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March 1 cb.

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Agenda Item: ID17-291 (4-A)

Date: 3/02/17



Supplemental Information Packet

Agenda Related Item(s) – ID17-291 (4-A)

Contents of Supplement: Letter from Leadership Counsel

Item(s)

RESOLUTION – Initiating a text amendment to Tables 15-002, 15-1102 and 15-1202 of the Fresno Municipal Code pursuant to FMC section 15-5803-A, relating to multi-unit residential uses.

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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February 28, 2017

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Fresno City Council
City Hall, Room 2097
2600 Fresno Street, Fresno, CA 93721

CITY CLERK, FRESNO CA

*Sent via Email***Re: City Council Agenda Item 4-B (ID 17-291), Resolution Initiating Text Amendment to the Fresno Municipal Code Relating to Multi-Unit Residential Uses**

Dear Mayor Brand and Councilmembers:

We are writing on behalf of our clients, Familias Addams por un Mejor Futuro, with respect to the above-referenced agenda item ("Resolution") which proposes to initiate the revision of the Fresno Municipal Code to impose a Conditional Use Permit requirement on multi-family land use in the RM-1, RM-2, RM-3, NMX, CMX, RMX, CMS, and CR zone districts. Adoption of this Resolution would further exacerbate the City's failure to comply with its obligations under State Housing Element, Least Cost Zoning, and Fair Housing Laws as well as policies and programs in the City's General Plan. We urge the Council not to adopt the Resolution and to immediately take action to achieve compliance with its obligations under state and federal laws.

1. The Resolution Would Further Hinder the Development of and Exacerbate the Lack of Affordable Housing in Violation of the State Housing Element and Least Cost Zoning Laws.

By requiring multi-family residential use developments located in the RM-1, RM-2, RM-3, NMX, CMX, RMX, CMS, and CR zone districts to obtain a conditional use permit (CUP), the Resolution would impose significant financial and procedural burdens and uncertainty on the development of housing affordable to lower-income Fresnoans. Absent the implementation of a development and impact fee waiver program for multi-family housing by the City, the CUP requirement would subject multi-family housing projects to a standard application fee of \$14,719 for CUP for mid-rise and high-rise buildings and \$8,177 for all other multi-family projects located outside of designated inner-city areas. City of Fresno Master Fee Schedule, Effective 7/01/16. In addition to City fees, multi-family housing projects subject to a CUP requirement would extend project processing times and associated approval costs, as the City typically takes months to process a CUP application. Additionally, the CUP requirement would impose uncertainty on projects subject to discretionary review and potentially numerous lengthy hearings prior to consideration. This Resolution therefore would have a significant chilling effect on multi-family housing development and constitute a governmental constraint on housing

development which the City must analyze – and include commitments to remove – in its housing element. Gov. Code §§ 65583(a)(5); 65583(c)(3).

The State Department of Housing and Community Development has found that the City's 2015-2023 Housing Element does not substantially comply with state law, because, among other inadequacies, the Housing Element fails to identify adequate sites to meet the City's need from the current housing element planning period for over 8,955 lower-income housing units as well as the City's unaccommodated lower-income housing need from the prior planning period of 6,476 units. HCD letter to City of Fresno dated August 11, 2016. The adoption of a resolution imposing constraints on the development of affordable housing, while the City lacks a legally adequate housing element and sites to meet the need for affordable housing, would exacerbate the City's non-compliance with State Housing Element and Least Cost Zoning Laws. Gov. Code §§ 65583(c)(3); 65913.1.

In addition, the Resolution would create an additional barrier to the City's compliance with Government Code Section 65583.2(h)'s requirements that sites identified to meet the carry-over need satisfy specific size and density requirements and allow multi-family development *by right* by imposing a discretionary approval on all multi-family housing development outside of the Downtown and therefore rendering all sites outside of Downtown ineligible to satisfy Section 65583.2(h). The Resolution would also exacerbate the City's current failure to affirmatively further fair housing opportunities through its Housing Element – a central matter at issue in Familias Addams' petition against the City – by restricting the development of affordable housing outside of racially and ethnically concentrated areas of poverty ("R/ECAP"), such as the Downtown, and limiting sites available to satisfy the City's current RHNA and carry-over requirements in high opportunity neighborhoods.

2. The Resolution Impermissibly Conflicts with the City's Own General Plan Policies and Programs, Including Policies and Programs Contained in the Housing Element

State law requires city zoning ordinances to maintain consistency with jurisdictions' general plans. Gov. Code § 65860. By conditioning and restricting the development of multi-family housing, this Resolution explicitly conflicts with narrative, policies and programs contained in the City's General Plan, including the Housing Element, that prioritize the development of a diverse housing stock, higher density housing development, streamlined development approval, and the development of affordable housing in neighborhoods throughout the City and therefore would violate state law. The General Plan "designates areas for higher densities and calls for by-right zoning to implement higher densities in the Development Code update consistent with the City of Fresno Housing Element." General Plan, Ch. 10, p. 26. Policies and programs at odds with this Resolution include but are not limited to the following:

- General Plan Goal 1: "... *avoid over-saturation of a single type of housing...*"

- General Plan Goal 7: *“Provide for a diversity of districts, neighborhoods, housing types (including affordable housing), [and] residential densities...that appeal to a broad range of people throughout the City.”*
- Objective UF-1. *“Emphasize the opportunity for a diversity of districts, neighborhoods, and housing types.”*
- Urban Form Policy UF-1-d, *“[F]urther affordable housing opportunities throughout the city.”*
- Urban Form Policy UF-1-e. *“[P]rovide a range of housing options, including furthering affordable housing opportunities...”*
- Land Use Element Policy LU-2. *“Plan for infill development that includes a range of housing types, building forms, and land uses to meet the needs of both current and future residents.”*
- Land Use Element Policy LU-5. *“Plan for a diverse housing stock that will support balanced urban growth, and make efficient use of resources and public facilities.”*
- Healthy Community Policies HC-3. *“Create healthy, safe, and affordable housing”*
- Housing Element Program 2. *Expand affordable housing opportunities that prevent the concentration of single family and multifamily dwelling units affordable to low- and moderate-income households.*

The City must not adopt the Resolution in direct violation of the goals, objectives, policies, and programs of its General Plan.¹

* * * * *

We urge the Council to reject this Resolution and instead work together with Familias Addams and the public to develop a housing element that substantially complies with state laws and includes effective strategies to meet the housing needs of all Fresno residents, including education, outreach, and affordable housing streamlining strategies to address NIMBY opposition as a constraint on development of affordable housing.

I will be unavailable from March 1 through March 15, 2017. In my absence, please contact Valerie Feldman at (916) 457-7155 if you would like to find a time to discuss these comments.

¹ The Resolution also conflicts with Fresno’s RTP/SCS, which projects that multi-family housing will compromise 47% of housing development in Fresno County under the plan and which acknowledges the policy of jurisdictions in the region to facilitate development of housing all price ranges and to meet the housing needs of the local workforce and population, including low income residents. 4:13, Figure 4-4; Ch. 6, p. 7. Action inconsistent with the RTP/SCS, including adoption of the Resolution, may render Fresno ineligible for certain sources of local, state and federal transportation funding.

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Sincerely,



Ashley Werner
Senior Attorney
Leadership Counsel for Justice and Accountability



Valerie Feldman
Staff Attorney
Public Interest Law Project

cc: Sophia Pagoulatos, Planning Manager, DARM
Douglas Sloan, City Attorney
Paul McDougall, California Department of Housing and Community
Development