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August 19, 2016

Governor Jerry Brown  
State Capitol, Suite 1173  
Sacramento, CA 95814

**SUBJECT: Streamlining Affordable Housing Approvals: Proposed Trailer Bill:  
Association of California Cities – Orange County Suggestions and Comments**

Dear Governor Brown,

The Association of California Cities – Orange County (ACC-OC) is a non-profit organization that proudly represents the interests of the 34 Orange County cities and the County of Orange. ACC-OC serves as a resource for elected officials and municipal staff, focusing on three key initiatives: facilitation of good public policy solutions, collaboration of regional stakeholders, and education for elected officials and staff. In pursuit of that mission, ACC-OC has collaborated with the Orange County Cities to provide feedback on your Streamlined Affordable Housing Approvals proposal (proposal). Although, ACC-OC was originally in opposition of the first iteration of the language, we are glad to see the effort for stakeholder input by the Department of Housing and Community Development (HCD), and look forward to working with you and your office to craft a more supportable proposal.

A significant priority of ACC-OC and our members is ensuring that the new proposal language strikes the right balance of meeting housing needs without diminishing local control. Equally as important, is the still to be determined allocation process of the \$400 million dollars for affordable housing and the decisions of where that money will be prioritized. Part of the larger issue surrounding unattainable housing is a lack of attention to the struggle of housing our workforce. According to demographic projections, Orange County is facing a workforce housing shortage of between 50,000 and 62,000 units. Those developments will have to include a high percentage of affordable housing based on home values and income levels in our region. ACC-OC would like for you to consider the concept of using funds to target job-creating areas that lack sufficient housing. The benefits of investing affordable housing dollars in an area like Orange County does more than house our workforce; it has a positive impact on an array of other challenging policy issues including: commuter transportation, roadway improvement, and emission reduction.

Since the first version of the proposal many of our original local control concerns have been addressed, and we would like to note the importance of California Environmental Quality Act (CEQA) reforms in the proposal. However, there are still many technical issues that pose enforceability and implementation challenges for cities. There appears to be inconsistencies in sections of the proposal that would contradict a traditional “by right” approval process.



This language will lead to confusion upon implementation, and needs clarification. Also concerning, is the addition of enforcement action language. This would allow third parties, including non-profits and adjacent land-owners to participate in public comment procedures. This has the potential to put cities in compromising situations by requiring municipalities to enact this process and answer questions based on ministerially approvals, which they had no discretion over. This could subject cities to frivolous lawsuits – resulting in costly litigation, and further delaying development goals.

Ultimately, ACC-OC is supportive of the need to increase affordable housing opportunities, especially in Orange County where housing costs are at the highest unattainability for middle-income earners. If the legislature and the administration intend to move on this proposal, we would like to make sure that the voices' of our cities are heard by bringing forward solutions that we would like to see reflected in the final legislation. The following pages outline a series of suggested comments and concerns gathered from cities across Orange County, based on the language from the June 10<sup>th</sup> Streamlined Affordable Housing Approvals proposal.

The ACC-OC remains committed to legislation that maintains maximum local control for cities in all areas of its responsibility and operations, and applaud you and your staff for addressing the statewide housing shortfall. As negotiations for a streamlined affordable housing proposal develops we would like for you to consider ACC-OC as a resource for collaboration between Orange County cities and your office. Do not hesitate to call on us for issues related to local government and when soliciting feedback on legislative measures. Should you have any questions about our position or about the ACC-OC please contact Diana Coronado in our office.

Sincerely,



Heather Stratman  
Chief Executive Officer  
Association of California Cities – Orange County

cc:  
ACC-OC Board of Directors  
Orange County State Legislative Delegation



**Streamlined Affordable Housing Approvals:  
Association of California Cities – Orange County Suggestions and Comments**

The following is a detailed compilation of input and feedback from the Association of California Cities – Orange County (ACC-OC), and Orange County cities, on the Governor’s June 10, 2016 Streamlined Affordable Housing Approvals proposal (proposal). ACC-OC gathered the responses, below, due to the solicitation for feedback from the California Department of Housing and Community Development (HCD). Outlined in this document are three categories of comments and recommendations separated by sections:

- Section A – Specific Concerns.....Pages 1 - 2
- Section B – General Comments.....Pages 2 - 4
- Section C – Recommendations.....Pages 4 - 5

Together, with the Governor’s staff and the California Legislature we hope to see some of our suggested changes and input reflected in the Governor’s final affordable housing proposal. Thank you for the opportunity to work towards finding a more supportable solution to our State’s affordable housing shortfall. Should you have any questions regarding this document or would like to view the accompanying letter, please contact Diana Coronado at (714) 953-1300 or dcoronado@accoc.org.

