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FRED GAINES, ESQ. (State Bar No. 125472)
LISA A. WEINBERG, ESQ. (State Bar No. 130091)
KIMBERLY A. RIBLE, ESQ. (State Bar No. 216861)
GAINES & STACEY LLP
16633 Ventura Boulevard, Suite 1220
Encino, CA 91436
Telephone: (818) 933-0200
Facsimile: (818) 933-0222

Attorneys for Petitioner
SNOWBALL WEST INVESTMENTS, L.P.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SNOWBALL WEST INVESTMENTS, L.P., a California limited partnership, Petitioner and Plaintiff, v. CITY OF LOS ANGELES; CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING; and DOES 1 through 10, inclusive Respondents and Defendants.	CASE NO. 20STCP00771 [Assigned for all purposes to Hon. Mitchell L. Beckloff, Dept. 86] **PETITIONER'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF REPLY BRIEF FOR PETITION FOR WRIT OF MANDATE, AND EXHIBITS THERETO** [Reply Brief in Support of Petition for Writ of Mandate Filed Concurrently Herewith] Date: March 24, 2021 Time: 9:30 a.m. Dept. 86 Action Filed: February 24, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

In addition to the four items, A through D, of which Petitioner SNOWBALL WEST INVESTMENTS, L.P. ("Snowball") requested that the Court take judicial notice in conjunction with its Opening Brief, Snowball requests that pursuant to Evidence Code § 452(c), this Court also take judicial notice of the following five items of legislative history concerning the Housing Accountability Act, Government Code §65589.5:

E. 2017 California Assembly Bill No. 3194, California 2017-2018 Regular Session, California Bill Text, dated February 16, 2018, a true and correct copy of which is attached as Exhibit E.

F. California Bill Analysis, Assembly Committee on Housing and Community Development, 2017-2018 Regular Session, Assembly Bill 3194, dated April 25, 2018, a true and correct copy of which is attached as Exhibit F.

G. 2017 California Assembly Bill No. 3194, California 2017-2018 Regular Session, Amended/Substituted California Bill Text, dated June 21, 2018, a true and correct copy of which is attached as Exhibit G.

H. California Bill Analysis, Senate Committee on Governance and Finance, 2017-2018 Regular Session, Assembly Bill 3194, dated June 27, 2018, a true and correct copy of which is attached as Exhibit H.

I. California 2018 Legislative Service, Chapter 243, A.B. 3194, filed August 28, 2018, a true and correct copy of which is attached as Exhibit I.

Items E through I are subject to judicial notice as official acts of the legislative department of the State of California. Evidence Code § 452(c). *See also, Save Berkeley's Neighborhoods v. Regents of University of California* (2020) 51 Cal.App.5th 226, 241, fn. 4; *Elsner v. Uveges*

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(2004) 34 Cal.4th 915, 934, fn. 19 ("we have routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent.")

DATED: March 8, 2021

Respectfully submitted,

FRED GAINES
LISA A. WEINBERG
KIMBERLY A. RIBLE
GAINES & STACEY, LLP

BY: *Fred Gaines*
FRED GAINES
Attorneys for Petitioners SNOWBALL WEST INVESTMENTS, L.P.

Exhibit E

2017 California Assembly Bill No. 3194, California 2017-2018 Regular Session

CALIFORNIA BILL TEXT

TITLE: Housing Accountability Act: project approval.

VERSION: Introduced
February 16, 2018
Daly

Image 1 within document in PDF format.

SUMMARY: An act to amend Section 65589.5 of the Government Code, relating to housing.

TEXT:

CALIFORNIA LEGISLATURE--2017-18 REGULAR SESSION

ASSEMBLY BILL No. 3194

Introduced by Assembly Member Daly

February 16, 2018

An act to amend Section 65589.5 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 3194, as introduced, Daly. Housing Accountability Act: project approval.

The Housing Accountability Act, which is part of the Planning and Zoning Law, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified findings. Under the act, the local agency may disapprove or condition approval of a housing development project or emergency shelter if, among other reasons, the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation, as provided.

If a local agency proposes to disapprove a housing development project that complies with applicable, objective general plan and zoning standards and criteria, or to approve it on the condition that it be developed at a lower density, the act requires that the local agency base its decision upon written findings supported by a preponderance of the evidence on the record that specified conditions exist.

This bill would prohibit a housing development project from being found inconsistent, not in compliance, or not in conformity, with the applicable zoning ordinance, and would prohibit a local government from requiring a rezoning of the project site, if the existing zoning ordinance does not allow the maximum residential use, density, and intensity allocable on the site by the land use or housing element of the general plan.

