May 23, 2022

Dear Cupertino City Council:

We are writing on behalf of **YIMBY Law** regarding Cupertino's 6th Cycle Housing Element Update. **YIMBY Law** is a legal nonprofit working to make housing in California more accessible and affordable through enforcement of state law.

Per §8899.50(a)(1) of state code, Cupertino's housing element must affirmatively further fair housing, which entails 'taking meaningful actions... that overcome patterns of segregation.'

The city has failed to affirmatively further fair housing in its housing element outreach:

1. When several De Anza College students emailed council to request inclusion in the city's housing element outreach, they were reprimanded by Vice Mayor Liang Chao in an email to the entire Foothill-De Anza board of trustees. This, as intended, reified existing disparities in which economic segments of the community are welcome in city hall.

2. This year, Cupertino City Council proposed requiring all 501(c) organizations to register as lobbyists if they perform a requisite amount of lobbying per year and proposed to establish a personal right to sue anyone who doesn't register as a lobbyist. Given the prevalence with which housing advocates are accused of being lobbyists, this move is intended to chill speech and public participation, which is antithetical to the inclusive public participation AB 686 requires.

Indeed, instead of engaging all economic segments of the community, the city has continued to rely on poorly reasoned analysis from the Planning Commission, including Planning Commissioner R Wang's suggestion the city place new housing below ground or above highways and Planning Commission Chair Steven Scharf's argument that the city could AFFH by maintaining high parking minimums. (This is the same Steven Scharf who once joked about building a wall around Cupertino to keep San Jose residents out.) When middle and working class families are excluded from the conversation, this is what passes for analysis.

The City of Cupertino is uniquely positioned to affirmatively further fair housing, as Cupertino is a wealthy, exclusionary city that Berkeley researchers identify as highly segregated from the rest of the Bay Area. This socioeconomic segregation is caused by the exclusionary cost of housing in your community, where an average home, as of April 30th, costs $3,166,000, which is only affordable to someone earning a salary of $484,000, meaning **only the richest 2% of households can afford to settle down in your community**. To put a finer point on the level of affluence in your community, the average home in your city costs more than French castles. It is thus no coincidence that your city is 90% less black and 30% less brown than the rest of the Bay Area.

In a 2021 report entitled 'Exclusionary Zoning: Its Effect on Racial Discrimination in the Housing Market,' economic advisors for the White House outline how exclusionary zoning, like yours, causes segregation. Your exclusionary zoning pushes low income children to

live in less resourced areas, which begets worse life outcomes from health to income. The research is clear: exclusionary zoning violates your duty to further fair housing.

To take meaningful actions that overcome patterns of segregation, we recommend you:

1. **End apartment bans in high opportunity areas.** This will give middle and working class families the opportunity to share in the resources your rich neighborhoods enjoy. As of 2020, **your city banned apartments in over 91.3% of residential areas**, including in 94.5% of high opportunity residential areas.

2. **Accommodate 5604 low income homes in your site inventory.** While substantially larger than the floor of 1880 low income homes required by RHNA, 5604 is the number of homes required to bring the proportion of low income families in your city in line with the rest of the Bay Area. While this number is large enough to be politically challenging, it will always be politically challenging to overcome segregation, as AFFH requires.

Thank you,
Salim Damerdji, South Bay YIMBY