

City of Palo Alto

Office of the Mayor and City Council

April 15, 2021

The Honorable Janet Nguyen
California State Assembly Member, 72nd District
State Capitol, Room 4153
Sacramento, CA 95814

RE: AB 1258 (Nguyen) – Support

Dear Assembly Member Nguyen,

As one Councilmember of the City of Palo Alto, and in my individual capacity and not on behalf of the Council as a body, or the City, I write in support of AB 1258, your measure that would subject the Department of Housing and Community Development's (HCD's) final determination of a region's housing needs, or a final regional housing needs plan, to judicial review.

Current law requires local governments to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element, part of which is an assessment of housing needs, including the locality's share of the regional housing need. HCD, in consultation with the regional council of governments, determines each region's existing and projected housing needs. Once that determination is made by HCD, the council of governments may object to the determination, and the department is required to respond to an objection by making a final written determination.

Until 2004, state law contained provisions that provided for the judicial review of regional housing needs plans, but those provisions were removed as part of broad legislation that modified regional housing needs law. In 2009, the California Court of Appeals ruled, in *City of Irvine v. Southern California Association of Governments*, that state statutes reflect a clear intent to vest the HCD and regional councils of government with the authority to set the regional housing needs allocation for each local government. The Court went on to state "the nature and scope of a general plan's housing element and the length and intricacy of the process created to determine a municipality's RHNA allocation reflects a clear intent on the part of the Legislature to render this process immune from judicial intervention." In their ruling, the Court pointed to the legislation approved in 2004, which amended the Government Code related to regional housing need plans to delete references to judicial review, as evidence of that intent. Very sneaky and undemocratic.

AB 1258 would reinstate previous state law providing judicial review for challenges to HCD's final housing needs determination or a regional council of government's final regional housing needs plan. Under current law, any challenges to these findings are presented to HCD or the regional council of governments that made the original findings. This process does not provide

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for independent review and analysis of the findings and final determinations. Given the significant impact that a housing element has on local governments' planning and development, it seems reasonable that there should be the opportunity for judicial review of these decisions.

It is for these reasons; I am glad to support AB 1258. Thank you for your sponsorship.

Sincerely,

DocuSigned by:

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Lydia Kou
Councilmember, City of Palo Alto

cc:

Josh Becker, Senator, California's 13th Senate District

Marc Berman, Assemblymember, California's 24th Assembly District

Tom DuBois, Mayor, City of Palo Alto

City Council, City of Palo Alto

Ed Shikada, City of Palo Alto

Board of Supervisors, Santa Clara County

Cities Association, Santa Clara County

Seth Miller, Regional Public Affairs Manager, Peninsula Division, League of California Cities

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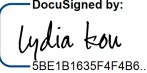
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 Council Member
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