

From: [Anne Paulson](#)
To: [Public Comment](#)
Subject: PUBLIC COMMENT AGENDA ITEM 11 - March 8, 2022
Date: Monday, March 7, 2022 8:39:29 AM

March 7, 2022

Re: City Council Meeting Agenda Item #11 - Historic Resource Inventory

Dear Mayor Enander and Councilmembers,

On the matter of historical determination for housing projects, I urge the City Council to select Option 1, verifying that the project site is not already listed as a historic resource and requiring nothing more. When we require an applicant to hire a historian for thousands of dollars and wait months for the historic review process to play out, we're almost certainly merely making the applicant wait months and spend time and money to no purpose, as most houses are not historic. We need to get rid of red tape for housing, and this is a good place to start.

Even if the city elects to continue to require this discretionary historical determination for discretionary approvals, it cannot do so for SB 9 applications, which must be handled ministerially. By way of reminder, a *discretionary* approval is one that may require the exercise of judgment, deliberation, or discretion; it might require hearings, public comment, research, or any number of complicated processes. A *ministerial* approval is the opposite: the project must be approved or denied based on whether it satisfies objective criteria. Historical reviews, which are judgment calls, cannot be ministerial.

The city would be erring in two ways in doing a discretionary historical review for SB 9 projects. First, the city is prohibited from doing the discretionary review at all, because the approval process has to be ministerial. The planning department seeks to require a historian report to help it determine whether an SB 9 site is a "discretionary historic resource". It can't. The very word "discretionary" indicates why this is not permitted. The planning department is not permitted to use "some kind of historic analysis;" such an analysis is not part of a ministerial review. The planning department may only use the objective ministerial process of determining whether the site is already listed in the California Register or already determined to be a local historic resource or historic landmark.

Second, the city cannot use the results of the discretionary review to deny an SB 9 project, because a denial has to be based on violations of objective written standards, rather than a

discretionary decision about the historical nature of a property. Staff claims that, "the local building official may deny a proposed SB 9 project that will have a specific, adverse impact on the physical environment ... including any discretionary historic resource". But the statutes require that any such denial be based on "objective, identified written public health or safety standards, policies, or conditions" and that those objective, written standards be identified in the denial. (The relevant sections of the law are included below.) Staff's suggestion of denial for an impact on a "discretionary historic resource" is, by their own words, discretionary, rather than objective, and thus not permitted by SB 9.

This discretionary review must be eliminated for SB 9 projects, and should in my view be eliminated for all other projects as well. If the city wants to identify historical resources, it should do so before an applicant puts forward a building application.

Sincerely,

Anne Paulson

SB 9: Section 65852.21 (d)

Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in **paragraph (2) of subdivision (d) of Section 65589.5**, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. [my bold]

Housing Accountability Act: Section 65589.5 (d) (2)

The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a **significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions** as they existed on the date the application was deemed complete. [my bold]