Under the Housing accountability Act, if a local agency proposes to disapprove a housing development project that complies with applicable, objective general plan and zoning standards and criteria, or to approve it on the condition that it be developed at a lower density, the act requires that the local agency base its decision upon written findings supported by a preponderance of the evidence on the record that specified conditions exist. One of those conditions is that the housing development project

would have a specific, adverse impact upon the public health or safety, as specified. "Specific adverse impact" is defined to mean a significant, quantifiable, direct, or 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.

This bill would revise that definition to require that the impact also be imminent.

The bill would additionally state the Legislature's intent in enacting the bill's provisions to supersede the California Court of Appeal decision in Mira Development Corp. v. City of San Diego (1988) 205 Cal.App.3d 1201, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

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(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section

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65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(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. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph

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(4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

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(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the housing development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the record. For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j) (1) **(A)** When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

~~(A)~~

(i) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this ~~paragraph,~~ **clause,** a "specific, adverse impact" means ~~a~~ **an imminent,** 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.

~~(B)~~

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(ii) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to ~~paragraph (1),~~ **clause (i),** other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(B) In amending subparagraph (A) by the act adding this subparagraph, it is the intent of the Legislature to establish a very high threshold for a local agency to justify denying or conditioning a project for health or safety reasons. The Legislature further declares that the conditions necessary to satisfying subparagraph (A) rarely arise. The Legislature further declares its intent, in amending subparagraph (A) by the act adding this subparagraph, to supersede the holding and dicta in the decision of Mira Development Corp. v. City of San Diego (1988) 205 Cal.App.3d 1201 to the extent that the decision suggests that regularly occurring planning issues such as parks, traffic, schools, and air quality rise to the level of a "specific, adverse impact upon the public health and safety" as used in this section.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) (A) For purposes of this section, a housing development project shall not be found inconsistent, not in compliance, or not in conformity, with the applicable zoning ordinance, and the project shall not require a rezoning, if the existing zoning ordinance does not allow the maximum residential use, density, and intensity allocable on the site by the land use or housing element of the general plan.

(B) The Legislature declares its intent in adding this paragraph to supersede the holding and dicta in the decision of Mira Development Corp. v. City of San Diego (1988) 205 Cal.App.3d 1201 to the extent that the decision declined to apply this subdivision to a proposed housing development on the basis of inconsistency with the existing zoning ordinance, notwithstanding that the project was consistent with the use, density, and intensity allowable on the project site by the general plan.

~~(4)~~

(5) For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

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(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017-18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017-18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or

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advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, "bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

End of Document

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Exhibit F

CA B. An., A.B. 3194 Assem., 4/25/2018

California Bill Analysis, Assembly Committee, 2017-2018 Regular Session, Assembly Bill 3194

April 25, 2018
California Assembly
2017-2018 Regular Session

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 3194 (Daly) - As Amended April 16, 2018

SUBJECT: Housing Accountability Act: project approval

SUMMARY: Makes changes to the Housing Accountability Act (HAA). Specifically, **this bill**:

1) Declares the intent of the Legislature to establish a very high threshold for a local agency to justify denying or conditioning a housing project for health or safety reasons, that the conditions for denying a project under the HAA are very rare, and that regularly occurring planning issues do not rise to the level of a "specific, adverse impact upon the public health and safety."

2) Provides that a housing development shall not be found inconsistent with and not in compliance or not in conformity with the applicable zoning ordinance and shall not require the site to be rezoned, if the zoning ordinance does not allow for the maximum allowable density and intensity for the site allowable under the housing element or the general plan.

EXISTING LAW: Under the HAA:

1) Defines "housing development project" to mean a use consisting of any of the following:
   a) Residential units only.
   b) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.
   c) Transitional housing or supportive housing.

2) Defines "disapprove the development project" to include any instance in which a local agency either:
   a) Votes on a proposed housing development project and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit; or
   b) Fails to comply with the required time period for approval or disapproval required by law.

3) Defines "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

4) Defines "housing for very low-, low-, or moderate-income households" as either:
   a) At least 20% of the total units shall be sold or rented to lower-income households; or
   b) 100% of the units shall be sold or rented to persons and families of moderate-income or middle-income.

5) Defines "very low-income" as persons and families whose income does not exceed 50% area median income (AMI).

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6) Defines “low-income” as persons and families whose income does not exceed 80% AMI.

7) Defines “moderate-income” as persons and families whose income does not exceed 120% of AMI.

8) Defines “above moderate-income” as persons and families whose income exceeds 120% of AMI.

9) Defines “housing organization” as a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the project. A housing organization may only file an action under the HAA to challenge the disapproval of a housing development by a local agency.

