

MEMO

To: City of Cupertino
Legislative Review Committee

From: Townsend Public Affairs, Inc.

Date: December 10, 2021

Subject: Discuss Statewide Initiative 21-0016 (Local Land Use and Zoning Laws)

Initiative Information

The official text of the Local Land Use and Zoning Laws Override Conflicting State Laws constitutional amendment can be found [here](#)¹.

Summary

An initiative has been proposed that seeks to amend the California Constitution to ensure local land use authority would prevail over conflicting state laws. This amendment would allow a local government to maintain local land use authority when in conflict with state legislation, except in the coastal zone and concerning water or transportation projects of statewide concern.

Specifically, the proposed initiative would specify that the following local laws related to zoning or land use would prevail over state laws:

- A zoning, development, or land use local law within a charter city or charter county,
- A zoning, development, or land use local law within a general law city or general law county, and
- A zoning, development, or land use local initiative.

The proposed initiative identifies certain areas where a court should determine whether state law should continue to prevail over local law. This includes issues relating to zoning and land use within the following areas/situations:

- Proposed developments within the Coastal Zone,
- The siting of a power plant capable of generating more than 50 megawatts of electricity that the California Public Utilities Commission has determined needs to exist as a matter of statewide concern, or
- The development of water, communications, or transportation infrastructure projects that the state declares to be a matter of statewide concern.

In addition to the initiative's proposition to outstrip state-imposed preemption pertaining to local land use decisions, its provisions include limits to the state's discretion when appropriating state funds. Specifically, the proposed initiative would amend the Constitution to specify that the state could not modify how it appropriates state funding as a result of the measure, meaning that it

¹ [https://oag.ca.gov/system/files/initiatives/pdfs/21-0016A1_%28Local Land Use%29.pdf](https://oag.ca.gov/system/files/initiatives/pdfs/21-0016A1_%28Local%20Land%20Use%29.pdf)

could not deny funding to local governments who opt to enact zoning or land use laws that conflict with state general law. Further, the state could not impose preferences when appropriating state funds to governments that choose or choose not to conform with state-imposed development and zoning laws.

Preemption due to Conflict with State Law

The California Constitution provides that a city may not enact local laws that conflict with state laws. All local legislation that conflicts with state law is void if it either (1) duplicates, (2) contradicts, or (3) enters a field which has been fully occupied by state law, whether expressly or by legislative implication. In some cases, local governments may enact laws on matters of statewide concern in the absence of a preemptive state law. Such enactments must be made under some identified source of authority (i.e., police power, charter, ordinance). Examples of overlapping local laws include local zoning ordinances.

Municipal Law: The Police Power

Virtually every reference guide on Municipal Law begins with the premise that a city has the police power to protect the public health, safety and welfare of its residents. This right is set forth in the California Constitution, which states “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. at. XI, section 7. This power is important in its application to land use decisions because it allows for very broad rights to enact local ordinances to protect the health and safety of community residents through local land use visions and values, so long as they do not conflict with state law. The concept of the Police Power is critical because a city’s broad land use authority flows directly from the constitution in the absence of a statutory prohibition or preemption. The power is “*not a prescribed prerogative, but is elastic and, in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life and thereby keep pace with the social, economic, moral, and intellectual evolution of the human race,*” *Miller v. Board of Public Works* (1925).

Current law provides that the exercise of the municipal police power must:

- Be reasonably related to a legitimate governmental purpose,
- Have a reasonable tendency to promote the public health, morals, safety, or general welfare of the community

Proponents of this initiative argue that preserving local land use discretion is critical to ensure that all developments meet all safety standards, particularly in areas located within the state’s identified Very High Fire Hazard Severity Zones (VHFHSZ). This initiative will ensure that related traffic changes due to increased development potential do not have undue influence on things like egress paths.

Potential fiscal effects include:

Changes to Existing State Allocations to Local Governments

Some existing state funds hinge on things like local government’s progress toward meeting state housing goals. This measure proposes limiting the state’s ability to distribute funds in this manner, meaning the state could choose to reallocate this type of funding to local governments differently.

Impacts on Housing Production and Affordability

If enacted, this initiative would allow local governments to enact new local laws to restrict the enforcement of state-imposed zoning and land use requirements. For local governments that choose to restrict housing production, prices could increase, whereas local governments that opt to spur housing development could see greater economic growth. Given that the initiative would

apply to both charter and general law cities and counties just as major housing reform measures have, the impacts are dependent on the future decisions of local governments.

Status

The Attorney General issued a Title and Summary for the proposed initiative on November 1, 2021, which allowed proponents to begin circulating petitions for signatures. The proponents have until May 2, 2022, to submit 997,139 valid signatures. In order to qualify for the November 2022 General Election ballot, the Secretary of State must certify that the initiative has enough valid signatures by June 30, 2022.

Legislative Platform

The proposed initiative is substantially similar to ACA 7 (Muratsuchi), which was introduced in March 2021. On May 14, 2021, the Legislative Review Committee voted to support ACA 7 based on consistency with the City's adopted legislative platform. This bill falls under Cupertino's 2021 Legislative Platform in the Local Control Guiding Principle II (page 1) and allows for a Support position.

Recommended Action

Adopt a support position on Statewide Initiative 21-0016 (Local Land Use and Zoning Laws) and authorize the Mayor to send letters to the state legislature