Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Click here to view the entire Agenda Packet

**Wednesday, November 6, 2019** **South Berkeley Senior Center**
**7:00 PM** **2939 Ellis Street**

***See "MEETING PROCEDURES" below.***

***All written materials identified on this agenda are available on the Planning Commission webpage: http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=13072***

***PRELIMINARY MATTERS***

1. ***Roll Call:*** **Wiblin, Brad,** appointed by Councilmember Kesarwani, District 1
**Martinot, Steve**, appointed by Councilmember Davila, District 2
**Schildt, Christine, Chair,** appointed by Councilmember Bartlett, District 3
**Lacey, Mary Kay,** appointed by Councilmember Harrison, District 4
**Beach, Benjamin**, appointed by Councilmember Hahn, District 5
**Kapla, Robb, Vice Chair** appointed by Councilmember Wengraf, District 6
**Vacant**, appointed by Councilmember Robinson, District 7
**Vincent, Jeff**, appointed by Councilmember Droste, District 8
**Wrenn, Rob**, appointed by Mayor Arreguin

2. ***Order of Agenda:*** The Commission may rearrange the agenda or place items on the Consent Calendar.

3. ***Public Comment:*** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (*See "Public Testimony Guidelines" below):*

4. ***Planning Staff Report:*** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: December 4, 2019.**

5. ***Chairperson's Report:*** Report by Planning Commission Chair.

6. ***Committee Reports:*** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

7. ***Approval of Minutes***: Approval of Draft Minutes from the meeting on **October 2, 2019**.

8. ***Future Agenda Items and Other Planning-Related Events:*** None.

***AGENDA ITEMS:*** *All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.*

| | | |
|---|---|---|
| ***9.*** | ***Action:*** | ***Public Hearing: Local Hazard Mitigation Plan (LHMP)*** |
| | ***Recommendation:*** | Hold a public hearing and recommend adoption of LHMP and General Plan amendments to City Council. |
| | ***Written Materials:*** | Attached |
| | ***Web Information:*** | https://www.cityofberkeley.info/Mitigation/ |
| | ***Continued From:*** | November 7, 2018 |
| ***10.*** | ***Discussion:*** | ***Transportation Impact Fee (TIF)*** |
| | ***Recommendation:*** | Receive presentation and ask questions of Transportation Division staff |
| | ***Written Materials:*** | N/A |
| | ***Web Information:*** | N/A |
| | ***Continued From:*** | N/A |
| ***11.*** | ***Discussion:*** | ***2019 California Housing Legislation*** |
| | ***Recommendation:*** | Discuss 2019 California Housing Legislation |
| | ***Written Materials:*** | Attached |
| | ***Web Information:*** | N/A |
| | ***Continued From:*** | N/A |
| ***12.*** | ***Action:*** | ***2020 Planning Commission Calendar*** |
| | ***Recommendation:*** | Adopt 2020 Planning Commission calendar |
| | ***Written Materials:*** | Attached |
| | ***Web Information:*** | N/A |
| | ***Continued From:*** | N/A |

***ADDITIONAL AGENDA ITEMS:*** In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

***Information Items:*** None.

***Communications:***

- October 14 – Chimey Lee, Referencing European Cities

***Late Communications:*** (Received after the packet deadline):

- November 1 – Planning Staff, Item 11 Written Materials
- November 5- Kelsie Kerr, Small Business Support
- November 5- Kelsie Kerr, Berkeleyside Article

***Late Communications:*** (Received and distributed at the meeting):

None.

***ADJOURNMENT***

## Meeting Procedures

***Public Testimony Guidelines:***
Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. ***To speak during Public Comment or during a Public Hearing, please line up behind the microphone.*** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See "Procedures for Correspondence to the Commissioners" below.

***Consent Calendar Guidelines:***
The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

***Procedures for Correspondence to the Commissioners:***
To distribute correspondence to Commissioners prior to the meeting date, submit comments by 12:00 p.m. (noon), eight (8) days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than twenty (20) pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Any correspondence received after this deadline will be given to Commissioners on the meeting date just prior to the meeting.
- Staff will not deliver to Commissioners any additional written (or emailed) materials received after 12:00 p.m. (noon) on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning, of the meeting.
- Written comments should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

***Communications are Public Records:*** Communications to Berkeley boards, commissions, or committees are public records and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

***Written material*** may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3rd Floor**, during regular business hours, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

***Note: If you object to a project or to any City action*** or procedure relating to the project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge

related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

***Meeting Access*: This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.**

***Please refrain from wearing scented products to public meetings.***

***---***

I hereby certify that the agenda for this regular/special meeting of the Berkeley City Commission on Commissions was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on **October 31, 2019**.

_____

Alene Pearson
Planning Commission Secretary

Planning Commission

# DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
# October 2, 2019

The meeting was called to order at 7:03 p.m

**Location:** South Berkeley Senior Center, Berkeley, CA

1. **ROLL CALL:**
   **Commissioners Present:** Benjamin Beach, Ruben Hernandez, Robb Kapla, Mary Kay Lacey, Steve Martinot, Jeff Vincent, Brad Wiblin (arrived at 7:10) and Rob Wrenn.

   **Commissioners Absent:** Christine Schildt (leave of absence).

   **Staff Present:** Secretary Alene Pearson, Katrina Lapira, and Justin Horner.

2. **ORDER OF AGENDA:** No changes.

3. **PUBLIC COMMENT PERIOD:** No speakers.

4. **PLANNING STAFF REPORT:**
   Staff provided the following updates on upcoming meetings and policy projects:

   - October 16, 4-6pm - Planning Department Open House
   - Staff thanked Commissioner Ben Fong for his service on the Planning Commission

**Information Items:** None.

**Communications:**

- September 5, 2019 – Commissioner Vincent, Terner Article
- September 8, 2019 - Christine Schwartz, PC Meeting Videos-September 4, 2019
- September 13, 2019 – Charlie Pappas, Cannabis (Delivery- Only)
- September 16, 2019 - Alene Pearson (staff email to commissioners)
  Planning Open House 2019 Flyer
- September 16, 2019 – Alene Pearson (staff email to commissioners)
  PC Work Plan on September 24 City Council Agenda
- September 18, 2019- Phyllis Orrick, Green Affordable Housing

**Late Communications** (Received after the Packet deadline):

- September 30, 2019- Commissioner Wrenn, TDM Program
- October 1, 2019- Aaron Eckhouse, TDM Program

**Late Communications** (Received and distributed at the meeting):

- October 1, 2019 Diego Aguilar-Canabal, TDM Program
- October 2, 2019- Justin Horner, Item 10 Staff Presentation

**5. CHAIR REPORT:** None.

**6. COMMITTEE REPORT:**

- Joint Subcommittee for Implementation of State Housing Laws (JSISHL): On September 25, 2019 JSISHL held a meeting where City consultant, Opticos, presented on findings related to objective density standards. The next JSISHL meeting will be on October 23, 2019.

- Zoning Ordinance Revision Project (ZORP): As part of Phase I - the production of a Baseline Zoning Ordinance (BZO) - the subcommittee reviewed the reorganized regulations of the residential districts at the meeting on September 13, 2019. At the next meeting in November, JSISHL will review commercial and industrial zones.

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Kapla /Wibilin) to approve the Planning Commission Meeting Minutes from September 4, 2019 with three minor edits. Ayes: Beach, Lacey, Martinot, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: Hernandez and Kapla. Absent: None. (6-0-2-0)

**FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** At the next meeting, November 6, 2019 the following items may be presented.

- Public Hearing: Local Hazard Mitigation Plan
- 2019 State Legislation Tracking- Review of Housing Bills (ADUs, Large Family Daycares, etc.)

**AGENDA ITEMS**

**9. Discussion: Proposed Transportation Demand Management (TDM) Framework**

Staff presented on approaches to Transportation Demand Management including vehicle trip reduction and community benefits in the context of parking minimums and maximums. As part of their discussion, the Planning Commission expressed support for the removal of parking minimums and establishment of parking maximums for new residential and mixed use projects. In support of a TDM program, the Commission directed staff to reconfigure the proposed TDM menu of options and research different TDM measures that could provide the most value to the greater Berkeley community, including, but not limited to shuttle services and transit passes.

**Public Comments:** 5

**10. Discussion: Planning Commission Workplan**

Staff shared the Planning Commission Workplan adopted by the City Council on September 24, 2019 and the Policy matrix of projects.

**Public Comments:** 0

**11. Action: Southside EIR Subcommittee**

A temporary subcommittee was formed to help scope the project description for the Southside Environmental Impact Report (EIR). Subcommittee members include Commissioner Lacey, Schildt, Kapla, and the future District 7 representative.

**Public Comments:** 0

| |
|---|
| Motion/Second/Carried (Kapla /Vincent) to establish the Southside EIR Subcommittee and appoint Commissioners Lacey, Schlidt, Kapla and the future District 7 representative. Ayes: Beach, Hernandez, Kapla, Lacey, Martinot, Vincent, Wiblin, and Wrenn. Noes: None. Abstain: None. Absent: None. (8-0-0-0) |

| |
|---|
| Motion/Second/Carried (Kapla /Wrenn) to adjourn the Planning Commission meeting. Ayes: Beach, Hernandez, Kapla, Lacey, Martinot, Vincent, Wiblin, and Wrenn. Noes: None. Abstain: None. Absent: None. (8-0-0-0) |

**The meeting was adjourned at 9:15pm**
**Commissioners in attendance: 8**
**Members in the public in attendance: 6**
**Public Speakers: 5 speakers**
**Length of the meeting: 2 hours and 12 minutes**

**Planning and Development Department**
Land Use Planning Division

# STAFF REPORT

DATE: November 6, 2019

TO: Members of the Planning Commission

FROM: Alene Pearson, Principal Planner

SUBJECT: 2019 Local Hazard Mitigation Plan

---

## RECOMMENDATION

Hold a Public Hearing to consider input and recommend approval to the City Council of the 2019 Local Hazard Mitigation Plan (LHMP). LHMPs are updated on a 5-year cycle and this plan replaces the 2014 LHMP. Adoption of this plan requires an amendment to the General Plan, which explicitly references the 2014 LHMP. Findings for the General Plan amendment are included in this report.

## BACKGROUND

There are three steps the Planning Commission must take to address the staff recommendation to have the LHMP adopted into the General Plan (by reference):

- Hold a Public Hearing and consider public input (*see Attachment 1*):
- Recommend that the General Plan be changed to include the proposed language, which references the LHMP into the General Plan, but removes reference to the update year; and
- Recommend the LHMP as drafted, or with additional changes, to the Council for adoption as part of the General Plan.

Note: General Plan amendment findings are included in this report.

This report provides steps, process and findings for the Planning Commission (Commission) to consider. It also includes a report submitted by the City's Office of Emergency Services (OES), which describes the details of the LHMP and the update process to date (*see Attachment 2*).

The Commission was introduced to the LHMP on November 7, 2018 and then reviewed a preliminary draft of the LHMP on February 6, 2019. At that meeting, the Commission and public was informed that the Draft LHMP was available for review on the City's website and at libraries.

DISCUSSION

## Local Hazard Mitigation Plan Essentials

- *Purpose of the LHMP*
  The LHMP identifies and suggests actions to reduce a wide range of Berkeley's hazard vulnerabilities. The document follows a standardized outline and process mandated by the State and Federal government. Once a city has adopted an LHMP, opportunities for State and Federal funding become available. The City of Berkeley may be eligible for program funding based on adoption of the LHMP.

