City of Mission Viejo

Office of the Mayor and City Council

April 22, 2022

The Honorable Buffy Wicks
Chair, Assembly Committee on Housing and Community Development
California State Assembly
1021 O Street
Sacramento, California 95814

RE: AB 2011 (Wicks): Affordable Housing and High Roads Jobs Act of 2022;
City of Mission Viejo – Notice of Opposition

Dear Assembly Member Wicks,

The City of Mission Viejo has carefully reviewed the provisions of AB 2011, 4/18/2022 (amended), and finds that an OPPOSE position is necessary and warranted.

While AB 2011's intent to spur housing, production is a recognized statewide goal, AB 2011's method to do so threatens the economic stability of California jurisdictions. AB 2011 is fiscally and structurally unsound. By allowing residential land uses by-right in commercial zones, AB 2011 removes the ability of a local jurisdiction to continue to carefully zone and balance revenues generated by all its land uses. It would trigger the loss of revenue-producing commercial uses with housing, with no ability of a local jurisdiction to intervene and mitigate the economic offset. AB 2011 undermines good planning.

The City of Mission Viejo respectfully offers this observation, with the recognition that the City has been able to complete its rezoning of all its sites for the 6th cycle of the SCAG Regional Housing Needs Assessment (RHNA), in absence of the draconian measures that AB 2011 would impose.

Further, this was accomplished largely through the City's rezoning of nonresidential, infill sites with residential overlay zoning, which AB 2011 would eliminate from a jurisdiction's planning process. The City's approach in meeting its housing need was done in the spirit of community planning and engagement, and allows for the availability of sites that can increase housing production while protecting economic viability, and in absence of the confusing, layered, and objectionable provisions of your proposed legislation. Further, the City's rezonings were accomplished with the support and engagement of property owners, the building community and our residents, and we are particularly proud of the working relationship between the City and the property owner of the City's regional commercial mall, whereby residential development is now allowed in the regional commercial mall.

AB 2011, in contrast, is a tops-down mandate that:

- is fiscally irresponsible, ruins the economy of a city, and provides absolutely no offset for the revenues lost through by-right residential development on commercial lands;
- eliminates a properly-analyzed juxtaposition of residential and nonresidential uses on a site, and the assurance of an economic viability for a jurisdiction that can be achieved only with a balance and mix of land uses;
- ignores community sensitivity and values;
- ignores safe access and available capacity to schools and parks for the low, very low and extremely low residents living in commercial zones; and,
- ignores environmental hazards that may exist in non-residentially zoned properties, and allows for the potential – absent a community planning process – of creating pockets of housing that could be located in areas of existing, environmental hazards.

The City finds that these above-mentioned loopholes in AB 2011 result in a misguided vehicle for spurring housing production, and a disservice to future residents and to the community at large.

Additional components of AB 2011 that the City finds particularly troubling, is the bill's confusing and obfuscated language. The provisions of AB 2011 is an attorney's dream in trying to understand the complicated layers of legislative requirements for allowing, and further streamlining, by-right affordable residential development projects in any zone where office, retail or parking are a permitted use. There is also a lack of any basis of fact to justify certain locational "criteria" proposed in the bill. Examples of some of these structural shortcomings of AB 2011 are summarized in Attachment One.

Most critically, given the confusing language of AB 2011, any jurisdiction and any developer seeking to apply AB 2011's provisions to a future affordable housing project, would easily find the project's forward progress subject to misinterpretation, disagreement, incorrect application and potential litigation.

For these reasons, the City of Mission Viejo opposes AB 2011.

Respectfully,

Wendy Bucknum,
Mayor
City of Mission Viejo

cc: City of Mission Viejo City Council
Dennis Wilberg, City Manager
William Curley, City Attorney
Elaine Lister, Director of Community Development
Marnie O'Brien Primmer, OCCOG Executive Director
Tony Cardenas, League of California Cities, Orange County Division

ATTACHMENT ONE

General and Unanswered Questions on the Intent of AB 2011

1) How is a jurisdiction supposed to apply residential development standards to a project being developed in a nonresidential zone, where there are no residential development standards in the nonresidential zoning?

    a) AB 2011 makes a series of confusing, tiered references to applying the zoning standards "allowed within that land use designation" for "density". What exactly does that mean? At what point is a "land use designation" assigned, and by whom, to calculate project density? And how is density calculated when the project is located and integrated within a larger commercial center? Is this subject to interpretation and negotiation between a local jurisdiction and the developer, which is wholly contrary to the function of a ministerial approval?

    b) AB 2011 states that development standards that would be applied to a residential project would be the development standards "set forth in the general plan." What does that mean? Under AB 2011, an affordable residential project is allowed by right in zones where there is no zoning for residential uses. But General Plans do not establish development standards; that is the purpose and function of zoning.

2) AB 2011 makes reference to a series of criteria by which to determine whether a candidate project is subject to a streamlined, ministerial process.

    a) One of the criteria is that the candidate project is not adjacent to any site where more than two-thirds of the *square footage* of the (adjacent?) site is dedicated to industrial use. What is the logic of using the criteria of *square footage*? This loophole could allow a candidate AB 2011 project to be located next to a noxious facility such as a power plant, a sand and gravel facility, a refinery or other land use that has minimal square footage on the site, but has serious environmental concerns. This seems to be wholly contrary to environmental justice concerns.
    b) One of the requirements for streamlining, is that an AB 2011 residential project must have at least 67% of its square footage designated for residential use. Please explain the logic and the basis for this criterion.
    c) One of the criteria for an AB 2011 residential project to be located on a commercial corridor, with no setbacks required, is that the corridor have right of way of at least 70 feet and no greater than 150 feet. Can you explain how this criteria was derived, and the logic of a residential project abutting a major arterial that could carry thousands of cars per day, and providing no setback relief for the property?