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June 15, 2021

Hon. Senator Scott Wiener,
State Capitol
Sacramento, CA 95814

Subject: OPPOSE SB 10 (Wiener) as amended 6/14/21

Dear Senator Wiener,

Livable California, a 501(c)4 non-profit, represents over 10,000 stakeholders committed to critical aspects of state policy at the local level. We strongly support affordable housing and self-determination of local government. Due to its failure in both of those areas, **we strongly oppose SB 10.**

While represented as a tool to enable local government to make up their own minds about up-zoning, once read it clearly oversteps many of the nuanced guardrails of local self-determination. It even ties the hands of future local elected officials.

SB 10 is fatally flawed and does not do what it says it does. It is a luxury housing proposal that benefits private sector developers, not communities or neighborhoods.

Senate Bill 10 concludes with a finding that affordable housing is a matter statewide concern and that by removing “potential restrictions,’’ the natural result will be affordable housing [footnote 1]. Yet SB 10 is specifically structured to not address affordable housing: there are no limitations placed on the rent or sales price of any housing unit that will be constructed through its implementation. There is not a shortage of luxury or “above moderate income” in California [footnote 2]. The bill fails on its face to further the production of affordable housing. **The finding is untrue. Since this finding is false, the Housing Committee should make the**

finding that SB 10 “is a state mandate that requires state funding to become law."

Moreover, it contains a disturbing attack on the democratic fundamentals of local self-determination: the guaranteed constitutional right of “one-person one-vote.” Under SB 10, any city council, on a 3-2 vote (given 5 members), can override the will of voters in an entire community. This is precisely what the language of SB 10 enables [footnote 3]. Undermining the voting rights within its cities will cost the state millions of dollars to defend.

Senate Bill 10 makes a finding, on behalf of cities/counties that up-zone parcels within their jurisdictions that relieves them from thoughtfully evaluating neighborhood and community members’ displacement as a result of removing “barriers” to market-rate housing production [footnote 4]. The displacement of residents as a result of gentrification of middle- and lower-income neighborhoods will be a great cost to the state.

As a result of amendments, SB10, adds 4 more units (J/ADU, 2 each), for a new total of 14 dwelling units. The **40% density increase has implications for environmental and infrastructure demands;** but bill language states the dwelling units shall not count as dwelling units.

Will the Senator’s office clarify how a bill written for 14 dwelling units, remains a 10-dwelling unit building?

SB 10 sweeps away any environmental assessment requirements, including critical cumulative impacts arising from the parcel(s) up-zoned under its proposed rules. The appeal to market-rate private sector developers is obvious:

A. More density. Little or no parking,
B. No environmental mitigation measures required,
C. Application of ADU law for at least 2 additional units,
D. Density bonus law, which enables waivers from height restrictions or other objective design standards [footnote 5]**.**

On what basis are environmental impacts and their mitigations deferred? What happens to cumulative environmental affects with project-by-project review? How are communities to address increased demands on parks, open space, sewer, water consumption for the entire area up-zoned?

All elements of a general plan, whether mandatory or optional, must be consistent with one another. Cities rely on the general plan for capital improvement forecasts and many other land use actions. For example, the regular maintenance and upgrade of old sewer lines and treatment

facilities; urban water management plans; or renovation of recreation facilities. An “automatic” declaration that a general plan land use and up-zoning are permitted without a study of the infrastructure impacts is irresponsible. Who pays? Finally, all elements of the general plan have equal legal status and internal consistency requires that no policy conflicts, either textual or diagrammatic, can exist. SB 10 skirts the requirements of general plan law.

Notwithstanding any subsequent planning, zoning or environmental issues that arise from up-zoning completed under SB 10, it specifically prohibits local governments from correcting their mistakes [footnote 6]**.** This completely ties the hands of future local legislators.

SB 10 is a bad bill and does not fulfill its stated intent to ensure the production of affordable housing. It should be rejected for the additional costs it imposes on the state through legal challenges, inadequate infrastructure capacity and natural gentrification as the private sector seeks highest and best use relieved of any obligations for mitigation or affordability.

Livable California strongly **opposes SB 10.**

Sincerely,

The Board of Directors of Livable California

Rick Hall, President
T Keith Gurnee, Member
Carey White, Member
Isaiah Madison, Member

Footnotes

1. The language of Senate Bill 10 is directed at affordable, not market-rate housing, as follows:

Its finding for adding Section 4752 to the Civil Code, SB 10 reads;
“(c) The Legislature finds and declares that ensuring the adequate production of affordable housing is a matter of statewide concern and that

this section serves a significant and legitimate public purpose by eliminating potential restrictions that could inhibit the production of affordable housing."

Its finding for Government Code Section 65913.5, SB 10 reads:
"(f) The Legislature finds and declares that ensuring the adequate production of affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities."

2. The Embarcadero Institute's RHNA analysis demonstrates that counties are "far exceeding their market rate housing targets, while failing far short on their affordable housing targets. Fourteen [of 58 total] counties have issued permits for nearly 300,000 new market rate housing units, yet only about 140,000 were required by the state housing department." https://embarcaderoinstitute.com/

The California Housing and Community Development Department (HCD) further demonstrates on its own "Dashboard" that in housing identified in its statewide records (5th cycle) through 2019, **more than 100% of the housing targets for above moderate-income housing units were met**; 41% of moderate-income targets were met; 16.8% of low-income targets met; and **just 11.3% very low income targets met**. In City of Los Angeles alone, developers built more than 261% above-moderate housing units. San Francisco reached 158% of targets for above-moderate income housing units. San Diego reached 97.2% of its target for above-moderate-income housing units. In contrast, San Diego has made little progress in housing units built for moderate, low and very-low income people. These were met at 0.2%, 15% and 11% respectively of the housing unit targets. hcd.ca.gov/app.powerbigov.us

3. "**65913.5.** (a) (1) **Notwithstanding any local restrictions** on adopting zoning ordinances enacted by the jurisdiction, **including restrictions enacted by a local voter initiative**, that limit the legislative body's ability to adopt zoning ordinances, a local government may adopt an ordinance to zone a parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance."

4. "(3) The legislative body shall make a finding that the increased density authorized by the ordinance is consistent with the city or county's obligation to affirmatively further fair housing pursuant to Section 8899.50."

Affirmatively Furthering Fair Housing (AFFH) was derived from federal requirements related to the federal Department of Housing and Urban Development (HUD). Effective in California in 2019, the chaptered law initially required “overcoming patterns of segregation, ”replacing segregated living patterns with truly integrated and balanced living patterns, transforming concentrated areas of poverty into areas of opportunity.” A critical point was to avoid displacement. SB10 does not do that. Furthermore, the year that AFFH was chaptered, HCD calculated its increased costs of AFFH at $519,000 in FY2019-20 and $315,000 annually thereafter to develop and provide technical assistance around AFFH requirements and to perform an ongoing increased level of housing element review (General Fund).

5. “**65913.5.** …..a local government may adopt an ordinance to zone a parcel for up to 10 units of residential density per parcel, **at a height specified by the local government in the ordinance.”**

However, Under State Density Bonus Law (up to 50% Density Bonus as of 2021), heights may be waived, if requested by a private developer, whenever the development standards preclude construction of the project that qualifies for a density bonus or incentive. A developer may request unlimited waivers, height being one of them. SB10 provision is moot.

6. “(c) A legislative body that adopts a zoning ordinance pursuant to this section **shall not subsequently reduce the density of any parcel** subject to the ordinance.”