

## Orozco, Norma

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**From:** Matthew Struhar <Matthew.Struhar@doj.ca.gov>  
**Sent:** Monday, July 17, 2023 12:44 PM  
**To:** eComment  
**Cc:** David Pai; Christina Bull Arndt  
**Subject:** July 18, 2023 City Council Meeting - Agenda Item 34 - Public Comment  
**Attachments:** Letter to Santa Ana re Urgency Ordinance.pdf

Hello,

Please see the attached letter, which the Office of the Attorney General submits as a public comment regarding agenda item 34—the Second Reading of Ordinance Amendment No. 2023-03 to Exempt certain Parcels Identified by the City from the Requirements of Assembly Bill 2011 and Senate Bill 6 Pursuant to California Government Code Sections 65912.114, 65912.124, and 65852-.24—for the City Council’s July 18, 2023 meeting.

Thank you.



**Matthew T. Struhar**  
Deputy Attorney General  
Land Use and Conservation Section, Public Rights Division  
Office of the Attorney General  
1300 I Street | P.O. Box 944255 | Sacramento, CA 95814  
Telephone (916) 210-7246 | [Matthew.Struhar@doj.ca.gov](mailto:Matthew.Struhar@doj.ca.gov)

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**ROB BONTA**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



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E-Mail: [Christina.Arndt@doj.ca.gov](mailto:Christina.Arndt@doj.ca.gov)

July 17, 2023

City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701  
Attn: Sonia Carvalho

Re: Urgency Ordinances Adopted on June 20, 2023

Dear Ms. Carvalho:

We have reviewed the urgency ordinance, Ordinance No. NS-3045, that the City Council passed on June 20, 2023, purporting to exempt certain parcels from AB 2011. We were aware that the Council had previously been considering a resolution concerning this subject matter but were surprised to learn it was converted into an urgency ordinance, particularly since the published June 20 meeting agenda did not identify it as such. State law provides that urgency ordinances can only be adopted in specific emergency circumstances supported by legislative findings of an immediate threat to public welfare. Because the urgency ordinance did not make such findings, the ordinance is void as a matter of law.

As set forth in detail in statewide guidance our office issued today, to be valid, urgency ordinances amending zoning regulations must be supported by written legislative findings that “there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.” (Gov. Code, § 65858, subd. (c); *216 Sutter Bay Associates v. County of Sutter* (1997) 58 Cal.App.4th 86.) Failure to make the showings required by Section 65858 renders an urgency ordinance invalid as a matter of law. (*California Charter Schools Assn. v. City of Huntington Park* (2019) 35 Cal.App.5th 362, 365.)

Ordinance No. NS-3045 states that “there is a current and immediate threat to the public health, safety, or welfare based on the passage of AB 2011, and an absence of a local ordinance adopting AB 2011 and the exemption of parcels described therein..., leading to uncertainty of implementation of the local land use plan in a consistent and equitable manner that may also be otherwise consistent with the General Plan.” This conclusory recital is insufficient to support the use of an urgency ordinance.



AB 2011 was enacted on September 28, 2022, and became effective on July 1, 2023. Had the City sought to implement it through an ordinance, it had nine months to consider and adopt an implementing ordinance without resorting to an urgency ordinance. The City's own conduct shows that there is no emergency threat. The ordinance that the City adopted on June 20, 2023 (after public notice stating that the City Council would be considering a resolution) identifies no threat to public health, safety, or welfare, let alone an immediate threat. The City's conclusory statement about potential uncertainty in implementation of a nine-month old state law is not a reasonable, credible, or sound factual finding relevant to the existence of an imminent threat to public health, safety, or welfare.

Further, an urgency ordinance – like this one – that “has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing,” may only be extended beyond the initial 45 days upon written legislative findings, supported by substantial evidence on the record, of a “specific, adverse impact upon the public health and safety,” which is defined as “a significant, quantifiable, direct, and unavoidable impact based on objective, identified written public health or safety standards, policies, or conditions” existing at the time that the urgency ordinance is adopted. (§ 65858, subd. (c)(1)). The findings must further demonstrate that there is no feasible alternative that would mitigate or avoid the adverse impact “as well or better, with a less burdensome or restrictive effect,” than the urgency ordinance. (§ 65858, subd (c)(3).) In addition, a city must “issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance” at least ten days before its extension. (§ 65858, subd. (d).)

Finally, as HCD has advised in its letters dated June 19, 2023 and dated July 11, 2023, both the urgency ordinance adopted June 20 and the proposed regular ordinance scheduled for a second reading at the July 18 City Council meeting, conflict with AB 2011, particularly as amended on July 10 by SB 129. AB 2011 allows a local government to exempt parcels only if it makes specific written findings, including that the exemption would result in no net loss of residential capacity in the City relative to the total capacity in light of both AB 2011 and local law. (Gov. Code, § 65912.114, subd. (i)(3).) The City has not made those findings.

