From: Zac Bowling
To: City Clerk; Manager Manager; Malia Vella; Marilyn Ezzy Ashcraft; John Knox White; Trish Spencer; Tony Daysog; Andrew Thomas; City Attorney
Subject: [EXTERNAL] Public comment re SB 9 Urgency Ordinance: 2021-1571
Date: Friday, December 17, 2021 12:56:02 AM

Mayor and council members,

A city can not rezone under an urgency ordinance unless there is "a current or immediate threat to public health, safety, or welfare" according to government code. New SB 9 units being allowed in R-1 do not meet that criteria, especially since we allow similar ADUs units today. Urgency ordinances were not designed to give local governments a way to react to changes in state law to nullify the effect of the law but rather to react to impeding local changes that could be a public hazard as laid out in the same government code governing urgancy measures.

Additionally given provisions of SB-9 specifically exclude developments in high fire hazard severity zones, earthquake fault zones and/or covered by conservation/open space easements, there is no basis to assume that SB-9 would lead to a public hazard worthy of an urgancy measure.

Further, the Housing Accountability Act and SB-9 permit cities to disapprove a project, even a ministerial, by-right one, that would cause a specific, adverse health or safety impact by making the finding, based on a preponderance of evidence, that the project would cause such an impact based on a violation of existing objective health and safety standards.

Given that, SB-9 going into effect on January 1st could not lead to a situation where there could be a "current or immediate threat to public health, safety, or welfare". Staff would have the ability to deny any such SB-9 usage that provably creates such issues.

For that reason, Councilmember Herrera Spencer's arguments calling for an emergency rezoning under an urgancy ordinance are therefore out of line with the requirements under state law.

A few cities have made use of an urgency ordinance in relation to making reactionary changes to try and restrict SB 9 usage as much as possible (often to try and make it infeasible to use). However after being tipped off by several groups to this method, both the attorney general office and HCD are currently scrutinizing this type of action to determine if is entirely legal. Additionally a few housing organizations are also considering their own legal remedies with the cities that have pulled this manover to avoid proper noticing (some also violating SB330 in the process).

Contrary to Mr. Paul Forman and Jay Garfinkle correspondence that lead to this council referral (and the councilmember's rephrasing of that same argument in the referral itself), simply not having objective design standards on January 1st does raise to the bar of impending emergency worthy of using an urgancy ordinance to enact since the lack thereof does not, again, create a threat to public health, safety, or welfare.

The city will bring an item up from planning board to council to pass in due time following proper noticing and agendizing of the items. In the interim it is unlikely that the city will get many SB-9 applications. However, even if we do, given where planning board landed on these

standards so far it's unlikely that any project filed before the new standards go into effect will not fit these design criteria anyways, making this item is entirely moot.

I ask that the author withdraw this council referral. If this does end up being herd, I ask that all of council vote to take no action on this item to avoid putting the city in the cross hairs of the state or anyone that would bring claim against the city for violating state law on urgency measures and not properly noticing all zoning changes. I would hope that I don't need to point out that you have a fiscal responsibility to avoid risking the city by pushing it into unnecessary litigation and voting to take any action this could do that.

Thank you,

Zac Bowling