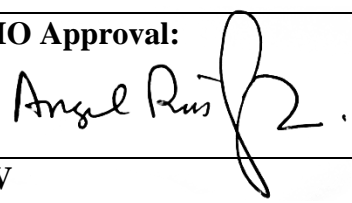


CITY COUNCIL ACTION REQUEST

Department(s): Housing	Date: 05/05/22	Coordination: CAO, CMO – Intergovernmental Relations	Dept. Approval: /s/ Jacky Morales-Ferrand
			CMO Approval: 

SUBJECT: SUPPORT SCA 2 (ALLEN) REPEAL OF ARTICLE XXXIV

RECOMMENDATION:

- (a) Adopt a position of support for State Constitutional Amendment (SCA) 2 (Allen), which would repeal Article XXXIV of the State of California Constitution (Article 34) which requires a public referendum vote for any publicly-funded housing development with 49% or more restricted affordable units, and
- (b) Agendize this position for the June 7, 2022, City Council meeting so that the City’s Legislative Representative can advocate the City’s support for SCA 2 (Allen).

BASIS FOR RECOMMENDATION:

SCA 2 (2020), introduced by State Senators Ben Allen and Scott Weiner, is a proposed amendment to the State of California Constitution that would repeal Article XXXIV of the State Constitution (Article 34). If it passes, a repeal proposition could be placed on the November 2022 statewide ballot.

Article 34 requires approval by a referendum vote of any publicly-funded rental housing development with over 49% of units that are affordable housing. This vote must occur in the jurisdiction where the housing is proposed. California voters narrowly passed Article 34 in 1950, largely in response to the federal Housing Act of 1949, which prohibited racial segregation in public housing. When Article 34 passed, homeowners reportedly saw it as a tool to prevent public housing from being sited in their neighborhoods. In the 1960s and 1970s, [Article 34 was blamed](#) for weakening efforts to racially integrate suburban communities across California. A HUD study also found that California significantly under-produced needed affordable housing because of communities’ failed referenda and their unwillingness to hold referenda due to fears that residents would vote down proposed affordable housing developments. (“Why it’s been so hard to kill Article 34, California’s ‘racist’ barrier to affordable housing,” *L.A. Times*, Mar. 14, 2022.)

In San José’s [current housing crisis](#), Article 34 is inconsistent with the City’s efforts and recent State and local policies to make affordable housing approvals faster, more efficient, and more predictable. Like San José, most pro-housing jurisdictions currently pursue general approval of a large number of affordable housing units across the entire jurisdiction rather than through site-by-site referenda. San José continues to operate under Measure D from 1994, which allows the creation of affordable homes in an amount “not to exceed 1/2 of 1% of the existing housing units in San José as of the 1990 Census, annually, with any unused amounts to be carried over from year to year.” But although San José has sufficient development capacity (up to 1,296 new affordable apartments per year), Article 34 is estimated to add an [estimated \\$10,000 to \\$80,000 in costs](#) to each affordable housing development on average. Repealing Article 34 would remove one barrier to production of affordable housing in California and better address the State’s current housing crisis.

Supporting a repeal of Article 34 would also help the City to affirmatively further fair housing in a way that would recognize and honor the efforts of a former San José resident. San José is an integral part of the story of Article 34. The U.S. Supreme Court’s 1971 decision in *James v. Valtierra*, which ultimately upheld Article

34 of California's State Constitution, featured Anita Valtierra as a plaintiff, who was a mother of six and resident of San José when she challenged Article 34. Ms. Valtierra was a part of a larger group of Latino/a/x and African American families from San José and San Mateo that filed a lawsuit to strike down Article 34 when low-income housing proposals were voted down in San José and San Mateo. They argued Article 34 was racially discriminatory and in violation of the U.S. Constitution's Equal Protection Clause. From its passage in 1950, communities of predominantly white homeowners had used the Article 34 process to block the siting of affordable housing in their neighborhoods, thereby preventing greater integration of communities and blocking an increase in the supply of affordable housing. However, the U.S. Supreme Court held in 1971 that Article 34 didn't rely on "distinctions of race" and was therefore Constitutional, and that the use of referenda was democratic, thereby overturning the District Court decision that had gone against Article 34.

