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Orinda, CA 94563-1432  
June 22, 2019

Via email  
Assembly Committee on Local Government  
Sacramento, CA

Re: Oppose SB 330

Dear Chair and Committee Members:

Please refer this bill to the Office of Legislative Counsel for an opinion as to whether it is constitutional. For the reasons stated below, I believe that it is not constitutional.

***Summary:***

Proposed Gov't Code section 65913.3(b)(1)(A) would regulate minimum parking requirements that cities may impose.

SB 330 violates the California constitutional right that cities have to control land use within their boundaries. Article XI, Section 7, of the California Constitution, provides, "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." SB 330 is constitutional only if it is a "general law." SB 330 is not a general law, because it does not "apply statewide;" instead, it distinguishes between counties with more or fewer than 700,000, and between cities with a population of more or fewer than 100,000 in counties with a population of 700,000 or less.

SB 330 is also invalid because it violates the equal protection clauses of the California and United States Constitution by making those distinctions.

***Discussion***

***SB 330 Violates Cities' California Constitutional Right of Control Over Land Use***

SB 330 violates the California Constitutional right that cities have to control land use within their boundaries. Local control over land use and zoning is a right granted to cities under the California Constitutional, subject only to the general laws of the State of California. Article XI, Section 7, of the California Constitution, provides, “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” As the California Supreme Court has explained, “This inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders....” (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729.)

As noted, a city’s constitutional right to regulate land use is subject to “general laws.” SB 330 would supplant local land use law. It is only constitutional if it is a “general law.” The Supreme Court recently explained, “General laws are those that apply statewide and deal with matters of statewide concern.” (*T-Mobile West, LLC v. City and County of San Francisco* (April 4, 2019) No. S238001.)

SB 330 is not a general law, because it does not “apply statewide;” instead, it distinguishes between counties with a population more or less than 700,000 residents. It also distinguishes between cities with a population of more or less 100,000 in counties with a population of 700,000 or less. (Proposed Gov’t Code section 65913.3(b)(1)(A).)

Accordingly, it is an unconstitutional usurpation of the cities’ right to control land use, under Article 11, section 7 of the California Constitution.

### ***SB 330 is Unconstitutional Because It Denies Equal Protection of the Law***

SB 330 is also invalid because it violates the equal protection clauses of the California and United States Constitution. (U.S. Const., 14th Amend., and Cal. Const., art. I, § 7.) As explained in *Britt v. City of Pomona* (1990) 223 Cal.App.3d 265:

Both the Fourteenth Amendment of the federal Constitution and article I, section 7 of the state Constitution prohibit denial to persons of the equal protection of the laws. These constitutional

provisions require that persons who are similarly situated receive like treatment under the law and that statutes may single out a class for distinctive treatment only if that classification bears a rational relationship to the purposes of the statute. Thus, if a law provides that one subclass receives different treatment from another class, it is not enough that persons within that subclass be treated the same. Rather, there must be some rationality in the separation of the classes. (Citation omitted.)

Analyzing SB 330 under these rules, there is no rational basis for distinguishing between counties with more than, compared to fewer than, 700,000. (Proposed Gov't Code section 65913.3(b)(1)(A)(i).) Likewise, there is no rational basis for distinguishing between cities with "a population of 100,000 or greater ... located in a county with a population of 700,000 or less." (Proposed Gov't Code section 65913.3(b)(1)(A)(ii).)

There is no rational relationship between these distinctions and the purpose of the bill. The bill therefore violates equal protection.

### *Conclusion*

SB 330 violates the California Constitution. It should be referred to the Office of Legislative Counsel for analysis of this issue.

Respectfully submitted,

*/s/ Nicholas B. Waranoff*

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