10) Prohibits a local agency from disapproving a proposed housing development project for very low-, low-, or moderate-income households or an emergency shelter, or conditioning approval in a manner that renders the project infeasible for development, unless it makes written findings based upon a preponderance of the evidence in the record, as to one of the following:

a) The jurisdiction has adopted and revised its housing element as required by law and has met its share of the regional housing need allocation.

b) The proposed development project or emergency shelter would have a specific, adverse impact upon public health or safety that cannot be mitigated without rendering the development unaffordable or shelter infeasible.

c) The denial of the proposed development project is required to comply with specific state or federal law and there is no feasible method to comply without rendering the development unaffordable or shelter infeasible.

d) The development project or emergency shelter is proposed on land that does not have adequate water or waste water facilities, or is zoned for agriculture or resource preservation as specified.

e) The proposed development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete.

11) Provides that when a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

a) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. 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; and

b) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to a), above, other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

12) Provides that a change in a zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

13) Provides that, for purposes of the HAA, the receipt of a density bonus shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision, as specified.

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14) Requires, if the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified, the agency to provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

a) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

b) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

15) Provides that if the local agency fails to provide the documentation described above in 14), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

16) Authorizes the applicant, any person who would be eligible to apply for residency in the proposed development or emergency shelter, or a housing organization to bring an action to enforce the HAA.

17) Specifies that if a jurisdiction denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete, that have a substantial adverse effect on the viability or affordability of a housing development for very low-, low-, or moderate-income households and is the subject of a court action which challenges the denial, the burden of proof shall be on the local legislative body.

18) Specifies that in any action taken to challenge the validity of a decision by a jurisdiction to disapprove a project or approve a project upon the condition that it be developed at a lower density, the local government shall bear the burden of proof that its decision has conformed to all of the conditions specified in the HAA.

19) Provides that the court must issue an order of judgment compelling compliance with the HAA within 60 days, if it finds either of the following:

a) The local agency, in violation of subdivision (d) of the HAA, disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low-, low-, or moderate-income households, including farmworker housing, without making the findings required by the HAA or without making findings supported by a preponderance of the evidence; or

b) The local agency, in violation of subdivision (j) of the HAA, disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by the HAA or without making findings supported by a preponderance of the evidence.

20) Authorizes the court to issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of the HAA.

21) Requires the court, if it finds a violation of the HAA, to award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of the HAA.

22) Requires, if the court determines that the local agency has failed to comply with the order or judgment compelling compliance within 60 days, the court to impose fines on a local agency that has violated the HAA.

a) Specifies that the fine shall be in a minimum amount of $10,000 per housing unit in the housing development project on the date the application was deemed complete, as specified.

b) Requires the local agency to deposit any fine levied into a local housing trust fund. Provides that the local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, or otherwise in the Housing Rehabilitation Local Fund.

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c) Requires the court, in determining the amount of fine to impose, to consider the local agency's progress in attaining its target allocation of the regional housing need, as specified, and any prior violations of the HAA.

23) Prohibits fines from being paid out of funds already dedicated to affordable housing, as specified. Requires the local agency to commit and expend the money in the housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low-, very low-, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited into the Building Homes and Jobs Fund, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low-, very low-, or low-income households.

24) Provides that if any money derived from a fine imposed pursuant to the above provisions is deposited in the Housing Rehabilitation Loan Fund, then that money shall be available only upon appropriation by the Legislature.

25) Requires, if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter, and failed to carry out the court's order or judgment within 60 days, as specified, the court to multiply the fine specified above by a factor of five. Specifies that “bad faith” includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

26) Requires a petition to enforce the HAA to be filed and served no later than 90 days from the later of:
a) The effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project; or,
b) The expiration of the time periods specified in the Permit Streamlining Act.

27) Authorizes a party to appeal a trial court's judgment or order to the court of appeal pursuant to specified procedures.(Govt. Code Section 65589.5)

FISCAL EFFECT: Unknown.

COMMENTS:

The HAA: The purpose of the HAA, also known as the “Anti-NIMBY Act,” is to limit the ability of local agencies to reject or make infeasible housing developments without a thorough analysis of the economic, social, and environmental effects of the action. The HAA provides for a judicial remedy that allows a court to issue an order to compel a city to take action on a development project. An applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization, may bring an action to enforce the HAA. Many provisions of the HAA are limited to lower-income housing developments. In 2011 the California Court of Appeal in *Honchariw v. County of Stanislaus* (200 Cal.App.4th 1066) held that specified provisions of the HAA apply to all housing projects, not just affordable projects.

