, and this bill's multiple co-authors, to address California's affordable housing crisis, but SB 10 misses the mark. Amongst other concerns with the bill, our primary objection lies with the provision that would allow cities and counties to override local voter-approved initiatives in the enactment of SB 10's provisions.

We sympathize with the need to revisit outdated voter-approved land use ordinances that inhibit inclusionary densification, but giving unilateral authority to jurisdictions to over-ride the constitutionally-defined power of the people is the wrong approach. Amendments made to limit this provision do not go far enough to address the sweeping implications this could have on all types of constructive voter-approved land use actions--including urban growth boundaries, inclusionary housing ordinances, and rent-control ordinances. SB 10 will undermine the voter-initiative power of the public, a fundamental tenet of a functioning democracy.

Judicial remedies already exist to invalidate outdated initiatives. The legislature has the power to preempt what the public can or cannot vote on by statute, but the legislature does not have the authority to alter the constitutionally defined power itself by statute. We believe SB 10 would be unconstitutional if enacted, and for this reason, we urge the Governor to veto this bill.

If this concerns you as well, please send a note to the Governor here:

<https://govapps.gov.ca.gov/gov40mail/>

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leg.unit@gov.ca.gov

Please feel free to use the wording above as a template for your comments

If you want PCL's view on the rest of SB 10, read on:

The outstanding concern described above aside, PCL's view on the rest of what SB 10 does is also indicative of PCL's approach to much of California's housing legislation.

SB 10 allows jurisdictions to streamline approval of an ordinance to up-zone most residential and mixed-use areas up to 10 units per parcel (in some cases 14), as the city or county sees fit. The "streamlining" offered is a California Environmental Quality Act (CEQA) process exemption for the General Plan amendment that would normally be required for such an up-zone. Projects in these up-zoned areas would then, in some cases, also be applicable to further existing project-level CEQA review exemptions, side-stepping the public process that CEQA provides entirely. Projects of 10 units or more that would be a part of this ordinance would be prohibited from using further CEQA exemptions or ministerial approvals.

Environment, siting, and location efficiency:

PCL supports bold action in confronting California's affordable housing crisis, and the intent of SB 10. We support densification of existing urban areas, without displacement of existing vulnerable residents. And, though PCL is a staunch defender of CEQA, we also support CEQA streamlining of housing and mixed-use development, so long as it is strictly directed to the places that will help California achieve its climate mandates and provide equitable access to opportunity. For PCL this means that CEQA streamlining and other incentives and resources should be laser-focused on location efficient areas with equitable access to jobs, services and transportation options, explicitly excluding sensitive natural and working lands, as well as hazardous sites.

SB 10 constrains its streamlining provisions to existing urban areas and urban clusters as defined by the Census in unincorporated areas, but not cities. There are a lot of important undeveloped natural and working lands within the boundaries of California's cities, and SB 10 and other legislation should, at a minimum constrain these streamlining incentives to existing urban areas in both cities and counties. Yet, for CEQA streamlining and densification measures as strong as this, PCL would argue that the Census definition of an urban area is not a strong enough constraint. Densification of single-use residential neighborhoods remote from jobs and services will only increase vehicle miles traveled (VMT) and corresponding GHG emissions. Densification streamlining should be focused on areas that readily provide access to jobs, essential services, and transportation options.

PCL feels this "location efficiency" is best measured by VMT performance. The Office of Planning and Research defines areas of low-VMT to be areas that exhibit -20% regional or city average per capita VMT. PCL supports this general definition, but jurisdictions can determine their VMT performance requirements according to local conditions. If done correctly, "Low-VMT" zones can accommodate self-sufficient urban, suburban, and rural communities alike, and PCL has recommended that SB10, and other housing legislation such as SB 9 and SB 6, use this definition of location efficiency as the geographical condition of the bill.

Further, PCL also does not believe SB 10 goes far enough to restrict densification in areas subject to wildfire. SB 10 excludes the application of its provision in "Very High Risk" fire areas, but not "High-Risk" fire areas. Given the current state of California fire conditions, we believe this is irresponsible, and that High-Risk areas should also be excluded from these incentives.

Finally, on the topic of siting, SB 10 does not go far enough to prohibit the use of this CEQA exemption incentive on a range of natural sensitive land types or known hazardous toxic sites. These exclusions are commonly used in housing legislation that provides CEQA exemptions and they should have been included in SB 10.

Equity and displacement:

Further, when we are focusing incentives and resources on the densification of existing communities, we must account for the gentrification and displacement pressures these investments can bring on low-income residents in these communities—particularly long-underserved communities of color. To be clear, we want investments in these communities, but we must make sure these improvements do not inadvertently displace the very residents we are trying to serve. If displacement impacts are not adequately accounted for by our housing legislation and funding programs, we only risk the perpetuation of historical patterns of segregation, and undercut our ability to achieve our GHG reduction mandates by pushing low-income workers into ever longer commutes.

By increasing the unit capacity and property value potential of a parcel, up-zoning can spur speculation that can lead to both the demolition of existing low-income housing and the general gentrification of a neighborhood that drives indirect displacement. There are many ways to mitigate potential displacement: constraints on the demolition of existing housing, replacement requirements, “right of first return” and many other strategies. Yet, the primary way of mitigating displacement is the protection of existing affordable housing and the promotion of more affordable housing, California’s greatest need.

SB 10 requires no consideration or mitigation of displacement. There are no demolition protections. There is no requirement that a portion of the housing produced using these provisions are to be affordable to lower-income households. Nor, is there a value capture mechanism required for the jurisdiction to set aside a portion of the value increases of these parcels to be used for affordable housing. Housing advocacy organizations including the California Rural Legal Assistance Foundation, Western Center on Law and Poverty, and the Public Interest Law Project have pointed out that the prohibition of subsequent CEQA exemptions on projects of 10 or more units that are part of an SB 10 ordinance runs counter to other existing CEQA exemptions that could provide for more affordable housing, inadvertently limiting the production of affordable units.

We agree with the recommendation of these same organizations that the by-right up-zonings of SB 10 should have been explicitly linked to sites identified by the jurisdiction’s Housing Element process. A housing element is produced with substantial review by the public and the state, requires careful balance of housing need across a range of incomes and assures compliance to Affirmatively Furthering Fair Housing law. Further, absent stronger affordable housing and anti-displacement requirements in SB 10, we also agree with the above organizations that the bill should have excluded lower-income housing sites identified by the housing element, so as not to inadvertently inhibit a jurisdiction’s affordable housing capacity.

Again, PCL supports bold action in confronting California’s affordable housing crisis, but these actions must still be made thoughtfully. Providing for more housing alone will not meet California’s needs. To meet our climate and equity goals, where that housing is, and who it serves, matters. SB 10, like much of the Senate housing package, does not control for location efficiency or equity as much as it must, and for this reason, we respectfully urge the Governor to veto the legislation.

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