**Section A – Specific Concerns:**

- **Page 3, §3 (4):** The definition for "Design Review" should be added. There should also be a clarification that any projects proposed under this action shall be subject to compliance with the California Building and Fire Code in effect at the time of project submittal to the local government jurisdiction.
- **Page 6, §3 (4)(B):** This enforceability section should be reconsidered. It is an open invitation to lawsuits against local government agencies and will be counter-productive to the streamlining of affordable housing projects.
- **Page 6, §3 (5)(C):** This restriction should also apply to high fire hazard severity zones as established by the local agency.
- **Page 7, §3 (5)(H):** This gives too much discretion to the HCD and creates confusion. It could be interpreted to mean that HCD could change the standards for the awarding of affordable housing funding even for projects that comply with the previous criteria.

- **Page 8, §3 (7):** This requirement establishes a quasi-discretionary action and creates ambiguity for the local jurisdiction. This could force local governments to respond to questions from adjacent property owners, as to their ability to participate in the approval process, despite the ministerial action.
- **Page 9, §3 (c):** 30 days is not sufficient enough time for cities to make this determination. This subsection conflicts with the following subsection (d), which allows for 90 days for design review. (In addition, it is not clear what constitutes design review as this term varies among jurisdictions).
- **Page 9, §3 (f):** Language should be added to acknowledge that compliance with the Map Act could result in a discretionary action.
- **Page 9, §3 (g):** A section should be added that the project is still subject to the payment of any development fees in effect at the time of project submittal.
- **Page 9, §3 (h):** This section is similar to the Enforceability section (Page 6, §3 (4)(B)) because it can result in lawsuits, either from the applicant or adjacent property owners, presumably against the local jurisdiction that is required to ministerially approve the projects. “By-Right” projects are, by definition, not subject to public notice and the requirement to provide such notice establishes a quasi-discretionary process, which adds confusion to the entire proposal.
- **Page 10, §3 (n):** This section is helpful in establishing the local jurisdiction's authority to retain control over the objective planning standards.

## **Section B – General Comments:**

### “By-Right” Approval

- “By-Right” zoning/approval does not necessarily lead to increased affordable housing development. The City of Mission Viejo has three “By-Right” sites for the last eight years (through two housing element certifications by the State) and only one has actually been developed, and mainly due to the result of a density bonus approval, not because of “By-Right” zoning. The other two sites are languishing because there is no longer a city subsidy available, since the demise of Redevelopment Agencies.
- “By-Right” development with staff-level “ministerial” approvals will lead to a loss of transparency in decision making. Many cities are in favor of developing affordable housing, but would prefer that they retain the discretionary right to review and condition a project. In a time when there is so much distrust in government at the state and federal levels, and where local governments are held to a much stricter standard, there is great need for open and clear transparency.
- The proposed elimination of the current discretionary review and public input process can lead to potential unintended consequences, including the lost opportunity to negotiate a better project benefitting the city and developer while

providing affordable housing. Perceived 'development hurdles' led to benefits in the 403 affordable units built in the City of Irvine in 2016, including: Expanded site amenities allowing resident use of larger community space and recreation facilities – improving quality of life, the procurement of increased affordability to 'very low-income' earners – which provides housing for residents at significantly more affordable cost than low-income rental rates, and negotiations with developers allowed for approved where entitlements extending the term of affordability from 30 years to 99 years.

### Affordable Housing Funding Challenges

- Cities that would like to move forward with affordable housing have not been able to because of the elimination of redevelopment funding, and the resulting lack of housing set-aside funds to provide the assistance that many developers have expressed that they need. In cities that already have specified "By-Right" areas, without affordable housing subsidies, the proposed development does not pencil out.
- Since the dissolution of redevelopment agencies, the amount of funding for affordable housing has been severely reduced, especially in smaller municipalities. With the Low and Moderate Income Housing Funds (LMIHF) being the only affordable housing funding for most agencies, the proposal to produce affordable housing seems to be inconsistent with the current use of Housing Successor funds as defined in HSC 34176.1. The ability to utilize funding is strictly restricted since the majority of the funds (80%) must be expended for households under 60 percent of the area median income. This restriction increases the amount of affordability gap funding to make the project financially viable.
- When public funds are utilized to assist developers in reducing the affordability gap on a multifamily housing project, prevailing wage requirements are triggered. The cost of the prevailing wage requirements increases building costs 25 to 35 percent more than over private sector costs. This issue needs to be addressed. Many developers would consider developing mixed income projects with assistance from local governments, but when prevailing wages have to be part of the financial equation the projects are not feasible.