- *The LHMP and the General Plan*
  In 2004, the City of Berkeley adopted a Disaster Mitigation Plan (DMP) that was considered part of the Disaster Preparedness and Safety Element of the General Plan. In 2014, the LHMP replaced the DMP and was appended to the General Plan by reference. Attachment 3 provides the proposed General Plan amendment text being considered by Planning Commission on November 6, 2019 which extends this reference to future updates of the LHMP.

- *LHMP Project Management and Plan Development*
  The LHMP update process was managed through the Fire Department's OES Division, which focuses on disaster readiness. A companion OES staff report *(see Attachment 2*) describes the LHMP mandate, Berkeley LHMP basics, and the public process associated with the 2019 LHMP update. The LHMP Executive Summary (*see Attachment 4*) is also provided to guide Commission discussion. OES staff will provide a short presentation and be available as subject experts to address any questions the Commission may have regarding the details of the LHMP.

## Environmental Review

The environmental impacts of the LHMP, from a CEQA standpoint, are inconsequential. CEQA is used to evaluate the environmental impact of a jurisdiction's action. The action can result in direct physical changes in the environment (such as the approval of a new building), or indirect change that is reasonably foreseeable (such as the approval of a General Plan).

In this case, the action is the adoption of a plan that identifies natural hazards in Berkeley and outlines a five-year strategy of possible future efforts to further protect Berkeley's citizens, buildings, infrastructure and environment from those hazards. Much of the plan's mitigation strategy focuses on studies and inter-agency programs, for which the City of Berkeley is not the Lead Agency as defined by CEQA. Other mitigation programs that may be undertaken would require specific CEQA review, once they are better understood and a scope is set.

The LHMP project can be considered "exempt" from CEQA based on four different sections of the CEQA Guidelines:

Section 15183(d): "The project is consistent with…a general plan of a local agency, and an EIR was certified by the lead agency for the...general plan."

Section 15262: "A project involving only feasibility or planning studies for possible future actions which the agency, board or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities."

Section 15306: "(Categorical Exemption) Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded."

Section 15601(b)(3): "...CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

**General Plan Amendment Findings:**

1. *The proposed amendment is in the public interest.*
   The LHMP and General Plan amendment open the opportunity for the City to better protect itself from natural disasters. The update of the LHMP incorporates state of the art knowledge regarding potential disasters, and makes the City eligible to receive funding.

2. *The proposed amendment is consistent and compatible with the rest of the General Plan.*
   Four of the six Objectives of the General Plan's Disaster Preparedness and Safety Element refer to the need to mitigate and reduce potential for damage from disasters:

   a. Improve and develop City mitigation programs to reduce risks to people and property from natural and man-made hazards to socially and economically acceptable levels.
   b. Reduce the potential for loss of life, injury, and economic damage resulting from earthquakes and associated hazards.
   c. Reduce the potential for loss of life, injury, and economic damage resulting from urban and wild land fire.
   d. Reduce the potential for loss of life and property damage in areas subject to flooding.

   The LHMP responds to these General Plan objectives and focuses attention on resolving them. In addition, the LHMP is a part of the Disaster Preparedness and Safety Element of the General Plan; a required Element under State General Plan Law.

3. *The potential effects of the proposed amendment have been evaluated and have been determined not to be detrimental to the public health, safety, or welfare.*
   The potential effects of the LHMP and General Plan amendment are all positive. The LHMP suggests preemptive programs and activities (some with other agencies) to make Berkeley less susceptible to natural disaster.

4. *The proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act.*
   The General Plan amendment is processed in accordance with Chapter 22.04.020 of the Berkeley Municipal Code. The amendment is being submitted to the Planning Commission for consideration; a public hearing was set for November 6, 2019 (*see Attachment 1*), with at least 10 days' notice given; and a notice was published in a newspaper of record (*The Berkeley Voice*) on October 25, 2019 according to the applicable procedures.

CONCLUSION

Staff recommends that the Planning Commission recommend to City Council adoption of the 2019 LHMP, make the General Plan findings, and recommend amending the General Plan to reference the updated LHMP.

Attachments:

1. Public Hearing Notice
2. Staff report from Fire Department – Office of Emergency Services
3. Proposed General Plan Language
4. 2019 Final Draft LHMP Executive Summary

# PLANNING COMMISSION

## NOTICE OF PUBLIC HEARING

## NOVEMBER 6, 2019

## 2019 Local Hazard Mitigation Plan (LHMP)

The Planning Commission, of the City of Berkeley, will hold a Public Hearing on the above matter, on **Wednesday, November 6, 2019,** at the **South Berkeley Senior Center**, 2939 Ellis Street (wheelchair accessible). The meeting starts at 7:00 p.m.

**PROJECT DESCRIPTION:** Consider an update to the Local Hazard Mitigation Plan (LHMP) adopted in 2014. The 2019 Local Hazard Mitigation Plan (LHMP) identifies natural hazards in Berkeley and outlines a five-year strategy to further protect Berkeley's people, buildings, infrastructure and environment from those hazards. Adoption of the 2019 LHMP requires an amendment to the City's Disaster Preparedness and Safety Element of the General Plan.

**LOCATION:** Citywide.

**ENVIRONMENTAL REVIEW STATUS:** The proposed change would be exempt from the California Environmental Quality Act pursuant to Guideline Sections 15183(d), 15262, 15306 and 15061(b)(3) because a) the Plan is consistent with the General Plan; b) the Plan involves feasibility and planning studies for possible future actions; c) the Plan involves basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource; and d) it can be seen with certainty that the proposed amendment would not have a significant effect on the environment.

### PUBLIC COMMENT

Comments may be made verbally at the Public Hearing, and in writing before the hearing. Those wishing to speak at the hearing must submit a speaker card. Written comments or questions concerning this project should be directed to:

Planning Commission
Alene Pearson, Secretary
Land Use Planning Division
1947 Center Street
Berkeley, CA 94704

E-mail: apearson@CityofBerkeley.info
Telephone: (510) 981-7489

To assure distribution to Commission members prior to the meeting, ***correspondence must be received by 12:00 noon, eight (8) days before the meeting*.** For items with more than ten (10) pages, fifteen (15) copies must be submitted to the Secretary by this deadline. For any item submitted less than eight (8) days before the meeting, fifteen (15) copies must be submitted to the Secretary prior to the meeting date.

## COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

## FURTHER INFORMATION

Questions should be directed to Alene Pearson, at 981-7489, or apearson@cityofberkeley.info

Current and past agendas are available on the City of Berkeley website at:
https://www.cityofberkeley.info/Clerk/Commissions/Commissions__Planning_Commission_Homepage.aspx

**Fire Department**
Office of Emergency Services

# STAFF REPORT

DATE: November 6, 2019

TO: Members of the Planning Commission

FROM: Sarah Lana, Emergency Services Coordinator

SUBJECT: Final Draft 2019 Local Hazard Mitigation Plan (LHMP)

---

## SUMMARY

The City of Berkeley's Local Hazard Mitigation Plan (LHMP) is an Appendix to the General Plan's Disaster Preparedness and Safety Element. The LHMP was originally adopted by the City Council on June 22, 2004, and Council adopted an update in 2014. The LHMP must be updated once every five years. The 2014 LHMP expires on December 16, 2019.

The LHMP is written in accordance with federal requirements so that Berkeley can maintain eligibility for federal mitigation grant funding. On September 20, 2019, FEMA determined the Final Draft LHMP to be eligible for final approval pending its adoption by the Berkeley City Council.

Tonight's Planning Commission meeting will serve as the first Public Hearing for the Final Draft 2019 LHMP. Staff will bring the Final Draft 2019 LHMP to the City Council for adoption at its December 10, 2019 meeting. If the plan is adopted by the City Council at its December meeting, the City will remain in compliance and will retain eligibility for mitigation grant funding.

## BACKGROUND

*Description of Local Hazard Mitigation Plan*

The LHMP is written to adhere to federal requirements as outlined in the Disaster Mitigation Act of 2000. The City of Berkeley retains eligibility for federal Hazard Mitigation grant funding by fulfilling these requirements and maintaining a LHMP that is updated on a five-year cycle. The LHMP has two functions.

- First, it identifies natural hazards in Berkeley and their possible impacts on Berkeley's people, buildings, infrastructure, and environment. Because of their potential to catastrophically impact Berkeley, earthquake and wildland-urban

interface fire are considered to be Berkeley's hazards of greatest concern. Other hazards of concern include landslide, flooding, tsunami, extreme heat, climate change, and hazardous materials release.

- Second, the Plan outlines a five-year strategy to reduce Berkeley's vulnerabilities to these potential impacts. The multi-faceted strategy builds on collaboration among City government, external partners, and community members to implement mitigation programs. Proposed Actions include strengthening Berkeley's building stock, reducing fire risk through code enforcement and vegetation management, and continuing research to better understand all hazards.

*First Draft Plan Development Process*
The first draft plan was developed using a collaborative process with partners and technical experts. The First Draft LHMP was circulated for public review for 73 days (December 18 through February 28, 2019). During this period, staff made presentations at 11 Commission meetings to provide interested persons with an in-person opportunity to ask questions and provide feedback on the First Draft 2019 LHMP.

*Plan Development*
In August 2018, the City convened an interdepartmental planning team to develop the First Draft 2019 LHMP. Over the three months, this Core Planning Team collaborated with numerous partner representatives, scientists, and hazard experts to update information in the 2014 Hazard Analysis. The 2019 LHMP accounts for new scientific research on hazards that could affect Berkeley, their areas of exposure, and their potential impacts.

City and partner representatives worked with the project manager to identify Berkeley's progress mitigation actions identified in 2014 (Element D.2). Next, the project manager, City representatives, and partner representatives combined information on the success of 2014 actions, updates to the hazard analysis, and guidance from the City's General Plan to identify "pre-draft" actions for the 2019 Mitigation Strategy (Element C). These pre-draft actions were initially vetted by the City's Core Planning Team in October 2018. They were then further vetted by a diverse group of partner representatives at the December 2018 Institutional Community Partner Meeting. The Core Planning Team revised actions to reflect feedback received from institutional partners, then incorporated the actions into a complete 2019 First Draft Plan.

*Public Outreach Process*
In June 2018, staff released a survey to collect information from the community about their hazard concerns. The 518 responses informed the First Draft 2019 LHMP.
City staff has provided updates and presentations to the community throughout the 2019 LHMP development process, starting during development of the First Draft Plan with the Planning Commission (November 7, 2018) and Disaster and Fire Safety Commission (December 5, 2018).

On December 18, 2019, the City made the First Draft 2019 LHMP a public document for review and comment by the Berkeley community. Additionally, the City Manager sent a

memo to City Council members and to secretaries of all City Commissions. The memos outlined the process for Commissions to provide feedback and attached the First Draft Plan's Executive Summary and Actions.

From December 18, 2018 to February 28, 2019:

- The City posted the First Draft Plan on the City website and at City libraries, and community members were invited to provide feedback on the plan.

- Staff presented the First Draft 2019 LHMP to Commissioners and community members for review and feedback at the following meetings:

    - January 3, 2019 Housing Advisory Commission
    - January 9, 2019 Parks and Waterfront Commission
    - January 9, 2019 Commission on Disability
    - January 10, 2019 Public Works Commission
    - January 16, 2019 Planning Commission
    - January 16, 2019 Commission on Aging
    - January 23, 2019 Disaster and Fire Safety Commission
    - February 4, 2019 Energy Commission
    - February 4, 2019 Peace and Justice Commission
    - February 7, 2019 Landmarks Preservation Commission
    - February 14, 2019 Community Environmental Advisory Commission

*Final Draft Plan Development Process*
Development of the Final Draft 2019 LHMP involved incorporation of community feedback and technical review by State and federal authorities. These activities are detailed below.