In 2017, the Legislature passed, and the Governor signed, three bills making significant changes to the HAA. Under identical measures AB 678 (Bocanegra), Chapter 373, Statutes of 2017 and SB 167 (Skinner), Chapter 368, Statutes of 2017, increased the burden on local jurisdictions when denying a housing project, imposed fines for a violation of the HAA, and expanded judicial remedies for violations of the HAA. AB 1515 (Daly), Chapter 378, Statutes of 2017, changed the standard the court must use in reviewing the denial of a housing development by providing that a project is consistent with local planning and zoning laws if there is substantial evidence that would allow a reasonable person to find it consistent. This could expand the number of housing developments that are afforded the protections of the HAA.

Standard for denying a project: When a local agency rejects a project that complies with zoning in the general plan, zoning standards, or design review, or requires that it be developed at a lower density for it to be approved, the decision must be based on written findings supported by a preponderance of the evidence that the development would have a specific, adverse impact on the public health and safety unless the project is developed at a lower density, and there is no way to mitigate the adverse impacts except to reduce the density or disprove the project. A “specific, adverse impact” means a significant, quantifiable,

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direct, and unavoidable impact based on objective safety standards, polices, or conditions as they exist on the date the application is deemed complete.

This bill would declare that it is the Legislature's intent to establish a "very high threshold" for the conditions to deny a project for health and safety concerns and that these conditions rarely arise. Further, the bill makes findings that "regularly occurring planning issues" do not arise to the level of "specific, adverse impact upon the public health and safety." The committee may wish to consider if these terms need further definition and if they could lead to confusion on the part of both developers and cities in implementing the HAA.

Planning mechanisms: Every city and county is required to develop a comprehensive, long-term general plan that outlines the community's vision of future development through a series of policy statements and goals. The general plan is the basis for all land use decisions. Zoning, subdivisions, and public works projects can only be approved when they are consistent with the general plan. Each community's must also adopt a housing element, which outlines a long-term plan for meeting the community's projected housing needs. Not only must all land use be consistent with the general plan, the general plan is required to be internally consistent. The land use element of the general plan must not conflict with the housing element.

The distribution of residential, commercial, and industrial and other zones must be based on the pattern of land uses established in the general plan. Zoning maps illustrate how all uses are distributed geographically. Zoning is adopted by ordinance and assigns each piece of property to a zone which describes the rules under which it can be used. A zoning ordinance identifies allowable uses and sets standards such as minimum lot size, maximum building height, and minimum front yard depth. If a developer proposes a use that is not allowed in that zone, then a rezoning is required. A public hearing is required to rezone and a city council or zone board must deny requests when the proposed zone conflicts with the general plan.

The housing element must include a specific list of adequate sites to accommodate the city or county's housing needs at all income levels. Once the housing element is adopted, sites must be zoned via local ordinance to reflect the density and intensity of the housing element within three years. Because a local government is not required to rezone for three years, there may be a gap between when the housing element and zoning ordinance are consistent.

According to a UC Berkeley Law School, of 152 housing projects processed in San Jose and San Francisco, over the last three years, in 78 instances the jurisdiction required a rezoning of a zoning variance. Even though in fully 72 instances the project was consistent with the general plan's housing polices and standards.

The HAA is intended to prevent a local government from denying a housing development project unless it is found to be inconsistent, or not in conformity with an applicable plan, program, policy, ordinance, or standard, unless it makes specific findings as noted above. This bill would define the maximum density and intensity standard that a housing development must comply with to the density standard in the zoning ordinance, housing element, or the general plan. In addition, a housing development would not be subject to rezoning if the existing zoning ordinance does not allow for the maximum residential use and density as allowable on the site according to the housing element or general plan. As noted above, the general plan is by definition a broad description of the policies and goals of the community's development goals. The housing element, which must be adopted every 8 years (5 years for some rural cities), is more detailed and includes a description of specific sites to meet the city or county's housing needs for all income levels. Three years after a housing element is adopted, the zoning ordinance must be updated to reflect any changes.

Purpose of this bill: According to the author, "the HAA provides that when a project complies with objective local planning rules, the local government cannot deny the project or reduce the density unless it makes a finding, supported by a preponderance of the evidence, that the project would have a specific adverse impact on public health or safety and there is no other feasible method to mitigate or avoid the impact. Despite the important improvements made to the HAA in last year's bill package, locals can still avoid the HAA by citing questionable health and safety concerns, or by requiring project-by-project re-zonings or zoning variances even where a housing project is consistent with the housing allowed by the general plan, thus rendering housing projects beyond the scope of the HAA's protections because they are technically 'inconsistent' with the zoning for the site. With respect to the health and safety loophole, the danger exists for locals to classify regularly occurring issues, such as

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increasing traffic or a shortage of parks in a neighborhood, as unmitigatable health and safety concerns that warrant rejecting a proposed housing development that complies with objective local planning rules.