The City must implement AB 2011 according to its terms. We welcome the City's reconciliation of its municipal ordinances with state law and we would be happy to meet to discuss this matter.

Sincerely,

*/s/ Christina Bull Arndt*

CHRISTINA BULL ARNDT  
Supervising Deputy Attorney General

For ROB BONTA  
Attorney General

July 17, 2023

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cc: Mayor Valerie Amezcua  
Mayor Pro Tem Jessie Lopez  
Councilmember Thai Viet Phan  
Councilmember Benjamin Vazquez  
Councilmember Phil Bacerra  
Councilmember Johnathan Ryan Hernandez  
Councilmember David Penaloza

**Orozco, Norma**

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**From:** Dale Helvig [REDACTED]  
**Sent:** Monday, July 17, 2023 9:33 PM  
**To:** eComment; Hall, Jennifer; Amezcua, Valerie; Phan, Thai; Vazquez, Benjamin; Lopez, Jessie; Bacerra, Phil; Hernandez, Johnathan; Penaloza, David  
**Cc:** Ridge, Kristine; Carvalho, Sonia R.; Mendoza, Steven; Thai, Minh  
**Subject:** 2023-07-18 Letter to City Council-Item 34 AB2011 and SB6 Ordinance  
**Attachments:** 2023-07-18 Letter to City Council-Item 34.pdf

Please ensure that only the attachment is posted so that emails are left off.

Dale Helvig  
Resident, Santa Ana

Dale Helvig

Resident, Santa Ana CA 92706



July 18, 2023

Mayor Amezcua and Santa Ana City Councilmembers  
City of Santa Ana  
20 Civic Center Plaza, 8<sup>th</sup> Floor  
Santa Ana CA 92702

**Subject: ITEM 34 – Second Reading of Ordinance Amendment No. 2023-03 to Exempt Certain  
Parcels Identified by the City from the Requirements of AB 2011 and SB 6**

I would like to start off by thanking you, and the City staff, for the effort and strong support you all have provided to ensure the first reading of this proposed ordinance was successful. This ordinance shows the City cares and what to follow the approved General Plan which includes the State of California approved Housing Element. The City should not give up its right to determine what is best for its residents, especially considering this city is leading the way in housing development for all income levels. This is why I fully support the City of Santa Ana in adopting this ordinance.

The General Plan took many years of hard work by the City, its residents, and its businesses to develop and pass. Do not let others dishonor that effort by making this into a NIMBY issue for the sake of optics and politics *when clearly it is not*. No one is saying “Do not build at all”... merely build according to the General Plan and State approved Housing Element.

Santa Ana has been a leader in addressing new housing and should have the opportunity to be a leader again by identifying **where** and **what** it needs to build to meet or exceed state requirements. Santa Ana should be held up as a model for both the state and other cities to follow.

Please retain local control and support this ordinance. Approve the second reading!

Thank you for your thoughtful consideration. Stay safe, stay healthy.

Respectfully,

Dale A Helvig  
Resident, Santa Ana

cc: Kristine Ridge,  
City Manager, Santa Ana

Steven Mendoza,  
Assist. City Manager, Santa Ana

Sonia Carvalho,  
City Attorney, Santa Ana

Minh Thai,  
Executive Director, Planning & Building



**Orozco, Norma**

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**From:** Tom Lutz [REDACTED]  
**Sent:** Tuesday, July 18, 2023 10:16 AM  
**To:** eComment  
**Subject:** Approval of Item #34

Dear Mayor and Council Members,

I encourage the support in passing item #34 to help protect development within the city and preserve the General Plan.

Tom & Nancy Lutz  
Ward 5  
[REDACTED]

## Orozco, Norma

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**From:** Irma Jauregui [REDACTED]  
**Sent:** Tuesday, July 18, 2023 11:38 AM  
**To:** eComment; Amezcua, Valerie; Bacerra, Phil; Penaloza, David; Hernandez, Johnathan; Vazquez, Benjamin; Lopez, Jessie; Phan, Thai  
**Cc:** Ridge, Kristine; Thai, Minh  
**Subject:** Item 34 support  
**Attachments:** 2023-07-18 Letter to City Council-Item 34.pdf

Dear Mayor, council members, city manager and executive director,

I am also in support of item 34 and included the letter that our neighbor Dale Helvig has sent to you for which I am heartily in agreement.

Thank you all for your work caring for our city and residents,

Warmest regards,

Irma P Jauregui

Wilshire Square resident

Sent from my iPad



Dale Helvig

Resident, Santa Ana CA 92706



July 18, 2023

Mayor Amezcua and Santa Ana City Councilmembers  
City of Santa Ana  
20 Civic Center Plaza, 8<sup>th</sup> Floor  
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