*Incorporating Community Feedback*
Following the February 28, 2019 comment deadline, City staff reviewed feedback from commissions and community members. Staff provided responses, as documented in *Public Comments and Staff Responses: First Draft 2019 Local Hazard Mitigation Plan*. Four topics emerged repeatedly in community responses to the First Draft 2019 LHMP:

1. Scope and Detail of the Mitigation Plan
   Community comments included a number of questions and suggestions regarding hazards, topics, and programs to consider for inclusion in the LHMP. Many of those suggestions related to emergency management, but were not within the scope of the LHMP.

   Mitigation describes pre-disaster activities that reduce the impact of a disaster by providing passive protection at the time of disaster impact. If an activity or system creates a steady state of protection that exists both before and after a disaster occurs, then it is likely a mitigation activity. If the activity creates a system that can be "activated" after a disaster to reduce vulnerability, then it is likely not considered a mitigation activity.

2. Hazard Information: Digital LHMP
   Many community members recommended that the plan include information on topics and hazards that were in fact addressed by the plan, but were likely challenging to find for community reviewers. Because the LHMP is written primarily to achieve compliance with federal requirements, staff recognizes that the document can be difficult to navigate. To address this gap and make the plan more user-friendly for community members, the LHMP Coordinator created the Digital LHMP, available at https://arcg.is/reqbG.

   This web-based tool highlights key hazard information, interactive maps, and associated mitigation actions in a much more user-friendly interface than can be provided in document version being provided to FEMA. Staff hopes that this structure helps to better educate the community about the key information contained in the plan. Staff also plans to adapt a version of the Digital LHMP that can be updated at more regular intervals as new hazard information arises.

3. Evacuation in the Berkeley Hills
   Many responses included concerns about Wildland-Urban Interface Fire risk in the Berkeley Hills and how people will evacuate. The City is finalizing its draft Wildfire Evacuation Plan, which addresses evacuation strategy and process. While evacuation is not considered mitigation and is not described in detail in the plan, there are mitigation activities addressed in the plan that can make evacuation easier:

   a. Hills Roadways and Parking: As part of the Hills Roadways and Parking Action, the City is currently developing the Safe Passages Program, which is a project to support the City's emergency evacuation plan by helping to ensure clear ingress for emergency vehicles and egress routes for evacuation. Project implementation will include evaluation of streets requiring parking restrictions, enforcement mechanisms, vegetation clearing and management, and a robust public education campaign to reduce risks and maximize benefits.

   b. Vegetation Management: The City runs a number of vegetation management programs. The Fire Department inspects over 1,400 parcels in Hazardous Fire Zones 2 and 3 in addition to responding to complaints. Many responses on this topics indicate that this may not be enough. As part of the Vegetation Management Action, the City's currently in-development Safe Passages Program includes seeking funding for vegetation clearing and management. The goal is to create a crew that would be available to assist with vegetation management on private and public property.

   c. Pedestrian Evacuation Routes in the Hills: The 2019 LHMP highlights paths in the hills areas as important elements of Berkeley's evacuation network. The Wildland-Urban Interface Fire information in Element B: *Hazard Analysis*

describes how these pathways significantly reduce evacuation distances when compared to City streets alone. The *Hills Pedestrian Evacuation* Action presented in Element C: *Mitigation Strategy* outlines how the City hopes to continue working with partners to maintain and promote these public pathways for pedestrian evacuation.
Some community responses identified concerns about the state of these pathways and who they serve. These concerns are noted. The City is focusing on path maintenance and key improvements as an important supplement to the existing network of streets in the hills. Paths can contribute to the limited evacuation routes currently available to community members in the hills.

4. Overhead Utility Lines
   Many responses expressed concerns about the threat of overhead utility wires. The 2019 LHMP includes the *Undergrounding* Action in Element C: *Mitigation Strategy*. This action describes the City's efforts to reduce the potential threat of these wires specifically in the Berkeley Hills. The action describes undergrounding projects that have been prioritized and or are underway.

   Each year, Pacific Gas & Electric credits the City of Berkeley with 525,000 credits for use in undergrounding utilities. Under Rule 20A, the City utilizes these credits on utility undergrounding projects that PG&E performs. The City may also borrow up to five years (2.6 million) of future credits at a time to help fund existing approved projects.

   At this time, funding alternatives have not been identified.

   The General Plan prioritizes undergrounding utilities along designated evacuation routes. See *Disaster Preparedness and Safety Element* Policy S-1: Response Planning, Actions B and C, Policy S-22: Fire Fighting Infrastructure, Action A; and *Transportation Element* Policy T-28, Action E.

Based on feedback, staff incorporated appropriate changes into the Final Draft Plan, as documented in *Summary of Changes to the City of Berkeley's First Draft 2019 Local Hazard Mitigation Plan*. Both of these documents are available at www.CityofBerkeley.info/Mitigation and at City libraries.

*Board of Forestry Review*
When adopted by City Council, the 2019 LHMP will serve as an Appendix to the General Plan's *Disaster Preparedness and Safety* Element. As part of the 2019 LHMP update, City staff worked with the California Department of Forestry and Fire Protection (Cal Fire) to meet requirements of Government Code 65302.5. This new code requires that when the City updates the LHMP, the City also review and update the Safety Element of the General Plan to address fire risk. The City submitted the current General Plan and the Final Draft 2019 LHMP for Board of Forestry Review. At its meeting on June 11, 2019, the Board of Forestry and Fire Protection reviewed these documents,

determined that they met Code requirements, and provided general recommendations for future collaboration.

*Federal Emergency Management Agency Review*
The LHMP is written in accordance with federal requirements so that Berkeley can maintain eligibility for federal mitigation grant funding. Review of the Final Draft Plan included assessment by the Federal Emergency Management Agency in August 2019. On September 20, 2019, FEMA determined the Final Draft LHMP to be eligible for final approval pending its adoption by the Berkeley City Council.

## CONCLUSION

Development of the 2019 LHMP update involved a highly-collaborative process with hazard experts, scientists, key Berkeley institutions, City Commissions, and individual community members. This inclusive effort has resulted in a cutting-edge document that describes the risks our community faces, as well as a path forward to protect our people, buildings, infrastructure, and environment in the next disaster.

Adopting the 2019 LHMP will provide a roadmap for the City to continue its work to make the community safer. It will also enable the City to use external resources for the effort. The Final Draft 2019 LHMP meets the technical needs of City government and reflects the will of the community.

DATE: November 6, 2019

TO: Members of the Planning Commission

FROM: Alene Pearson, Principal Planner

SUBJECT: 2019 Local Hazard Mitigation Plan, Proposed General Plan Language

Below is the proposed amendment to the General Plan. Changes would be made to the fifth paragraph on page S-3 of the Disaster Preparedness and Safety Element as follows:

> *In 2004, the City adopted its first Hazard Mitigation Plan. It is part of the Disaster Preparedness and Safety Element of the General Plan. The City updated the Disaster Mitigation Plan in 2014 and renamed it the Local Hazard Mitigation Plan (LHMP). On 12/16/14, the City Council adopted the LHMP (by reference) into the General Plan. The LHMP will be updated periodically, as required by State and Federal regulations.*

City of Berkeley

# 2019 Local Hazard Mitigation Plan

Final Draft

September 19, 2019

## Acknowledgements

City Council
Jesse Arreguin, Mayor
Rashi Kesarwani, District 1
Cheryl Davila, District 2
Ben Bartlett, District 3
Kate Harrison, District 4
Sophie Hahn, District 5
Susan Wengraf, District 6
Rigel Robinson, District 7
Lori Droste, District 8

City Manager
Dee Williams-Ridley

Project Managers
Sarah Lana, Emergency Services Coordinator, City of Berkeley
Jamie Albrecht, LHMP Coordinator, City of Berkeley

City of Berkeley Project Team
David Brannigan, Fire Chief
Andrew Brozyna, Deputy Director of Public Works
Galadriel Burr, Community Services Specialist
Karl Busche, Acting Hazardous Materials Manager
Caytie Campbell-Orrock, Climate Action Program Specialist
Stacie Clarke, Senior Management Analyst
Jamie Cooney, Toxics Management Division Intern
Amber Davis, Program Manager
Cristi Delgado, Enterprise GIS & Open Data Coordinator
Jennifer Lazo, Emergency Services Coordinator
Keith May, Special Operations Chief
Jenny McNulty, Program and Administration Manager
Alene Pearson, Principal Planner
Suzanne Ridel, PHEP Unit Senior Manager
Rachel Rodriguez, PHEP Program Manager
Tony Yuen, Fire Marshal

Institutional Key Partner Representatives
Alex Yao, UC Berkeley Police Captain
Alina Constantinescu, Berkeley Path Wanderers Incoming President
Daphne White, Berkeley Path Wanderers, Board Member
James Wogan, Berkeley Unified School District Manager of Student Services
John Calise, Berkeley Unified School District Director of Facilities
Kristi Mercado, AT&T FirstNet Senior Principal
Minna Toloui, Ecology Center Climate Lead

Natasha Beery, Berkeley Unified School District Director (BSEP)
Rafael Vargas, Sutter Health Emergency Management Coordinator
Robert Maisonet, Lifelong Medical Compliance Coordinator
Rochelle Pollard, AT&T Client Solutions Executive
Steven Frew, EBMUD Manager Security and Emergency Preparedness
Tonya Petty, Lawrence Berkeley National Lab Emergency Manager
Jeffrey Bowman, Bayer
Julia Halsne, EBMUD Manager of Business Continuity
Nicole Stewart, Kinder Morgan Corporation Area Manager
Margo Bennett, UC Berkeley Police Chief
Amina Assefa, University of California
Dr. Anna Harte, UC Berkeley Tang Center Medical Director
Sue Watz, UC Berkeley Tang Center Executive Assistant
Mary Popylisen, UC Berkeley Tang Center ESF 8 Lead
Shirley Slaughter, Berkeley City College Director of Business & Administration Services
Colleen Neff, Berkeley Path Wanderers Outgoing President
Anne Wein, US Geological Survey Operations Research Analyst
Michael Germeraad, Association of Bay Area Governments Resilience Planner

Technical Reviewers

Derek J. Lambeth, California Governor's Office of Emergency Services
Kelly Riley, California Governor's Office of Emergency Services
Lindsey Robinson, Michael Baker International
JoAnn Scordino, Federal Emergency Management Agency

# Executive Summary

Berkeley is a vibrant and unique community. But every aspect of the city – its economic prosperity, social and cultural diversity, and historical character – could be dramatically altered by a disaster. While we cannot predict or protect ourselves against every possible hazard that may strike the community, we can anticipate many impacts and take steps to reduce the harm they will cause. We can make sure that tomorrow's Berkeley continues to reflect our current values.

City government and community members have been working together for years to address certain aspects of the risk – such as strengthening structures, distributing disaster supply caches, and enforcing vegetation management measures to reduce fire risk. The 2004 Disaster Mitigation Plan formalized this process, ensuring that these activities continued to be explored and improved over time. The 2014 Local Hazard Mitigation Plan continued this ongoing process to evaluate the risks that different hazards pose to Berkeley, and to engage the community in dialogue to identify the most important steps that the City and its partners should pursue to reduce these risks. Over many years, this constant focus on disasters has made Berkeley, its residents and businesses, much safer.

The federal Disaster Mitigation Act of 2000 (DMA 2000) calls for all communities to prepare mitigation plans. The City adopted a plan that met the requirements of DMA 2000 on June 22, 2004, and an update on December 16, 2014. This is the 2019 update to that plan, called the 2019 Local Hazard Mitigation Plan (2019 LHMP).