On the zoning front, the concern is evading the HAA entirely through requiring project-by-project re-zonings or zoning variances."

Arguments in support: According to the Bay Area Council, "AB 3194 would strengthen the provisions of the HAA by closing loopholes that undermine the HAA applicability and effectiveness. As with a number of other related bills enacted into law in recent years, AB 3194 would reaffirm the intent of the HAA, but further clarifying the Act's provisions pertaining to health and safety impacts and zoning consistency."

Arguments in opposition: According to the American Planning Association (APA), "AB 3194 would prohibit a local government from requiring a rezoning of a project site if the existing zoning ordinance does not allow the maximum residential use density, [and] intensity, allocable on the site by the land use or housing element of the General Plan. The General Plan and the land use element were never intended to be as specific as the zoning ordinance - it covers different areas of the city with general categories. This major change would take away the whole purpose of the General Plan being general and would eliminate the long-standing relationship between the General Plan and zoning, forcing the General Plan map to be like the much more specific zoning map. If the Legislature intends to make such a fundamental change to a very general document after it has been approved it should give cities and counties time to update the General plan and land use element to take into account this new, zoning function. However, if the bill is amended to instead allow the developer to use the density specified in the housing element or zoning ordinance for a specific site, whichever is higher, APA would support that change. The housing element is the most detailed element in the General Plan and includes site-specific density information certified by HCD. The zoning is required to be updated within three years to reflect the housing element densities if there are not enough sites zoned at those densities within the jurisdiction. But if that rezoning has not [been] completed, using the more updated housing element densities makes sense."

Committee amendments: A local government is required to identify housing sites in their housing element and update the zoning ordinance within three years to reflect the density and use in the housing element. There may be a gap between when the housing element is adopted and when the zoning ordinance is updated. There may be cases in which the zoning ordinance does not allow the maximum density and intensity allowable in the general plan. As a result the site must be rezoned which means it does not receive the protections provided by the HAA. The committee may wish to allow sites where the zoning ordinance is not consistent with either a housing element or the land use element of the general plan, *if it has been updated in the last 10 years,* to receive the protections offered by the HAA and not require the site to be rezoned.

Related legislation:

AB 678 (Bocanegra), Chapter 373, Statutes of 2017: Made several changes to the HAA, including increasing the burden on local jurisdictions when denying a housing project, imposing fines for a violation of the HAA, and expanding judicial remedies for violations of the HAA.

SB 167 (Skinner), Chapter 368, Statutes of 2017: Identical to AB 678 (Bocanegra), above.

AB 1515 (Daly), Chapter 378, Statutes of 2017: Provided that, under the HAA, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

AB 2584 (Daly), Chapter 420, 2016: Authorized a "housing organization," as defined, to enforce specified provisions of the HAA.

Double-referred: This bill was also referred to the Committee on Local Government where it will be heard should it pass out of this committee

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REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association (sponsor)

Bay Area Council

California Apartment Association

California Association of Winegrape Growers

California Business Properties Association

California Chamber of Commerce

California Construction and Industrial Materials Association

National Federation of Independent Business

Non-Profit Housing Association of Northern California

Opposition

American Planning Association

California State Association of Counties (unless amended)

Rural County Representatives of California (unless amended)

Urban Counties of California (unless amended)

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085

CA B. An., A.B. 3194 Assem., 4/25/2018

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Exhibit G

2017 California Assembly Bill No. 3194, California 2017-2018 Regular Session

CALIFORNIA BILL TEXT

TITLE: Housing Accountability Act: project approval

VERSION: Amended/Substituted
June 21, 2018
Daly

Image 1 within document in PDF format.

SUMMARY: An act to amend Section 65589.5 of the Government Code, relating to housing.

TEXT:

AMENDED IN SENATE JUNE 21, 2018

AMENDED IN ASSEMBLY MAY 29, 2018

AMENDED IN ASSEMBLY APRIL 30, 2018

AMENDED IN ASSEMBLY APRIL 16, 2018

CALIFORNIA LEGISLATURE--2017-18 REGULAR SESSION

ASSEMBLY BILL No. 3194

Introduced by Assembly Member Daly

February 16, 2018

An act to amend Section 65589.5 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 3194, as amended, Daly. Housing Accountability Act: project approval.

The Housing Accountability Act, which is part of the Planning and Zoning Law, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings, based upon a preponderance of the evidence, that one or more conditions exist, including that the housing development project or emergency shelter would have a specific, adverse impact upon the public health or safety, as specified. The act also requires a local agency proposing to disapprove a housing development project that complies with applicable, objective general plan and zoning standards and criteria, or to approve it on the condition that it be developed at a lower density, to base its decision upon written findings supported by a preponderance of the evidence on the record that specified conditions exist, including if the housing development project would have a specific, adverse impact upon the public health or safety.

