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LOS ALTOS CITY COUNCIL'S STATEMENT ON ITS DECISION TO WITHDRAW ITS APPEAL OF THE 40 MAIN STREET CASE

Los Altos, Calif. – September 5, 2020 – On September 5, 2020, the Los Altos City Council voted 5-0 to withdraw its appeal of the trial court's judgment regarding the consolidated petitions in 40 Main Street LLC v. City of Los Altos (Santa Clara County Superior Court Case Nos. 19CV349845 and 19CV350422.) To say this was a difficult decision for the City Council is an understatement. On April 23, 2019, the City Council had voted unanimously to deny the developer's appeal of Staff's determination that the proposed project is not entitled to a ministerial streamlined permit under SB 35 and again, on July 7, 2020, voted unanimously to appeal the Superior Court Judge's order granting the developer's petitions, finding that the project is entitled to ministerial approval under SB 35. Unfortunately, relying on its broad discretion under the law, the Superior Court Judge also granted the developer's request that the City post an appeal bond in the amount of \$7 million.

The City would be required to post the bond by September 17, 2020, and, more concerning, if the City lost the appeal, the City would be required to pay the full amount of the bond to the developer, plus any attorney's fees, which is likely to exceed \$10 million. The Council determined that the potential cost of the litigation could severely impact the City's ability to provide even basic municipal services. In light of this huge financial risk to the City and the uncertainty and risk of losing the appeal, the City Council decided to withdraw the appeal. There is also no question that the requirement to post a bond in cases like this will have a chilling effect on any city's ability to appeal lower court rulings, even if the local jurisdiction believes the Court erred.

As the Council has maintained from the beginning, it supports efforts to increase the supply of housing, especially affordable housing. Its determination to uphold the Staff's decision was based on its interpretation of the applicable statutes. It was in no way to prevent the construction of the two affordable housing units that would have been part of this 5-story structure. State laws such as SB 35 and the Housing Accountability Act should not be used as tools to strip cities of their ability to review projects to ensure they conform with its zoning and safety requirements.

The next step is for the City to hold a public meeting to issue the court-mandated, streamlined ministerial permit requested by the applicant, 40 Main Street, LLC, subject to some limited City requirements. This meeting is tentatively set for September 10, 2020, at 7:00 pm. Notwithstanding the court-mandated hearing, the Council is still open and willing to discuss with the developer an alternative project for the 40 Main Street site because Council sincerely believes the project approved by the Court is not a good fit for this site and does not comply with the City's zoning and safety requirements. The City will continue to reach out to the developer in good faith to work on such a project so that we can have a solution that works for the City, the community and the developer.

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