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## Court of Appeal Rejects City's Reliance on Setback Standard Under Housing Accountability Act

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On September 10, 2021, the First District Court of Appeal published a decision emphasizing that the Housing Accountability Act severely limits local governments' discretion to deny housing projects, and that recent amendments further limiting local control are constitutional.

In *California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) \_\_ Cal.App.5th \_\_ [2021 WL 4129452], the Court of Appeal considered whether the San Mateo City Council's denial of a market-rate housing project violated the Housing Accountability Act (Gov. Code § 66659.5) ("HAA"). The City Council found that the four-story, ten-unit project, proposed to be built next to two-story and single-story homes, did not comply with design review guidelines that required a transition or setback for upper floors. The Superior Court upheld the City's denial on the ground that the setback standard was objective, and therefore that the HAA did not apply, and that even if the HAA applied, it was unenforceable as an impermissible intrusion into charter cities' home rule authority and an unlawful delegation of municipal affairs to private parties. The Court of Appeal reversed.

First, even though the City had a plausible basis to determine that the setback requirement was an unmet objective standard, the Court declined to defer to the City's determination. Most importantly, the standard did not establish the minimum distance. Rather, the design review guidelines provided that if the proposed development was one or more stories taller than an adjacent building, "a transition or step in height is necessary." Further, City consultants and the developer offered alternative reasonable interpretations as to the manner in which the project could comply, e.g., that trees between the buildings would mitigate the height differential. Thus, it was not indisputable that the standard was objective, and under subdivision (f)(4) of the HAA (added in 2017), the challengers' position was supported by substantial evidence and overrode the City Council's rejection of the consultants' and developer's interpretation and conclusion. Accordingly, the City Council's decision violated the HAA.

Second, application of the HAA to limit charter city authority over housing projects does not violate the home rule (or municipal affairs) doctrine. In short, the Court emphasized the HAA's housing crisis findings and that local governments and developers have not

approved and built sufficient housing to meet the state's needs. The HAA's limits on local control are reasonably targeted to address the crisis, and sufficiently tailored to do so.

In short, this case teaches that local governments must cautiously evaluate whether a housing project meets local government planning and design standards, including as to whether standards that appear at first blush to be objective really are.