## *Plan Purpose*

The 2019 LHMP serves three functions:

1. The 2019 LHMP documents our current understanding of the hazards present in Berkeley, along with our vulnerabilities to each hazard – the ways that the hazard could impact our buildings, infrastructure, community, and environment.
2. The document presents Berkeley City government's Mitigation Strategy for the coming five years. The Mitigation Strategy reflects a wide variety of both funded and unfunded actions, each of which could reduce the Berkeley's hazard vulnerabilities.
3. By fulfilling requirements of the DMA 2000, the 2019 LHMP ensures that Berkeley will remain eligible to apply for mitigation grants before disasters, and to receive federal mitigation funding and additional State recovery funding after disasters.

## *Plan Organization*

Unlike prior versions of the plan, the 2019 LHMP has been structured to specifically address DMA 2000 requirements. The 2019 LHMP is organized as follows:

*Element A: Planning Process*
This section of the 2019 LHMP describes the process used to develop the document, including how partners, stakeholders, and the community were engaged. It also addresses the City's approach to maintaining the 2019 LHMP over the five-year planning cycle.

*Element B: Hazard Analysis*
This section of the 2019 LHMP outlines the different hazards present in Berkeley. Analysis of each hazard includes the areas of Berkeley with exposure to the hazard, the potential impacts of each hazard, and Berkeley's vulnerabilities to each hazard.

*Element C: Mitigation Strategy*
The Mitigation Strategy section first documents the authorities, policies, programs, and resources that the City brings to bear in implementing mitigation actions. Second, this section outlines a comprehensive range of specific mitigation actions and projects designed to reduce Berkeley's hazard vulnerabilities. This section also describes how the 2019 LHMP is integrated with other City plans.

*Element D: Plan Review, Evaluation, and Implementation*
This section describes how changes in development have influenced updates to the 2019 LHMP. It also provides a detailed description of Berkeley's progress on the Mitigation Strategy proposed in 2014.

*Element E: Plan Adoption*
This section will be used to document formal adoption of the Final Draft 2019 LHMP by the Berkeley City Council.

In the pages that follow, this Executive Summary describes highlights from Element B: *Hazard Analysis* and Element C: *Mitigation Strategy*, as well as any key updates that were made to the section since the 2014 version.

# Element B: Hazard Analysis

To become disaster resilient, a community must first understand the existing hazards and their potential impacts. Berkeley is exposed to a number of natural and human-caused hazards that vary in their intensity and impacts on the city. This mitigation plan addresses six natural hazards: earthquake, wildland-urban interface (WUI) fire, flood, landslide, and tsunami. Each of these hazards can occur independently or in combination, and can also trigger secondary hazards.

Although this plan is focused on natural hazards, four human-caused hazards of concern are also discussed: hazardous materials release, climate change,[1] extreme heat events, and terrorism. They are included because of their likelihood of occurrence and the magnitude of their potential consequences, as outlined in the table below.

***Table 1. Summary of Hazard Analysis***

| Hazard | Likelihood | Severity of Impact |
|---|---|---|
| **Earthquake** | Likely | Catastrophic |
| **Wildland-Urban Interface Fire** | Likely | Catastrophic |
| **Rainfall-Triggered Landslide** | Likely | Moderate |
| **Floods** | Likely | Minor |
| **Tsunami** | Possible | Moderate |
| **Climate Change** | Likely | Moderate to Catastrophic* |
| **Extreme Heat** | Likely | Moderate to Catastrophic* |

**Consequence levels for climate change and extreme heat depend highly on the success of global climate mitigation over the coming decades. If greenhouse gas emissions are significantly reduced, and carbon sequestration is increased, impacts may be moderate. If emissions remain steady at present levels or even increase, consequences may increase to catastrophic, although effects will differ widely over the globe.*[23]

Hazardous materials release is described only as a cascading impact of a natural hazard. Because this plan focuses on natural hazards as emphasized in DMA 2000, likelihood and consequence levels for hazardous materials release and terrorism are not defined.

## *Hazards of Greatest Concern*

### Earthquake

We do not know when the next major earthquake will strike Berkeley. The United States Geological Survey states that there is a 72% probability of one or more M 6.7 or greater earthquakes from 2014 to 2043 in the San Francisco Bay Region.[4] There is a 33% chance that a 6.7 or greater will occur on the Hayward fault system between 2014 and 2043.[5] This means that many Berkeley residents are likely to experience a severe earthquake in their lifetime.

A catastrophic earthquake on the Hayward Fault would cause severe and violent shaking and three types of ground failure in Berkeley. Surface fault rupture could occur in the Berkeley hills along the fault, damaging utilities and gas lines that cross the fault. Landslides are expected in the Berkeley hills during the next earthquake, particularly if the earthquake occurs during the rainy winter months. Landslide movement could range from a few inches to tens of feet. Ground surface displacements as small as a few inches are enough to break typical foundations. Liquefaction is very likely in the westernmost parts of the city and could occur in much of the Berkeley flats. Liquefaction can destroy pavements and dislodge foundations.

Shaking and ground failure is likely to create impacts that ignite post-earthquake fires. Firefighting will be simultaneously challenged due to broken water mains and damage to electrical, transportation, and communication infrastructure.

In a 6.9 magnitude earthquake on the Hayward Fault, the City estimates that over 600 buildings in Berkeley will be completely destroyed and over 20,000 more will be damaged. One thousand to 4,000 families may need temporary shelter. Depending on the disaster scenario, one hundred people could be killed in Berkeley alone, and many more would be injured. Commercial buildings, utilities, and public roads will be disabled or destroyed. This plan estimates that building damage in Berkeley alone could exceed $2 billion, out of a multi-billion dollar regional loss, with losses to business activities and infrastructure adding to this figure.

Low-income housing units are expected to be damaged at a higher rate than other residences. Other types of housing, such as condominiums, may replace them when land owners rebuild. This could lead to profound demographic shifts in Berkeley.

### Wildland-Urban Interface Fire

Berkeley is vulnerable to a wind-driven fire starting along the city's eastern border. The fire risk facing the people and properties in the eastern hills is compounded by the area's mountainous topography, limited water supply, minimal access and egress routes, and location, overlaid upon the Hayward Fault. Berkeley's flatlands are also exposed to a fire that spreads west from the hills. The flatlands are densely-covered with old wooden buildings housing low-income and vulnerable populations, including isolated seniors, people with disabilities, and students.

The high risk of wildland-urban interface (WUI) fire in Berkeley was clearly demonstrated in the 1991 Tunnel Fire, which destroyed 62 homes in Berkeley and more than 3,000 in Oakland. Accounts of major wildfires in Berkeley date back to at least 1905 when a fire burned through

Strawberry Canyon and threatened the University campus and the small Panoramic Hill subdivision. Other major fires occurred in the 1970s and 1980s.

In 1923, an even more devastating fire burned through Berkeley. It began in the open lands of Wildcat Canyon to the northeast and, swept by a hot September wind, penetrated residential north Berkeley and destroyed nearly 600 structures, including homes, apartments, fraternities and sororities, a church, a fire station and a library. The fire burned downhill all the way to Shattuck Avenue in central Berkeley.[6]

If a fire occurred today that burned the same area, the loss to structures would be in the billions of dollars.[7] Destruction of contents in all of the homes and businesses burned would add hundreds of millions of dollars[8] to fire losses. Efforts to stabilize hillsides after the fire to prevent massive landslides would also add costs. Depending on the speed of the fire spread, lives of Berkeley residents could also be lost. Many established small businesses, homes, and multi-family apartment buildings, particularly student housing, would be completely destroyed, changing the character of Berkeley forever.

## *Natural Hazards of Concern*

This plan identified three additional natural hazards of concern: rainfall-triggered landslide, floods, and tsunami. These hazards could cause significant damage and losses in Berkeley. However, unlike earthquake and WUI fire, their impacts are likely to be smaller, and confined to specific areas.

### Rainfall-Triggered Landslide

Berkeley has a number of deep-seated landslides that continuously move, with the rate of movement affected by rainfall and groundwater conditions. Significant localized areas of the Berkeley hills face risk from landslide, and a major slide could endanger lives and impact scores of properties, utilities and infrastructure.

### Floods

Floods also could damage property and cause significant losses in Berkeley. Flooding can occur when stormwater exceeds the capacity of a creek channel, or the capacity of the storm drain system. Creek flooding in Berkeley has the potential to affect about 675 structures, mainly in the western, industrial area of the city. It is unlikely that floodwaters will reach higher than three feet, but damages to homes, businesses, and their contents could total over $160 million. Storm drain overflow creates localized flooding in many known intersections in Berkeley. With few properties covered by flood insurance, these costs would be borne primarily by Berkeley residents and businesses.

### Tsunami

Tsunamis, though rare inside the San Francisco Bay, can occur from large offshore subduction style earthquakes around the Pacific Rim. Small, local tsunamis can also result from offshore strike-slip Faults such as parts of the San Andreas Fault of the Peninsula and the Hayward Fault through San Pablo Bay. The March 2011 Japan earthquake generated a devastating tsunami, which reached the Bay Area and caused minor damage to docks and floats in the Berkeley Marina. A larger tsunami could impact much more of Berkeley's western shores. Buildings, infrastructure, and roadways could be damaged, and debris and hazardous materials could cause post-tsunami fires. Deaths are possible if individuals choose not to evacuate hazardous areas, do not understand tsunami warnings, or are unable to evacuate.

## *Manmade Hazards of Concern*

While the focus of the 2019 LHMP is on natural hazards as emphasized in the Disaster Mitigation Act of 2000 (DMA 2000),[9] the plan provides analysis of four manmade hazards of concern. Climate change is described because its impacts are likely to exacerbate the natural hazards of concern identified in the plan. The 2019 LHMP specifically addresses the hazard of extreme heat events because they are projected to increase exponentially in the next century as climate change continues. Hazardous materials release is addressed in this mitigation plan as a potential impact from a natural hazard. Terrorism is identified as a hazard of concern but is not analyzed in-depth.

### Climate Change

Like regions across the globe, the San Francisco Bay Area is already experiencing negative impacts of climate change. These impacts will continue to grow in intensity and will disproportionately affect communities such as the elderly, children, people with disabilities, and people with low incomes.

The severity of these impacts will depend on the amount of greenhouse gas emissions produced worldwide over the coming decades. Mitigation of further emissions will reduce Berkeley's exposure to climate change. Berkeley's Climate Action Plan[10] identifies the City's plan for emissions reductions, known as climate change mitigation. Simultaneously, we are already experiencing climate change impacts that will intensify over time—including sea level rise, prolonged poor air quality from wildfires, drought, severe storms, and extreme heat – so it is also critical that Berkeley adapt to current and projected impacts in order to protect Berkeley's community, infrastructure, buildings, and economy, known as climate change adaption.

Climate change will have direct impacts and will also exacerbate the natural hazards of concern outlined in this plan. Rising sea levels have the potential to impact infrastructure and community members in west Berkeley and the Berkeley waterfront. This will increase Berkeley's exposure to tsunami inundation and to flooding of critical infrastructure in these areas, which includes sanitary sewers, state highways, and railroad lines. Increased temperatures, when coupled with prolonged drought events, can increase the intensity of wildfires that may occur, and pose significant health and safety risks to people. By 2100, most of the Bay Area will average six heat waves per year, each an average length of ten day.[11] Shorter, more intense wet seasons will make flooding more frequent, and may increase the landslide risk in the Berkeley hills. California may experience greater water and food insecurity, and drought will become a more persistent issue as the effects of climate change deepen.