### Miscellaneous

- The latest proposal does a better job of preserving the local jurisdiction's ability to retain control over zoning given that the proposed project is required to comply with zoning standards in effect at the time the project is submitted.
- The development of incentives for cities to approve affordable housing projects could result in increased housing without diminishing the discretionary authority of cities.
- Each jurisdiction has its own identity and responsibilities to its residents as it relates to design, density and ability to accommodate high density residential development. The process of approving such development should be left up to each jurisdiction and not mandated by the State. Staffing of development departments varies

significantly from agency to agency and a one-size fits all approach is not feasible for timing of processing development requests.

- The current proposal would not require any California Environmental Quality Act (CEQA) analysis and by default, no CEQA mitigation measures for a qualifying housing proposal that meets the Governor's proposed criteria. However, subsequent development proposals in proximity to a qualifying housing proposal that does not meet the Governor's definition, would be required to undergo CEQA review and incorporate mitigation measures. These other development proposals could be required to mitigate impacts caused by a qualifying housing proposal, potentially increasing development costs for these development proposals.
- The language in the proposal introduces several new opportunities for individuals or non-profits to challenge cities on their implementation of the law and could subject cities to frivolous lawsuits.
- The proposal requires a notification requirement for adjacent property owners, which would give the impression that public participation is allowed, seemingly contradicting ministerial action.
- Is the real goal is to increase the number of housing units for the extremely low and very low income categories, or is the goal to produce low income units? There should be an increase in the affordability restrictions in the proposal to match the current law expenditure ratios or all low to moderate income housing funds (LMIHF) should be able to be used on projects for 80% or less in income categories.

### **Section C – Recommendations:**

The Governor has made it his goal to promptly address the severe shortage of affordable housing, through the use of a "By-Right" streamlined approvals process, which is captured in his "By-Right" proposal language. To support that effort, the Governor has set aside \$400 million to be allocated after final negotiations have been reached between the Governor and the Legislature on his proposal. This "By-Right" process would apply to cities that have already approved locations for new affordable housing and densities in their general plans and zoning codes. This proposal, as written, would prescribe a mandate approach to every city, across the state, through ministerial action without a city's discretion. ACC-OC has identified this concept as the most challenging component of the proposal, based on feedback from the cities in Orange County. In working with the Governor to reach his goal and retain portions of his current proposal, while addressing the issue most concerning to cities, the following recommendations are proposed as suggested alternatives to replace the Governor's June 10, 2016 Streamlined Affordable Housing Approvals proposal.

ACC-OC's first alternative recommendation would be contingent on the use of the \$400 million, set aside for affordable housing, through the creation of a qualifying grant program. A portion of the \$400 million would be awarded to cities who decide to implement the Governor's "By-Right" proposal by working with HCD to identify eligible "By-Right" affordable housing zones within their communities. If cities decide to work with HCD to designate "By-Right" zones in their communities the city would be agreeing to follow the

“By-Right” criterion for development identified in the Governor’s “By-Right” proposal. This recommendation would also remedy the previous concern related to funding shortfalls for “By-Right” developments, currently experienced by cities (and described in Section B).

In the event that our above recommendation is not considered for adoption by the Administration, ACC-OC has suggested two minor, incremental recommendations related to the use of the \$400 million, as well. The first funding recommendation would be the prioritization of an investment for affordable housing in job-creating regions that have weak workforce job to housing ratios, like Orange County. Home values and income levels are in complete disproportion in our cities, and investment in affordable housing would help alleviate the workforce housing shortfall. Affordable housing monies could be awarded to job-creating cities devised by a formula based on a jobs to housing ratio. In addition to housing our workforce, the benefits in investing affordable housing dollars in an area like Orange County has a positive impact on an array of other challenging policy issues.

If the proposal is adopted, in its current form, a second incremental funding recommendation would apply to cities that have been subject to “By-Right” development. A portion of the \$400 million could be distributed to cities to help local governments address costly community impacts. A direct result of “By-Right” development would remove the ability for cities to negotiate development agreements for community impacts. This recommendation would respond to the funding cities have been made responsible for in the event that costly mitigation efforts are needed to absorb impacts stemming from “By-Right” developments.

ACC-OC believes that that these alternative recommendations would act as incentives for cities to implement the Governor’s “By-Right” proposal – instead of a one-size fits all mandate. ACC-OC’s suggested alternative, and funding recommendations strike a healthy balance between remedying the concerns of local government while maintaining the integrity of the Governor’s proposal and goals. Our intent with this document is not only to reinforce and communicate our concerns with the Governor’s proposal, but to also offer solutions to our state-wide affordable housing challenge.