This bill would specify that a **proposed** housing development project is not inconsistent with the applicable zoning ~~ordinance,~~ **standards and criteria,** and would prohibit a local government from requiring a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general

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plan. **The bill would authorize a local agency, provided that the local agency has complied with specified provisions, to require the proposed housing development project to comply with the objective standards and criteria of the zoning that are consistent with the general plan, and would require the local agency to apply those standards and criteria to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.** The bill would declare the Legislature's intent that the conditions that would have a specific, adverse impact upon the public health and safety arise infrequently.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

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(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

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(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(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. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

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(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

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(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the housing development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the record. For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j) (1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. 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.

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(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, a **proposed** housing development project is not inconsistent with the applicable zoning ~~ordinance,~~ **standards and criteria,** and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. **If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning that are consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.**

(5) For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs

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of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B) (i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017-18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017-18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, "housing organization" means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, "bad faith" includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of

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preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

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Exhibit H

CA B. An., A.B. 3194 Sen., 6/27/2018

California Bill Analysis, Senate Committee, 2017-2018 Regular Session, Assembly Bill 3194

June 27, 2018
California Senate
2017-2018 Regular Session

SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair

2017 - 2018 Regular

Bill No:	AB 3194	**Hearing Date:**	6/27/18
Author:	Daly	**Tax Levy:**	No
Version:	5/29/18	**Fiscal:**	No
Consultant:	Favorini-Csorba		

HOUSING ACCOUNTABILITY ACT: PROJECT APPROVAL

Narrows the circumstances under which a housing project may be denied under the Housing Accountability Act.

Background

Land use planning and permitting. The California Constitution allows a city to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that local governments derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include seven mandatory elements, including a housing element that establishes the locations and densities of housing, among other requirements. Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. In this way, the general plan is a blueprint for future development.

Local governments use their police power to enact zoning ordinances that shape development, including setting maximum densities for housing units, minimum numbers of required parking spaces, and setbacks to preserve privacy. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

State law also specifies timelines for approvals of development projects. Specifically, the 1977 Permit Streamlining Act requires public agencies to act fairly and promptly on applications for development permits, including new housing. If they don't, the project is deemed approved. Under the act, public agencies must compile lists of information that applicants must provide and explain the criteria they will use to review permit applications. Public agencies have 30 days to determine whether applications for development projects are complete; failure to act results in an application being "deemed complete." However, local governments may continue to request additional information, potentially extending the time before the application is considered

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complete, which is the trigger for the approval timeline to commence. This has led to the Permit Streamlining Act to be characterized as a "paper tiger" that rarely results in accelerated development approvals.

Housing Accountability Act. The Legislature has enacted a variety of statutes to facilitate and encourage the provision of housing, particularly affordable housing and housing to support individuals with disabilities or other needs. Among them is the Housing Accountability Act (HAA), enacted in 1982 in response to concerns over a growing not-in-my-backyard (NIMBY) rejection of housing development by local governments (SB 2011, Greene). The HAA, also known as the "Anti-NIMBY" legislation, restricts a local agency's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA limits the ability of local governments to reject or render infeasible housing developments based on their density without a thorough analysis of the economic, social, and environmental effects of the action. Specifically, when a proposed development complies with objective general plan and zoning standards, including design review standards, a local agency that intends to disapprove the project, or approve it on the condition that it be developed at a lower density, must make written findings based on substantial evidence that the project would have a specific, adverse impact on the public health or safety and that there are no feasible methods to mitigate or avoid those impacts other than disapproval of the project.

The HAA provides for a judicial remedy that allows a court to issue an order to compel a city to take action on a development project. An applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization, may bring an action to enforce the HAA. Many provisions of the HAA are limited to lower-income housing developments. However, in 2011 the California Court of Appeal in *Honchariw v. County of Stanislaus* (200 Cal.App.4th 1066) held that specified provisions of the HAA apply to all housing projects, not just affordable projects.

In 2017, the Legislature enacted three bills making significant changes to the HAA. Two identical measures, AB 678 (Bocanegra) and SB 167 (Skinner), strengthened the HAA to increase the burden on local jurisdictions when denying a housing project by imposing fines for a violation of the HAA and expanding judicial remedies for violations of the HAA. The Bocanegra and Skinner bills also required cities and counties to explain their reasoning when they consider a housing development to be inconsistent with local planning standards. This explanation is due to the project applicant in writing within 30 to 60 days of the project's application being found complete. If a city or county fails to do so, the project is deemed to be consistent.