### Extreme Heat Events

Multiple factors contribute to the extreme heat hazard, including very high temperatures, nights that do not cool down, consecutive days of extreme heat, and extreme heat during unexpected times of the year. Extreme heat events impact public health, increase fire risk, damage critical facilities and infrastructure, and worsen air quality.

Social factors play a key role in vulnerability to extreme heat events, meaning that people with disabilities, chronic diseases, the elderly, and children under five are the most at risk to heat-

related illnesses.[12] Across California, the highest risk of heat-related illness occurs in the typically cooler regions found in coastal areas like Berkeley.

Projections indicate that the number of extreme heat days, warm nights, and heat waves will increase exponentially: by 2099, the City of Berkeley is expected to average 18 days per year with temperatures over 88.3 degrees F.

**Hazardous Materials Release**
Over the last 25 years, Berkeley has seen a more than 90 percent reduction in the number of facilities with extremely hazardous materials. The City carefully tracks hazardous materials within its borders, and works closely with companies using large amounts of potentially dangerous materials. The City has identified fifteen facilities in Berkeley with sufficiently large quantities of toxic chemicals to pose a high risk to the community. Hazardous materials also travel through Berkeley by truck and rail. Natural hazards identified in the plan could trigger the release of hazardous materials.

**Terrorism**
It is not possible to estimate the probability of a terrorist attack. Experts prioritize terrorism readiness efforts by identifying critical sites and assessing these sites' vulnerability to terrorist City officials are currently working with State and regional groups to prevent and prepare for terrorist attacks.

## *Access and Functional Needs*

This plan recognizes that there are many individuals that are still disproportionately vulnerable during disasters. People with access and functional needs are defined as community members who may have additional needs before, during and after an incident in functional areas, including but not limited to: maintaining independence, communication, transportation, supervision, and medical care. Individuals in need of additional response assistance may include those who have disabilities, live in institutionalized settings, are elderly, are children, are from diverse cultures, have limited English proficiency, or are non-English speaking, or are transportation disadvantaged. An individual with a disability is defined by the ADA as a person who had a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

## *Summary of Changes to the Hazard Analysis*

The 2019 LHMP contains numerous updates to facts, figures, and descriptions. The City has incorporated the newest-available hazard data, including impact maps for particular scenarios. The City and its partners have provided additional descriptions, details and definitions to explain the science of these hazards and their potential impacts. Advances in GIS mapping technology have enabled the City to present maps that help to visualize information.

Institutional community partners have updated information regarding their vulnerabilities to the described hazards, as well as significant mitigation activities that they have completed, are in progress, or planned for the coming five years.

Within the historical section for each hazard, the City has added information about any instances of the hazard affecting Berkeley since 2014. Throughout the plan, the City has updated financial loss estimates for inflation.

### Hazards Described in the 2014 Plan

For the first time, the plan identifies extreme heat events as a hazard of concern. Significant changes and updates to the analysis of each hazard are described below:

### Earthquake (Section B.5)

- The 2019 LHMP integrates the 2018 HayWired scenario developed by the USGS to help illustrate the potential impacts of a catastrophic earthquake near Berkeley. The plan now includes five maps with data from the scenario.
- Berkeley's liquefaction hazard is now mapped using both overall levels of susceptibility and probability of liquefaction in the 7.0M HayWired scenario.
- The seismic stability of City-owned and leased buildings has been updated to reflect significant retrofit and rebuilding efforts since 2014.
- The City has updated the plan to describe Berkeley's progress on mitigating earthquake vulnerabilities in privately-owned buildings. Detailed analysis along with three new maps have been provided to describe and illustrate the locations of potentially seismically vulnerable buildings, including unreinforced masonry buildings, soft story buildings, non-ductile concrete buildings, and tilt-up or other rigid-wall flexible diaphragm buildings.
- The Earthquake section includes updated descriptions from Key Institutional Partners about mitigation efforts completed or planned. Updated partner profiles include UC Berkeley, Berkeley Lab, Berkeley Unified School District, East Bay Municipal Utility District, AT&T, and Alta Bates Summit Medical Center.
- Earthquake risk and loss estimates have been updated to integrate regional estimates from the 2018 HayWired earthquake scenario.

### Wildland-Urban Interface Fire (Section B.6)

The 2019 LHMP integrates hazardous fire zones as defined by the City of Berkeley and the California Department of Forestry onto one map.

The 2019 LHMP presents a new map overviewing the locations of pedestrian pathways in Berkeley. These pathways are key resources for pedestrian evacuation from wildland-urban interface fire.

**Rainfall-Triggered Landslide (Section B.7)**
This section has been updated to describe hazard occurrences in Berkeley since 2014.

**Floods (Section B.8)**
The Floods section has been updated to include newly-revised flood exposure maps for Berkeley from the FEMA National Flood Insurance Program.

**Tsunami (Section B.9)**
The Tsunami section now includes a map of Tsunami Evacuation Playbook zones. These zones, developed by the California Geological Survey, California Governor's Office of Emergency Services, and the National Ocean and Atmospheric Administration (NOAA), reflect more refined and detailed planning, in which forecasted tsunami amplitudes, storm surge, and tidal information can help guide what areas might be inundated.

The Tsunami section also includes new information about infrastructure vulnerabilities of the Berkeley Marina, based on recent tsunami inundation modeling by the California Geological Survey, University of Southern California, California State Lands Commission, and California Governor's Office of Emergency Services.

**Climate Change (Section B.10)**
The Climate Change section has been updated to use the latest available science and policy guidance on the direct and secondary impacts of climate change. It describes recent events that demonstrate climate change impacts that we are already experiencing.

The section provides new analysis of amounts of sea-level rise anticipated under different projected carbon emissions scenarios, as well as new maps of expected levels of inundation from 2-ft, 4-ft, and 5.5-ft sea level rise scenarios using the Adapting to Rising Tides Bay Shoreline Flood Explorer.

**Extreme Heat Events (Section B.11)**
Extreme heat events are a newly-introduced hazard of concern for the 2019 LHMP. The extreme heat events section describes factors that contribute to the extreme heat hazard, and describe how the Urban Heat Island Effect can further exacerbate impacts of extreme heat events. The section outlines the secondary hazards created by extreme heat, including public health impacts, fire, damage to critical facilities and infrastructure, and worsened air quality.

The section also describes the predicted average number of extreme heat days in Berkeley through the end of the century.

**Hazardous Materials Release (Section B.12)**
The Hazardous Materials Release section contains updated figures on the number of sites with hazardous materials in Berkeley. Additionally, the section has been updated since 2014 to reflect Berkeley industrial sites with large quantities of extremely hazardous materials. These sites have been mapped for reference.

# Element C: Mitigation Strategy

## *Authorities, Policies, Programs and Resources*

Through many years of diligent effort by City government and the community, Berkeley has developed many innovative initiatives to increase our disaster resilience. The authorities, policies, programs and resources that Berkeley will use to support execution of the 2019 LHMP Mitigation strategy include:

- The City has strengthened its ability to serve the community during and after disasters by seismically upgrading or replacing buildings that house critical City functions. In 2017, work was completed on the James Kenney Recreation Center and the Center Street Garage. Since 2004 the City has strengthened or rebuilt all seven of the City's fire stations, the historic Ratcliff Building (which houses the Public Works Department Operations Center), the Civic Center (which houses many key government functions), the Public Safety Building, a new animal shelter, and all libraries.
- The Berkeley Unified School District, supported by voter-approved bonds, has strengthened all public schools.
- The City of Berkeley has worked diligently to enhance public safety and reduce physical threats from earthquakes by requiring owners of soft story and unreinforced masonry buildings to retrofit their structures.
    - Berkeley was the first city in the nation to inventory the community's soft-story buildings. In 2014 Berkeley mandated retrofit of soft story buildings with five or more dwelling units. Since then, 61 percent of these identified buildings have had retrofits completed.
    - Over 99% of Berkeley's 700 unreinforced masonry buildings have been retrofitted or demolished since a City mandate began in 1991.
- The City offers a comprehensive suite of programs to encourage the community to strengthen buildings to be more hazard-resistant.
    - In early 2017, the Building and Safety Division developed a new Retrofit Grants program with funding from a Hazard Mitigation Grant from the Federal Emergency Management Agency (FEMA) and the California Governor's Office of Emergency Services (Cal OES).
    - Since July 2002, the City has distributed over $12 million to homeowners through the Transfer Tax Rebate Program, which reduces the real estate transfer tax to building owners who perform seismic safety work.
    - The City participates in the Earthquake Brace + Bolt (EBB) program, a grant program administered by the California Earthquake Authority, providing grants of up to $3,000 for seismic retrofits of owner-occupied residential buildings with 1-4 dwelling units.
- The City, working together with key partners, is using a comprehensive strategy to aggressively mitigate Berkeley's wildland-urban interface (WUI) fire hazard. These approaches include:

  - Prevention through development regulations with strict building and fire code provisions, as well as more restrictive local amendments for new and renovated construction;
  - Enforcement programs including annual inspections of over 1,200 high-risk properties annually;
  - Natural resource protection through four different vegetation management programs;
  - Improvement of access and egress routes;
  - Infrastructure maintenance and improvements to support first responders' efforts to reduce fire spread.
- The Disaster Cache Program incentivizes community-building for disaster readiness. To date, the City has awarded caches of disaster response equipment to neighborhoods, congregations, and UC Berkeley Panhellenic groups that have undertaken disaster readiness activities.
- Berkeley's 2009 Climate Action Plan has served as a model for jurisdictions across the nation. The Climate Action Plan also guides the City's new climate adaptation strategy.

These programs, and many others, place Berkeley as a leader in disaster management. Long-term maintenance and improvements to these programs will support execution of the 2019 LHMP Mitigation strategy, and will help to protect the Berkeley community in our next disaster.

### *Disaster Mitigation Goals and Objectives*

Berkeley will focus on three goals to reduce and avoid long-term vulnerabilities to the hazards identified in Element B: *Hazard Analysis*:

1. The City will evaluate and strengthen all City-owned properties and infrastructure, particularly those needed for critical services, to ensure that the community can be served adequately after a disaster.
2. The City will establish and maintain incentive programs and standards to encourage local residents and businesses to upgrade the hazard resistance of their own properties.
3. The City will actively engage other local and regional groups to collaboratively work towards mitigation actions that help maintain Berkeley's way of life and its ability to be fully functional after a disaster event.

Five objectives guide the mitigation strategy:

A. Reduce the potential for loss of life, injury and economic damage to Berkeley residents and businesses from earthquakes, wildfires, landslides, floods, tsunamis, climate change, extreme heat, and their secondary impacts.

B. Increase City government's ability to serve the community during and after hazardous events by mitigating risk to key City functions.

C. Connect with residents, community-based organizations, institutions, businesses, and essential lifeline systems in order to increase mitigation actions and disaster resilience in the community.

D. Preserve Berkeley's unique character and values from being compromised by hazardous

events.

E. Protect Berkeley's historically underserved populations from the impacts of hazardous events by applying an equity focus, including equal access, to mitigation efforts.

## *Overview of Actions*

This plan identifies and analyzes 27 mitigation actions to reduce the impacts from hazards described in Element B: *Hazard Analysis.* This suite of actions addresses every natural hazard posing a threat to Berkeley, with an emphasis on new and existing buildings and infrastructure.

Tables 1, 2, and 3 below summarize all of the actions. The tables group actions by their priority level (see Element C.5.a for details on prioritization of actions), and identify the hazard(s) and each action addresses.

