SBAOR
Santa Barbara Association of REALTORS®

June 17, 2025

Mayor Paula Perotte
Mayor Pro Tempore Stuart Kasdin
Councilmember Luz Reyes-Martín
Councilmember James Kyriaco
Councilmember Jennifer Smith
130 Cremona Drive
Goleta, CA 93117

RE: Housing Priority for Goleta Residents and Employees (Implementation of Housing Element Subprogram HE 2.2(a))

Dear Mayor Perotte and Councilmembers,

The Santa Barbara Association of REALTORS® (SBAOR) represents about 1,300 REALTORS® throughout the South Coast and our mission includes engaging in real estate related community issues affecting our members and/or their clients who are homeowners, housing providers, tenants, and commercial owners. As one of the leading organizations on the South Coast primarily focused on housing, we support the staff recommendations for housing priorities for Goleta residents and employees.

SBAOR supports the three recommendations within the staff report. We appreciate a local preference program for Affordable housing and nonprofit affordable units supported by government funds (i.e. Housing Trust Funds). However, we concur with the report that trying to apply this to market rate resale units would be very difficult. As mentioned in the report, by extending this program to market rate resale you could potentially violate State and federal fair housing laws and run into legal concerns.

We applaud you in advancing this important issue and keep looking at ways to help our community without violating state and federal laws. SBAOR requests that you adopt staff recommendations.

Sincerely,

Summer Knight
SBAOR 2025 President

To: City Council
City of Goleta
June 17, 2025

RE: Agenda Item D.3 and City of Goleta's Inclusionary Housing Ordinance

Dear Ms. West,

I write to share my perspective on the Inclusionary Housing Ordinance (IHO) as an attorney at the public interest law firm Pacific Legal Foundation based in Sacramento.

The IHO likely imposes unconstitutional conditions on development permits in the form of exactions which lack the requisite nexus and proportionality under U.S. Supreme Court jurisprudence. As outlined in cases like *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 51 U.S. 374 (1994), the Court employs a two-part test to determine whether conditions on land use permit applications which demand property interests are constitutionally permissible. First, such conditions must bear an "essential nexus" to the burdened development, meaning that they must be designed to mitigate the negative public impacts of that development. Second, conditions must be "roughly proportional" to the impact which they seek to mitigate. In short, land use permit conditions which require the dedication of private property "must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Dolan*, 51 U.S. at 391. These principles are an articulation of the doctrine of unconstitutional conditions in the land use context.

The IHO demands the constitutionally protected property interest in the form of "the right of the owner of property to fix the price at which he will sell it," which is "an inherent attribute of the property itself, and as such is within the protection of the Fifth and Fourteenth Amendments."). *Old Dearborn Distrib. Co. v. Seagram Distillers Corp.*, 299 U.S. 183, 191–92 (1936). It also requires the developer to enter into and record a restrictive covenant regarding the affordability of below-market rate units, which demands a property interest. Goleta Muni. Code § 17.28.060(B); *see Cortese v. United States*, 782 F.2d 845, 850 (9th Cir. 1986) (applying California law, "[r]estrictive covenants, or promises respecting land use, may be referred to as interests in property . . . particularly for condemnation purposes[.]") (internal citations omitted).

Although the California Supreme Court in *CBIA v. San Jose* upheld a similar policy, 61 Cal. 4th 435 (2015), recent developments have cast severe doubt on the continuing viability of

that holding. In particular, Justice Thomas' concurrence to the denial of certiorari in that case indicated his firm belief that *Nollan* and *Dolan* "would have governed San Jose's actions had it imposed those conditions through administrative action" rather than by generally applicable legislation. *CBIA v. San Jose*, 577 U.S. 1179, 1179 (Thomas, J., concurring in the denial of *cert.*). Last year, however, the Supreme Court's ruling in *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024) clarified that the application of *Nollan* and *Dolan* do not depend on whether a condition is imposed by administrative or legislative means. In other words, San Jose's—and Goleta's—policies are now subject to serious constitutional threat under the unconstitutional conditions doctrine despite their legislative nature. Moreover, Goleta's IHO has a confiscatory effect, completely eliminating a developer's opportunity to earn a fair and reasonable return on property. This fact strongly distinguishes the situation in Goleta from that in San Jose. *See CBIA*, 61 Cal. 4th at 464 (observing that plaintiff did "not claim that the requirements imposed by the ordinance will have a confiscatory effect.").

Goleta's IHO fails the nexus prong of the unconstitutional conditions doctrine because new housing development does not *cause* housing affordability problems. On the contrary, as an elementary matter of economics, new supply tends to put *downward* pressure on price. Thus, far from contributing to the housing affordability crisis, new residential development actually alleviates the problem. Forcing developers to bear the burden of providing subsidized affordable housing is therefore not the kind of impact mitigation required by *Nollan* and *Dolan*; it is more like an "out-and-out plan of extortion." *Sheetz*, 601 U.S. at 275 (quoting *Nollan*, 483 U.S. at 837). Even worse, the policy does not even rationally advance the government's legitimate interest in promoting housing affordability. By making development economically infeasible, the IHO has the effect of reducing supply and putting upward pressure on the price of housing. It is simply impossible to make housing more affordable by making it more costly. *See, e.g.,* Bento, et al., *Housing Market Effects of Inclusionary Zoning*, 11 CITYSCAPE 7 (2009) (finding that inclusionary housing policies in California resulted in an increase in the price of single-family houses); Tom Means & Edward Peter Stringham, *Unintended or Intended Consequences? The Effect of Below-Market Housing Mandates on Housing Markets in California*, 30 J. PUB. FINANCE & PUB. CHOICE 39 (2012) (finding that inclusionary housing policies reduced housing supply by 7 percent and increased prices by 20 percent between 1990 and 2000).

The absence of an impact mitigation nexus can be clearly seen in the legislative statement of "purpose and intent" at Section 17.28.010 of Goleta's Municipal Code. This section lists several purposes of the policy, most of which are clearly geared towards providing a generalized benefit to the community and not to mitigating any actual impact of new

residential development. For example, the IHO seeks to "implement statewide policies to make available an adequate supply of housing" and to "support general plan policies intended to promote and maintain an economically diverse community." While these may certainly be laudable goals to advance the public interest, they are not constitutionally sufficient reasons for shifting the cost of promoting housing affordability onto the developers of new residential property.

In short, Goleta's IHO policy is both unconstitutional and counterproductive. Rather than mitigating any (non-existent) negative impacts of new residential development on housing affordability, the policy makes housing less affordable by imposing confiscatory costs on its construction. I urge the City Council to take this into consideration when reviewing the IHO.

Thank you,

David J. Deerson
Attorney
Pacific Legal Foundation
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