The third bill, AB 1515 (Daly), changed the standard the court must use in reviewing the denial of a housing development by providing that a project is consistent with local planning and zoning laws if there is substantial evidence that would allow a reasonable person to find it consistent, instead of deferring to a local government's interpretation of its own ordinances. AB 1515's changes are expected to expand the number of housing developments that are afforded the protections of the HAA.

The HAA only applies to a project that is consistent with local planning standards, including the applicable general plan and zoning ordinances; otherwise a local government may deny it. A local government may also deny a project if it finds that there are specific, adverse impacts on public health and safety that cannot be mitigated.

Although local zoning and other development standards must generally be consistent with the applicable general plan, situations can arise where there is an inconsistency. Some of these circumstances are legitimate: with the exception of the City of Los Angeles, charter cities' zoning and other planning standards are not required by state law to be consistent with their general plan, although approximately 1/4 of charter cities have adopted ordinances that require such consistency. In addition, there may be a period between an amendment to portions of a general plan, such as the housing element, and when the local government updates its zoning ordinances to match the general plan.

However, according to developers, some local agencies intentionally maintain inconsistencies to gain an additional measure of control over development. By maintaining low densities or height limits that are inconsistent with the general plan for the express purpose of requiring rezoning, even when projects are consistent with housing density and other objective standards contained in the city or county's general plan, local governments can ensure that they maintain discretionary approval over projects. Locals sometimes exploit this loophole to evade compliance with the HAA, on the grounds that projects are technically inconsistent with the existing zoning standards. For example, according to a 2018 report by researchers at the University of

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California, Berkeley, of 152 housing projects processed in two of California's largest jurisdictions over the last three years, the jurisdiction required a rezoning or a variance in 78 cases—yet in only six instances did projects need a general plan amendment.

Developers also argue that some local governments are exploring methods to expand the use of the HAA's health and safety exemption to apply more frequently to projects in an effort to preserve the ability to deny housing projects. The California Building Industry Association wants the Legislature to curb these practices.

Proposed Law

Assembly Bill 3194 provides that for purposes of the HAA, a housing development project is not inconsistent with the applicable zoning ordinance, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan.

AB 3194 states the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in the HAA, arise infrequently.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "This bill is designed to strengthen the Housing Accountability Act by closing loopholes that undermine the law's applicability and effectiveness. Under the HAA, when a proposed project complies with objective planning rules, the local government cannot deny the project, or reduce its density, unless it makes a finding that the project would have a specific, adverse impact on public health or safety that cannot otherwise be mitigated. Unfortunately, some local agencies have required housing projects to obtain re-zonings or variances on a project-by-project basis, even when projects are consistent with housing density and other objective standards. AB 3194 provides that if a proposed housing development is consistent with objective general plan policies, but it is inconsistent with the zoning for the site because the local government has not made the zoning consistent with the general plan, the project cannot be subjected to a re-zoning. However, the local government can still reject the project or require a down-sizing if it makes the necessary health and safety findings. This bill will continue to uphold the intent of the Housing Accountability Act, which is to ensure that more housing gets built in California."

2. When will it be enough? When the HAA was initially enacted in 1982, it contained three provisions. With the recent amendments in 2017, the current HAA now contains 52 parts as the Legislature has passed laws to respond to the creative ways in which local governments attempt to maintain the ability to deny projects. Time will tell if the most recent amendments significantly change the dynamics of the HAA, but it is unclear whether enforcement through litigation is the best approach: more direct intervention in local decision-making may be needed. In the meantime, local governments face the prospect of continually adapting to the new changes and the litigation environment that they create.

3. Incoming! The Senate Transportation and Housing Committee approved AB 3194 at its June 19th meeting on a vote of 13-0. The Senate Governance and Finance Committee is hearing AB 3194 as the committee of second reference.

4. Related legislation. SB 1333, which the Committee approved at its April 25th hearing on a vote of 4 to 2, requires charter cities' planning standards to be consistent with the applicable general plan. SB 1333 is currently pending in the Assembly Housing and Community Development Committee.

Assembly Actions

Assembly Housing and Community Development Committee: 7-0

Assembly Local Government Committee: 8-1

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Assembly Floor: 70-4

Support and Opposition (6/22/18)

Support: Bay Area Council; California Building Industry Association; California Apartment Association; California Association of Winegrape Growers; California Business Properties Association; California Chamber of Commerce; California Construction and Industrial Materials Association; National Federation of Independent Business; Non-Profit Housing Association of Northern California; Professional Women in Building Council; San Francisco Housing Action Coalition.

Opposition: Unknown.