***Table 2. High-Priority Actions in mitigation strategy***

| Name | Action | Hazards |
|---|---|---|
| **Building Assessment** | Continue appropriate seismic and fire safety analysis based on current and future use for all City-owned facilities and structures. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Floods<br>Tsunami<br>Climate Change<br>Extreme Heat |
| **Strengthen and Replace City Buildings** | Strengthen or replace City buildings in the identified prioritized order as funding is available. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Floods<br>Tsunami<br>Climate Change<br>Extreme Heat |

| Name | Action | Hazards |
|---|---|---|
| **Buildings** | Reduce hazard vulnerabilities for non-City-owned buildings throughout Berkeley. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Floods<br>Climate Change<br>Extreme Heat |
| **Retrofit Grants** | Implementation of the Retrofit Grants Program which helps Berkeley building owners increase safety and mitigate the risk of damage caused by earthquakes | Earthquake |
| **Soft Story** | Continued Implementation of the Soft Story Retrofit Program, which mandates seismic retrofit of soft story buildings with 5+ residential units. | Earthquake |
| **Unreinforced Masonry (URM)** | Complete the ongoing program to retrofit all remaining non-complying Unreinforced Masonry (URM) buildings. | Earthquake |
| **Concrete Retrofit Ordinance Research** | Monitor passage and implementation of mandatory seismic retrofit ordinances for concrete buildings in other jurisdictions to assess best practices. | Earthquake |
| **Gas Safety** | Improve the disaster-resistance of the natural gas delivery system to increase public safety and to minimize damage and service disruption following a disaster. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Tsunami |
| **Fire Code** | Reduce fire risk in existing development through fire code updates and enforcement. | Wildland-Urban Interface Fire |
| **Vegetation Management** | Reduce fire risk in existing development through vegetation management. | Wildland-Urban Interface Fire<br>Climate Change |
| **Hills Pedestrian Evacuation** | Manage and promote pedestrian evacuation routes in Fire Zones 2 and 3. | Earthquake<br>Wildland-Urban Interface Fire |

| Name | Action | Hazards |
|---|---|---|
| **Hills Roadways and Parking** | Improve responder access and community evacuation in Fire Zones 2 and 3 through roadway maintenance and appropriate parking restrictions. | Earthquake<br>Wildland-Urban Interface Fire |
| **Undergrounding** | Coordinate with PG&E for the construction of undergrounding in the Berkeley Hills within approved Underground Utility Districts (UUDs). | Earthquake<br>Wildland-Urban Interface Fire |
| **EBMUD** | Work with EBMUD to ensure an adequate water supply during emergencies and disaster recovery. | Earthquake<br>Wildland-Urban Interface Fire |
| **Extreme Heat** | Reduce Berkeley's vulnerability to extreme heat events and associated hazards. | Climate Change<br>Extreme Heat |
| **Hazardous Materials** | Mitigate hazardous materials release in Berkeley through inspection and enforcement programs. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Floods<br>Tsunami<br>Climate Change |
| **Air Quality** | Define clean air standards for buildings during poor air quality events and use those standards to assess facilities for the Berkeley community. | Wildland-Urban Interface Fire<br>Climate Change<br>Extreme Heat |
| **National Flood Insurance Program (NFIP)** | Maintain City participation in the National Flood Insurance Program. | Floods |
| **Hazard Information** | Collect, analyze and share information with the Berkeley community about Berkeley hazards and associated risk reduction techniques. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Floods<br>Tsunami<br>Climate Change<br>Extreme Heat |

| Name | Action | Hazards |
|---|---|---|
| **Partnerships** | Coordinate with and encourage mitigation actions of key City partners. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Floods<br>Tsunami<br>Climate Change<br>Extreme Heat |

***Table 3. Medium-Priority Actions in mitigation strategy***

| Name | Action | Hazards |
|---|---|---|
| **Severe Storms** | Reduce Berkeley's vulnerability to severe storms and associated hazards through proactive research and planning, zoning regulations, and improvements to stormwater drainage facilities. | Landslide<br>Floods<br>Climate Change |
| **Energy Assurance** | Implement energy assurance strategies at critical City facilities. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Floods<br>Tsunami<br>Climate Change<br>Extreme Heat |
| **Climate Change Integration** | Mitigate climate change impacts by integrating climate change research and adaptation planning into City operations and services. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Tsunami<br>Climate Change<br>Extreme Heat |
| **Sea Level Rise** | Mitigate the impacts of sea level rise in Berkeley. | Climate Change |
| **Water Security** | Collaborate with partners to increase the security of Berkeley's water supply from climate change impacts. | Climate Change |

***Table 4. Low-Priority Actions in mitigation strategy***

| Name | Action | Hazards |
|---|---|---|
| **Tsunami** | Mitigate Berkeley's tsunami hazard. | Tsunami |
| **Streamline Rebuild** | Streamline the zoning permitting process to rebuild residential and commercial structures following disasters. | Earthquake<br>Wildland-Urban Interface Fire<br>Landslide<br>Floods<br>Tsunami |

[1] Human action directly influences the probability that climate change will occur. Climate change is referenced as a natural hazard here because of its potential to exacerbate natural hazards described in this plan.

[2] Ackerly, David. 2018. California's Fourth Climate Change Assessment, San Francisco Bay Area Region Report. http://www.climateassessment.ca.gov/regions/docs/20190116-SanFranciscoBayArea.pdf

[3] https://cal-adapt.org/tools/extreme-heat/

[4] Detweiler, Shane and Wein, A., 2018, The HayWired Earthquake Scenario – Earthquake Hazards: U.S. Geological Survey Scientific Investigations Report 2017-5013-A-H, p.3.

[5] Detweiler, Shane and Wein, A., 2018, The HayWired Earthquake Scenario – Earthquake Hazards: U.S. Geological Survey Scientific Investigations Report 2017-5013-A-H, p.4.

[6] City of Berkeley. *Fire Hazard Mitigation Plan*. February 25, 1992.

[7] Total square footage of buildings in burn area is 9,386,281 square feet.

[8] In 2004, estimate was $500 million.

[9] Public Law 106-390

[10] Berkeley Climate Action Plan (City of Berkeley, 2009) www.cityofberkeley.info/climate/

[11] San Francisco Bay Area 2017 Risk Profile (ABAG, 2017, p58-59) http://resilience.abag.ca.gov/wp-content/documents/mitigation_adaptation/RiskProfile_4_26_2017_optimized.pdf

[12] San Francisco Bay Area 2017 Risk Profile (ABAG, 2017) http://resilience.abag.ca.gov/wp-content/documents/mitigation_adaptation/RiskProfile_4_26_2017_optimized.pdf

# ITEM 12: Adopt 2020 PC Calendar

January

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

February

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | | | | | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |

March

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | | | | |

April

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | | |

May

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 | | | | | | |

June

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | | | | |

July

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

August

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | | | | | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

September

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | | | |

October

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

November

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | | | | | |

December

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |

<u>Proposed PC Meeting Dates:</u>

- January 15, 2020 or January 22, 2020
- February 5, 2020
- March 4, 2020
- April 1, 2020
- May 6, 2020
- June 3, 2020
- July 1, 2020
- September 2, 2020
- October 7, 2020
- November 4, 2020
- December 2, 2020

## Lapira, Katrina

**From:** chimey lee [mailto:chimey2@yahoo.com]
**Sent:** Monday, October 14, 2019 6:22 AM
**To:** All Council <council@cityofberkeley.info>; Shen, Alisa <AShen@cityofberkeley.info>; Jenny Wong <jenny@jennyforauditor.com>; Manager, C <CManager@cityofberkeley.info>; Pearson, Alene <apearson@cityofberkeley.info>; toxics@cityofberkely.info
**Subject:** items on city council agenda Tues Oct 15,2019 plus other inclusive comments for Berkeley

Dear Mayor Arreguin, City Manager, Council Members of the City of Berkeley

Apologies for again not being able to join you at these community meetings due to health.

Below please find my supporting comments regarding initiatives and suggestions for the City of Berkeley:

1. Full support for Ban of Facial Recognition Technology of any kind for the City of Berkeley.
2. Full support for Public Restrooms and other initiatives of Measure T1(November 2016) for the City of Berkeley.
3.Full support for renovations of Milvia street for bikes "Only" from Dwight to Adeline, bikes have no such means to date, whereas autos have the most right of way.
4.Comment for Berkeley's future mentioned at one Planning Commission meeting (June 5, 2019) whereas in support of more public freedom and quality of health, I suggested to the Planning Commission should for not too far in the future, that they look at the example of European Cities that for many years now have created and redesigned their cities including infrastructure, to exclude all motor vehicles (allowed only on the outside circle of their cities, again allowing more human freedom withing their city, with more trees and foliage, etc., for fuller quality of life enjoyment of the city; in support of innovative, "Thinking out of the Box".
4. Along the above suggestion, along with more "freedom, I want to state that I attended meetings with Ford when they first came to explore support for their "bikes" incorporated in wide use all over Berkeley. At that time on making inquiry directly whether their bikes could be utilized by senior citizens, specifically "light enough" for seniors. The Ford rep confirmed this. Riding on my own bike (as an chronically disabled senior) for several years and have seen on personal investigation that the Ford bikes are in general too heavy for most seniors.
5. Regarding sighting vehicles with inadequate control of vehicle pollution.
For all the years of riding my own bike on a regular basis, I state that I would be hard put to not only sight the vehicles (on my bike) as they are "too numerous", ie: i would be spending all day (let alone my weaken energies) trying to sight all the vehicle polluiton I see all during any given day. This includes requesting the City of Berkeley, investigate all their vehicles, including Public Work vehicles for pollution not being regulated, I am wondering often if School buses are exempted! I would fully support all residents make an effort to sight any vehicle for non compliance of controlled emissions, as my health is daily impaired, my lungs are daily impacted by so many vehicles in non compliance of emissions control. These facts above could also impact reasons why you do not see too many seniors riding bikes in lieu of their vehicles on a daily basis. This is also the reason for the suggestion to the Planning Department to "Think out of the Box" for the future of Berkeley.
6. Last but not "least", though I am unable to read all city files as yet (due to lack of adequate glasses at this time), I wish to make a comment on housing in the City of Berkeley. First I would like to point out my deep concerns for adequate affordable housing. I would also wish to give my deep disappointment to the vote for the eighteen storied "Hotel"(?) voted for construction at the old Walgrens(?) site on Shattuck by all but three council members approx two(?) months ago without affordable housing included in its construction. I would therefore recommend the term
"inclusive affordable housing" for any building or housing proposed after the vote mentioned above.
Thank you for all your kind considerations
Chimey Lee
1501 Blake Street #306
Berkeley, Ca. 94703-1888
510-665-5914

**Planning and Development Department**
Land Use Planning Division

# STAFF REPORT

DATE: November 6, 2019

TO: Members of the Planning Commission

FROM: Alene Pearson, Principal Planner
Katrina Lapira, Assistant Planner

SUBJECT: 2019 State Housing Legislation

---

## BACKGROUND

California's State Legislature has passed significant packages of housing-related laws in the last three legislative sessions in order to address the State's housing crisis. This year's housing package included over 20 housing-focused bills that affect a variety of regulations including Accessory Dwelling Units (ADUs), density bonus, and streamlined permitting.

Jurisdictions across the State are working to understand new regulations, many of which take effect on January 1, 2020. Berkeley staff are consulting with the City Attorney and other municipalities to understand requirements. A number of land use law firms have provided summaries[1] of the new legislation (*see Attachments 1 through 3*) and guidance documents from California Department Housing and Community Development (HCD) are forthcoming. This report provides an initial analysis, identifies areas where the Planning Commission will be making recommendations, and discusses overlap with Council Referrals.