In addition to the 1971 legal challenge, there have been several other attempts to overturn Article 34: a 1974 bill by Assemblymember Willie Brown to repeal Article 34 through statewide ballot Proposition 15; a 1977 bill also by Assemblymember Willie Brown to modify Article 34 to place Proposition 4 on the 1980 statewide ballot; and 1993's statewide Proposition 168, which failed but received 60% of the vote. ([State Senate Rules Committee Analysis of SCA 2, Jan. 5, 2022](#)).

Despite enforcement for several decades of State and federal fair housing laws, the Bay Area – including San José and Santa Clara County – is now [more segregated now than it was 50 years ago](#) (Haas Institute for a Fair and Inclusive Society at UC Berkeley, May 2019). Although San José experienced a temporary dip in rents due to COVID-19, it remains one of the most expensive, least affordable rental housing markets in the country. As the City enacts its legal duty to affirmatively further fair housing and attempts to address its current housing crisis, Article 34 is an unnecessary, outdated impediment to developing and siting affordable housing in this expensive City.

It is notable that the California Association of Realtors, one of the original sponsors of Article 34, [now supports its repeal](#) and is a co-sponsor of SCA 2.

SCA 2 is a two-year bill in its second year. It passed easily out of the Senate with three unanimous votes in Senate committees and one unanimous (37-0) vote on the Senate floor. The bill is now in the Assembly and is being scheduled for a hearing in the Assembly Housing and Community Development Committee on May 11, 2022 and later by the Assembly Appropriations Committee before heading to the floor. To qualify for the November 2022 ballot, it would need to pass both houses with a two-thirds vote by June 30, 2022.

Fifty-one years ago, a courageous group of San José residents first challenged Article 34, taking their claim all the way to the U.S. Supreme Court. Staff recommends that the City Council honor their efforts and go on record to support SCA 2's repeal of Article 34.

Co-sponsors of SCA 2:

California Association of Realtors (co-sponsor)
California Housing Consortium (co-sponsor)
California Rural Legal Assistance Foundation (co-sponsor)
California YIMBY (co-sponsor)
Merritt Community Capital Corporation (co-sponsor)
Western Center on Law & Poverty (co-sponsor)

Other supporters of SCA-2 (as of January 5, 2022):

Abundant Housing LA
Activesg, a Project of Community Partners
AIDS Healthcare Foundation
American Planning Association, California Chapter
California Housing Partnership Corporation
Chan Zuckerberg Initiative
City of Pasadena
City of Pleasanton

City of Santa Monica
East Bay for Everyone
East Bay Housing Organizations
Eden Housing
Facebook, INC.
Health Officers Association of California
Housing Action Coalition
Inner City Law Center
League of Women Voters of California
Long Beach YIMBY
Los Angeles County Democratic Party
Los Angeles Homeless Services Authority
Mountain View YIMBY
North Bay Leadership Council
Northern Neighbors
Path
Peninsula for Everyone
People for Housing - Orange County
Public Advocates
San Fernando Valley YIMBY
San Francisco Bay Area Rapid Transit District
Santa Cruz YIMBY
Silicon Valley @ Home
Silicon Valley Leadership Group
South Bay YIMBY
Southern California Association of Governments
Streets for People Bay Area
The Santa Monica Democratic Club
Urban Environmentalists
YIMBY Action
Zillow Group

Opponents: None on record (as of January 5, 2022)

Climate Smart San José: The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

Commission Recommendation/Input: Not applicable, as legislative endorsements are outside the scope of the Housing and Community Development Commission.

COST AND FUNDING SOURCE:
Not applicable.
FOR QUESTIONS CONTACT: Kristen Clements, (408) 535-3860.

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

**SENATE
AMENDMENT****CONSTITUTIONAL****NO. 2****Introduced by Senators Allen and Wiener****December 07, 2020**

A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing Article XXXIV thereof, relating to public housing projects.

LEGISLATIVE COUNSEL'S DIGEST

SCA 2, as introduced, Allen. Public housing projects.

The California Constitution prohibits the development, construction, or acquisition of a low-rent housing project, as defined, in any manner by any state public body until a majority of the qualified electors of the city, town, or county in which the development, construction, or acquisition of the low-rent housing project is proposed approve the project by voting in favor at an election, as specified.

This measure would repeal these provisions.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 2021–22 Regular Session commencing on the seventh day of December 2020, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California, that the Constitution of the State be amended as follows:

That Article XXXIV thereof is repealed.