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Exhibit I

2018 Cal. Legis. Serv. Ch. 243 (A.B. 3194) (WEST)

CALIFORNIA 2018 LEGISLATIVE SERVICE

2018 Portion of 2017-2018 Regular Session

Additions are indicated by **Text**; deletions by
* * * .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

CHAPTER 243
A.B. No. 3194
ZONING AND PLANNING—AFFORDABLE HOUSING—SAFETY

AN ACT to amend Section 65589.5 of the Government Code, relating to housing.

[Filed with Secretary of State August 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3194, Daly. Housing Accountability Act: project approval.

The Housing Accountability Act, which is part of the Planning and Zoning Law, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings, based upon a preponderance of the evidence, that one or more conditions exist, including that the housing development project or emergency shelter would have a specific, adverse impact upon the public health or safety, as specified. The act also requires a local agency proposing to disapprove a housing development project that complies with applicable, objective general plan and zoning standards and criteria, or to approve it on the condition that it be developed at a lower density, to base its decision upon written findings supported by a preponderance of the evidence on the record that specified conditions exist, including if the housing development project would have a specific, adverse impact upon the public health or safety.

This bill would specify that a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and would prohibit a local government from requiring a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. The bill would authorize a local agency, provided that the local agency has complied with specified provisions, to require the proposed housing development project to comply with the objective standards and criteria of the zoning which are consistent with the general plan, and would require the local agency to apply those standards and criteria to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project. The bill would declare the Legislature's intent that the conditions that would have a specific, adverse impact upon the public health and safety arise infrequently.

The people of the State of California do enact as follows:

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SECTION 1. Section 65589.5 of the Government Code is amended to read:

<< CA GOVT § 65589.5 >>

65589.5. (a)(1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.

(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.

(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent.

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(H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(I) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

(J) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(K) The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled.

(L) It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

(3) It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.

(b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the

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need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(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. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

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(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f)(1) Nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) “Housing development project” means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed–use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(3) “Housing for very low, low-, or moderate-income households” means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent

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of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the housing development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by a preponderance of the evidence in the record. For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(j)(1) When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. 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.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(2)(A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

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(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.

(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.

(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.

(5) For purposes of this section, "lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.

(k)(1)(A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. For purposes of this section, "lower density" includes conditions that have the same effect or impact on the ability of the project to provide housing.

(B)(i) Upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with this section within 60 days issued pursuant to subparagraph (A), the court shall impose fines on a local agency that has violated this section and require the local agency to deposit any fine levied pursuant to this subdivision into a local housing trust fund. The local agency may elect to instead deposit the fine into the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund. The fine shall be in a minimum amount of ten thousand dollars ($10,000) per housing unit in the housing development project on the date the application was deemed

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complete pursuant to Section 65943. In determining the amount of fine to impose, the court shall consider the local agency's progress in attaining its target allocation of the regional housing need pursuant to Section 65584 and any prior violations of this section. Fines shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the money in the local housing trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. After five years, if the funds have not been expended, the money shall revert to the state and be deposited in the Building Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular Session is enacted, or otherwise in the Housing Rehabilitation Loan Fund, for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

(ii) If any money derived from a fine imposed pursuant to this subparagraph is deposited in the Housing Rehabilitation Loan Fund, then, notwithstanding Section 50661 of the Health and Safety Code, that money shall be available only upon appropriation by the Legislature.

(C) If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency and to approve the housing development project, in which case the application for the housing development project, as proposed by the applicant at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed to be approved unless the applicant consents to a different decision or action by the local agency.

(2) For purposes of this subdivision, “housing organization” means a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project. A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section.

(*l*) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, shall multiply the fine determined pursuant to subparagraph (B) of paragraph (1) of subdivision (k) by a factor of five. For purposes of this section, “bad faith” includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency, unless the petitioner elects to prepare the record as provided in subdivision (n) of this section. A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). Upon entry of the trial court's order, a party may, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow, or may appeal the judgment or order of the trial court under Section 904.1 of the Code of Civil Procedure. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

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(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(*o*) This section shall be known, and may be cited, as the Housing Accountability Act.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 16633 Ventura Boulevard, Suite 1220, Encino, CA 91436-1872.

On March 9, 2021, I served the foregoing documents described as:

PETITIONER'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF REPLY BRIEF FOR PETITION FOR WRIT OF MANDATE, AND EXHIBITS THERETO

on all interested parties in this action by as follows:

Michael N. Feuer
Terry Kaufmann Macias
Donna Wong
Patrick Hagan
200 North Main Street
City Hall East, Room 701
Los Angeles, California 90012-4131
Email: patrick.hagan@lacity.org

[X] **(BY EMAIL OR ELECTRONIC TRANSMISSION)**: I caused a copy of the document(s) to be sent from e-mail address tperry@gaineslaw.com to the persons at the addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on March 9, 2021, at Encino, California.

Tiffany Perry
TIFFANY PERRY