Laws affect land use policies, implementation procedures and specific zoning standards. Planning Commission will ultimately recommend Zoning Ordinance (ZO) amendments to City Council for consideration. This report summarizes four important bills (*see Attachments 4 through 7*) affecting housing policies and practices:

- AB-881 -- Accessory Dwelling Units
- AB-1763 -- Density Bonuses
- AB-1485 – Streamlining
- SB-330 -- Housing Crisis Act of 2019

[1] Summaries are provided for informational purposes only. The City of Berkeley has not consulted with authors or firms about content or analysis.

## AB-881 -- Accessory Dwelling Units

As of January 1, 2020, a new set of ADU regulations take effect statewide. Local ordinances are superseded by these regulations, except where noted. The list below outlines main points of the new law – providing references to some Government Code sections (GC) and highlighting opportunities to refine local ordinances.

1. **Allowable Lots:** ADUs are allowed in all districts that allow residential uses. ADUs would be allowed on lots that include a proposed or existing dwelling unit.

   *Local ordinances can restrict ADUs from areas 1) without adequate water and sewer service and 2) in areas where ADUs create impacts to traffic flow and public safety.* *GC 65852.2 (a)(1)(A)*

2. **Approval Process:** Jurisdictions must ministerially approve or disapprove building permit applications for ADUs within 60-days of receiving a complete application. If an ADU building permit is associated with an application for a new primary dwelling unit, ministerial approval of the ADU can be delayed until there is an action on the permit for the primary dwelling unit.

3. **Development Standards:** ADUs will have to adhere to and can impose only the following development standards (unless modified by local ordinance as set forth in italics below):
   - Maximum height of 16 feet
   - Rear and side setbacks of 4 feet
   - Maximum size:
     - A detached ADU shall not exceed 1200 square feet
     - An attached ADU shall not exceed 50% of the floor area of an existing or proposed primary dwelling unit. GCS 65852.2 (a)(1)(D)(iv)

   *Local ordinances can reduce maximum ADU size to no less than 850 square feet for a studio and 1-bedroom ADU and no less than 1000 square feet for ADUs with more than one bedroom.*

   *Local ordinances can impose development standards on ADUs that prevent adverse impacts to any real property listed in the California Register of Historic Resources.* *GC 65852.2 (a)(1)(B)(i)*

   *Local ordinances can impose development standards for lot coverage and open space as long as those standards allow for at least an 800 square foot ADU that is 16 feet in height.* *GC 65852.2 (c)(2)(C).*

4. **Parking:** Replacement parking for the primary dwelling unit is not required if the ADU physically replaces the location of an existing garage, carport or covered parking structure.

5. **Sprinklers:** Fire sprinklers are required for the ADU if they are required for the primary dwelling unit.

6. **Fees**
   a. No **impact fees** may be levied on ADUs that are less than 750 square feet. For ADUs larger than 750 square feet, impact fees must be **proportional** to the square footage of the primary dwelling unit. GC 65852.2 (f)(3)
   b. ADUs shall not be considered new residential uses for the purposes of calculating **connection fees or capacity charges** for utilities, unless the ADU is created with a newly constructed primary dwelling unit. GC 65852.2 (f)(2).
   c. ADUs carved out of existing dwelling units shall not require new or separate **utility hook-ups**. All other ADUs may require new hook-ups and will be charged **utility fees** proportionate to its size and/or burden. GC 65852.2 (f)(4),(5).

   *Local Ordinance: Cities can charge fees to cover costs associated with meeting the new 60-day timeline. Fees can include costs incurred adopting new ADU ordinances. GC 65852.2 (a)(3)*

7. **Owner Occupancy, Rental and Sale of ADUs:** Properties with ADUs cannot require owner-occupancy of the ADU or the primary dwelling unit. ADUs can be rented separate from the primary dwelling unit, but the rental term shall be for 30-days or more. GC 65852.2 (e)(4). ADUs may not be sold separately from primary dwelling unit. GC 65852.2 (a)(1)(D)(i)

8. **Number of ADUs**
   a. **Single Family (Primary) Dwelling Unit:** One ADU is allowed on all lots with one primary dwelling unit. The ADU can be attached to the primary dwelling unit or can be a detached structure. In addition, the lot can have a Junior ADU (J-ADU) attached to either the ADU or the primary dwelling unit.
   b. **Multifamily Dwelling Units**
      Attached: Multiple ADUs can be created within existing areas of multifamily dwellings that are not used as livable space (i.e. storage rooms, basements, garages, attics). At a minimum, one ADU is allowed. At a maximum, the number of ADUs cannot exceed 25% of the number of multifamily dwelling units. GC 65852.2 (e)(1)(C)(i),(ii)
      Detached: There can be no more than two detached ADUs on lots with multifamily dwellings, subject to the abovementioned development standards. GC 65852.2 (e)(1)(D)

9. **Non-conforming Structures:** If an ADU is constructed in the same location and to the same dimensions as an existing non-conforming structure, it does not have to comply with the rear and side setbacks. GC 65852.2 (a)(1)(D)(vii). Additionally, the jurisdiction cannot require the correction of nonconforming zoning conditions in order to ministerially approve an ADU. GC 65852.2 (e)(2).

Berkeley Context:

- *Planning Commission Action:* As of January 1, 2020, Berkeley's ADU Ordinance will be considered null and void. Until Berkeley's ADU Ordinance is updated to reflect new law, State regulations will be in effect. Staff is working on amendments for Planning Commission consideration. As part of this effort, a J-ADU Ordinance will be adopted.

- *Referrals:* Listed below are requests from City Council referrals that pertain to ADUs (*see Attachment 8*). Some requests have been resolved with the passage of AB-881, others are included in AB-881 – but need additional consideration and refinement from the City -- and some topics are not included in AB-881. Over the next few months, Planning Commission will be considering these items while developing Berkeley's new ADU Ordinance.

  AB-881 Dictates Action with New Regulations:
  - Reconsider the owner-occupancy requirements (May 15, 2018)
  - Rectify ADU regulations for demolition and conversion of legally non-confirming structures (May 15, 2018)
  - Consider allowing multiple ADUs on a lot (May 15, 2018)
  - Consider allowing ADUs for multifamily dwellings (May 15, 2018)
  - Clarify regulations for ADUs created through residential additions (Sept 13, 2018)

  AB-881 Provides Guidance and Requires City Action:
  - Adopt a J-ADU ordinance (May 2, 2017)
  - Consider public safety issues in the Very High Fire Zone (Feb 27, 2018)
  - Reconsider off-street parking regulations on narrow roads (Sept 13, 2018)

  These are not included in AB-881:
  - Consider incentives for affordability restrictions (May 15, 2018)
  - Consider incentives for universal design (September 13, 2018)
  - Require signed receipt of information on rent control, tenant protections and short term rental rules when ADU permits are issued (Sept 13, 2018)

## AB-1763 -- Density Bonuses

AB-1763 modifies GC 65915 to include 100% affordable housing projects[2]. Under the new law, projects that provide 20% of their units to moderate income households[3] and 80% of their units to lower income households[4] will be eligible for State Density Bonus. Under this program, 100% affordable projects do not have to provide off-street parking. Projects that are more than half a mile from major transit stops[5] receive an 80% density bonus. Projects that are within half a mile of major transit stop have no maximum density,

[2] 100% affordable housing projects include all (base and bonus) units, except manager's unit(s)
[3] Moderate income households: 120-80% of the Area Median Income (AMI)
[4] Lower income households: Less than 80% of the AMI
[5] Major transit is defined as fixed rail service or a bus stop for a rapid line or a line with 15 minute headways at commute hours, per Public Resources Code 21155.

receive four incentives or concessions, and are provided an additional three stories or 33 feet in height.

Berkeley Context:

- *Planning Commission Action:* No action is required. In March 2019, City Council adopted a new Density Bonus Ordinance (Chapter 23C.14) that points to GC 65915. This was done intentionally to ensure that as State law evolved, Berkeley's ZO would not need to be amended.
- *Referrals:* The Planning Commission and its Subcommittee on Affordable Housing developed a multi-phase approach to address six Density Bonus referrals. The approach included 1) adopting a new Density Bonus Ordinance; 2) developing a local density incentive program that would result in affordable housing production in excess State Density Bonus requirements; and 3) recommending density standards. AB-1763 directly responds to the second phase of the outlined approach.

## AB-1485 – Streamlining

AB-1485 modifies SB-35, which was signed by Governor Brown in the fall of 2017. SB-35 requires streamlined permit processing for qualified housing developments in cities that have not met their Regional Housing Needs Allocation (RHNA) targets and/or have not submitted their Housing Element Annual Progress Reports. AB-1485 provides additional options for developers (i.e. percentage of units at different affordability levels) requesting streamlining. AB-1485 clarifies project approval timelines taking into consideration length of potential litigation and/or construction. Furthermore, AB-1485 requires jurisdictions to ministerially process subsequent permits needed for a project that has received its SB-35 approval. Finally, AB-1485 explains how to calculate the percentage of a project that is residential (e.g. exclude underground space such as parking garages and basements).

Berkeley Context:

- *Planning Commission Action:* No action is required.

- *Referrals:* On December 5, 2017 City Council adopted a referral to allow ministerial approval of housing projects that receive Housing Trust Fund monies and/or housing projects that have more than 50% below market rate units with 20% of the BMR units designated for those earning up to 50% AMI (extremely low and very low income households). Affordability levels in this referral are deeper than those required by SB-35. Additionally, the referral asks for design review and a community meeting as part of ministerial review.

## SB-330 -- Housing Crisis Act of 2019

SB-330 places a moratorium on regulations that limit housing development. It dictates a new project intake process – requiring a preliminary application -- and freezes applicable

regulations and fees at the time the preliminary application is submitted. It shortens timelines to approve projects and limits the number of allowable project hearings[6] to five. SB-330 primarily affects permit processing procedures, but it also restricts jurisdictions from adopting new zoning regulations or policies that limit housing or density. This includes objective standards and invalidates any regulations adopted after January 1, 2018 that reduce allowable density or restrict development.

Berkeley Context:

- *Planning Commission Action:* As new ZO amendments are considered, Planning Commission and staff will have to evaluate if proposals are reducing density or restricting development.
- *Referrals:* N/A

NEXT STEPS

Staff will continue to work with the City Attorney and HCD to evaluate the interpretations presented in this staff report. Planning Commission is asked to provide feedback on this summary, with particular attention to the analysis of AB-881.

Attachments:

1. New California Housing Laws by Best, Best and Kreiger
2. California's 2020 Housing Laws: What You Need to Know by Holland and Knight
3. California Housing Law Update by Meyers and Nave
4. AB-881 -- Accessory Dwelling Units
5. AB-1763 -- Density Bonuses
6. AB-1485 – Streamlining (SB-35)
7. SB-330 – Housing Crisis Act of 2019
8. ADU Referrals

[6] A project hearing is broadly defined as a city-held meeting, workshop, work session, commission meeting, public hearing, subcommittee meeting, appeal or departmental meeting.

LEGAL ALERTS | OCT 16, 2019

# SB 330 Limits Local Laws Over Housing Developments

Part 4: New California Housing Laws

As part of Gov. Gavin Newsom's pledge to create 3.5 million new housing units by 2025, he signed Senate Bill 330 on Oct. 9. The new law makes numerous changes to the Permit Streamlining Act and the Housing Accountability Act, many of which are in effect only until Jan. 1, 2025, and establishes the Housing Crisis Act.

Under the new rules, cities and counties will be limited in the ordinances and policies that can be applied to housing developments. "Housing development" is now defined to include residential projects, mixed-use projects with 2/3 of the square footage dedicated to residential units and transitional or supportive housing projects.

**New Preliminary Application Process**

The legislation creates a preliminary application process. A housing development will be deemed to have completed the preliminary application process by providing specified information regarding:

- site characteristics,
- the planned project,
- certain environmental concerns,
- facts related to any potential density bonus,
- certain coastal zone-specific concerns,
- the number of units to be demolished and
- the location of recorded public easements.

With limited exceptions, housing developments will only be subject to those ordinances and policies in effect when the completed preliminary application is submitted. The public agency must make any historic site determination at the time the developer has complied with the preliminary application checklist. That determination can only be changed if archaeological, paleontological or tribal cultural resources are found during development.

## People

**Elizabeth W. Hull**
PARTNER
(949) 263-2608

## Related Practices

Economic Development, Real Estate & Affordable Housing

Municipal Law

## Related Industries

Municipal

To facilitate the preliminary application process, all public agencies must compile a checklist that specifies what is required to complete a development application. The application checklist must now be made available in writing and on the public agency's website.

The developer has 180 days from the submittal of the preliminary application to submit a development application. Under SB 330, the local agency now has additional disclosure obligations when rejecting an application as incomplete and cannot request anything that is not identified on the application checklist.

**Streamlining Provisions**

The Housing Accountability Act was amended to prohibit more than 5 hearings when reviewing a project that complied with the general plan and zoning code objective standards when the application was deemed complete. "Hearing" is broadly defined to include any workshop or meeting of a board, commission, council, department or subcommittee.

Additionally, a housing development cannot be required to rezone the property if it is consistent with the objective general plan standards for the property. The public agency may require the housing development to comply with the objective zoning code standards applicable to the property, but only to the extent they facilitate the development at the density allowed by the general plan.

SB 330 also shortens the timeframes for housing development approval under the Permit Streamlining Act. Local agencies now have 90 days, instead of 120 days, following certification of the environmental impact report, to approve the project. For low-income projects seeking tax credits or other public funding, that time frame is 60 days.

**Housing Crisis Act of 2019**

The HCA freezes many development standards in affected cities and counties starting Jan. 1. Generally, an affected city or county will be a U.S. Census Bureau-designated urbanized area. Under the HCA, the Department of Housing and Community Development will determine the affected cities and counties by June 30. HCD may revise this list after Jan. 1, 2021 to address changes in urbanized areas based upon the new census data.

Among other changes, the HCA provides that, where housing is an allowable use, an affected public agency, including its voters by referendum or initiative, may not change a land use designation (general plan or zoning) to remove housing as a permitted use or reduce the intensity of residential uses permitted under the general plan and zoning codes that were in place as of Jan. 1, 2018. The exception is if the city concurrently changes the standards applicable to other parcels to ensure there is no net loss in residential capacity.

Affected public agencies are also prohibited from imposing a moratorium or similar restriction on a housing development, including mixed-use developments, except to specifically protect against imminent threats to public health and safety. Additionally, affected public agencies cannot enforce a moratorium or other similar restriction on a housing development until the ordinance has been approved by HCD. As of Jan. 1, affected cities or counties are prohibited from imposing or enforcing subjective design standards on housing developments where housing is an allowable use. Objective standards are limited to design standards that involve no personal or subjective judgment by a public official. They must be verifiable by reference to an external and uniform benchmark available to both the applicant and the public official prior to application submittal

An affected city or county is also prohibited from establishing or implementing any growth-control measure adopted by the voters after 2005 that:

- limits the number of land use approvals for housing annually,
- acts as a cap on the number of housing units that can be constructed or
- limits the population of the city or county.

The HCA also prohibits development approvals that require residential unit demolition. Unless the project will replace all existing or previously demolished affordable restricted units, it will include at least as many units as existed on the site within the previous 5 years. Existing residents are allowed to remain until 6 months before construction begins, and displaced residents are provided relocation benefits and a right of first refusal for a comparable unit in the new project at an affordable rent.

*With California's housing shortage reaching crisis levels, the state Legislature and Gov. Gavin Newsom approved a slew of new bills this session aimed at helping the situation. Using a mix of carrots and sticks, these laws will change how cities and counties address housing shortages in their own communities. Watch for more Legal Alerts analyzing the new laws and how they impact your agency*.

**Also in BB&K's Housing Series:**

- Omnibus Housing Bill Adds Teeth to Housing Element Law Enforcement
- Surplus Land Act Requirements Expand for Local Agencies
- Tenant Protection Act Sets Statewide Rent Caps and Eviction Rules
- California Paves Way for More ADUs
- Housing Density Bonus and Reporting Changes for Local Agencies

If you have any questions about SB 330 and how it may impact your agency, please contact the author of this Legal Alert listed to the right in the firm's Municipal Law practice group, or your BB&K attorney.

Please feel free to share this Legal Alert or subscribe by clicking here. Follow us on Facebook @BestBestKrieger and on Twitter @BBKlaw.

*Disclaimer: BB&K Legal Alerts are not intended as legal advice. Additional facts or future developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information in this communiqué.*

LEGAL ALERTS | OCT 16, 2019

# California Paves Way for More ADUs

Part 5: New California Housing Laws

As part of its response to California's housing crisis, the Legislature passed a handful of new laws that further limit local regulation of accessory dwelling units, or ADUs. The Legislature's goal is to accelerate ADU development throughout the State. Historically, an ADU is usually a second small residence on the same grounds as a single-family home, such as a back house or an apartment over a garage.

**AB 881, SB 13 and AB 68[1]**

*More Locations*

- State law now clearly prohibits a city from requiring a minimum lot size.
- ADUs are now allowed on lots with multifamily dwellings (not just single-family dwellings).
- The no-setback rule is expanded beyond just nonconforming garages to include any existing structure, or any *new* structure in the same place and with the same dimensions as an existing structure.
- The most a city may require for a side or rear setback is now 4 feet.
- Before, the adequacy of water and sewer services and ADU impact on traffic flow and public safety were just examples of reasons that might justify a city in restricting ADUs in a certain area. Now, they're the only allowed reasons, and cities must consult with utility providers before deciding that water and sewer services are inadequate.

*Fewer Opportunities to Regulate Size*

- Minimum size must be 220 square feet, or as low as 150 square feet if the city has adopted a lower efficiency-unit standard by local ordinance.
- Maximum size must be at least 850 square feet for attached and detached studio and one-bedroom ADUs and at least 1,000 square feet for two or more bedrooms. In practice, an ADU might be limited to less than these minimum maximums by the application of development standards, such as lot coverage and floor-area ration. But another new provision prohibits the application of any standard that wouldn't allow for at least an 800-square foot, 16-foot tall ADU with 4-foot side and rear setbacks.
- Converted ADUs may now include an expansion of the existing structure of

## People

**Elizabeth W. Hull**
PARTNER
(949) 263-2608

**Todd R. Leishman**
OF COUNSEL
(949) 263-6576

**Isaac Rosen**
ASSOCIATE
(213) 787-2564

## Related Practices

Economic Development, Real Estate & Affordable Housing

Municipal Law

## Related Industries

Municipal

up to 150 square feet for ingress and egress.
- Attached ADUs are no longer limited to 1,200 square feet — just 50 percent of the existing primary dwelling.

*Less Parking*

- Cities may no longer require replacement parking when a garage is converted to an ADU.
- A city cannot require ADU parking within a 1/2 mile of public transit. State law now clarifies that “public transit” includes any bus stop, which may considerably expand parking-exempt areas for many cities.

*More Limited Review*

- Whether or not a city has a compliant ADU ordinance, it must ministerially approve a compliant ADU, and now a junior ADU as well, within 60 days of receiving a complete application — a decrease from 120 days. But the city must extend that time if an applicant requests it. Cities may charge a fee to recover review costs.
- Any new primary dwelling that requires a discretionary review may still be subjected to the normal discretionary process, and consideration of an ADU on the same lot may be delayed until the primary dwelling is approved. But the ADU decision must remain ministerial.
- Cities now have to approve new detached ADUs with only a building permit (as they do for converted ADUs), without applying any standard except for 4-foot setbacks, an 800-square foot max and a 16-foot height limit.
- Cities may not require correction of physical nonconforming zoning conditions for an ADU or junior ADU.

*Multiple ADUs and Multifamily*

- Cities must now allow both a junior ADU and either a converted ADU or a detached building-permit-only ADU on the same lot.
- A city must now allow junior ADUs even if the city doesn’t have an ADU ordinance, in which case it may only impose the few standards in state law.
- Cities must now allow multiple converted ADUs on lots with a multifamily dwelling.
- Cities must now allow up to two detached ADUs on lots with a multifamily dwelling, subject only to a 16-foot height limit and 4-foot setback.

*More Limited Fees*

- Utility providers are now more limited in whether and how they can charge connection fees and capacity charges.
- Impact fees are prohibited for ADUs smaller than 750 square feet. They’re allowed for large ADUs, but only proportional to the primary dwelling.

*No Owner-occupancy*

- All ADUs are exempt from owner-occupancy requirements until Jan. 1, 2025. Cities may then impose occupancy requirements, but only to ADUs created after that date.

*No Short-term*

- Cities may no longer allow short-term rentals of ADUs.

*Heavier Consequences for Cities*

- Now, a local ADU ordinance is null and void if it does not fully comply with whatever the current state law requires — not just with the 2017 amendments (which was previously the case). So cities will have to proactively conform their ordinances before changes in state law take effect or continually risk voiding their entire local ordinance.
- Cities are more accountable now to the California Department of Housing Community Development for confirming their local ordinances to the state ADU law, and HCD may refer a violation to the Attorney General.

**AB 671 and AB 139**[2]

*Housing elements must now promote ADUs for affordable rent. HCD must provide financial incentives.*

Every general plan housing element must now include, as part of its program to make adequate provision for the housing needs of all economic segments of the community, a "plan that incentivizes and promotes the creation of [ADUs] that can be offered at affordable rent … for very low, low, and moderate-income households." For its part, HCD is charged with developing "a list of existing state grants and financial incentives" for ADU developers and operators by the end of 2020.

In practice, cities and counties will likely need to not only discuss their ADU ordinance and report on ADU development in their housing elements, but also report on what they are doing to promote affordable rental of those ADUs. The upside is that affordable ADUs may count toward fulfilling regional housing needs allocations, also known as RHNA, requirements.

**AB 670**

*Home Owner Associations are now limited like local agencies in restricting ADUs.*

State law has limited local agencies in restricting ADUs for a while now, but hasn't addressed private restrictions such as HOA Covenant, Conditions & Restrictions, or CC&Rs. AB 670 makes any governing HOA document void and unenforceable to the extent that it prohibits, or effectively prohibits, the construction or use of ADUs or junior ADUs. AB 670 does permit an HOA to place "reasonable restrictions" on ADUs and junior ADUs in common interest developments, as long as the restrictions do not discourage ADU or junior ADU construction or unreasonably increase the cost to construct them. (Like cities, HOAs are bound to disagree with ADU proponents over what those standards

mean in practice.) The new law does not define what sort of “restrictions” are “reasonable,” but the bill does not require an HOA to follow the same exact standards that the city or county has adopted, leaving open the possibility that the HOA might still have its own “reasonable restrictions” that differ from those of the local agency.

While HOA regulation of ADUs is not directly a local agency’s business, it is helpful for cities and counties to keep this in mind since they receive complaints from time to time from residents concerned about government approval of uses that violate CC&Rs.

### AB 587

*Separate sale or conveyance of ADUs is now okay in limited situations.*

State law generally prohibits local ADU ordinances from allowing ADUs to be sold or otherwise conveyed separately from the primary dwelling. But AB 587 creates a limited exception by allowing (though not requiring) cities to adopt ordinances authorizing ADUs to be conveyed separately from the primary dwelling if certain conditions are met. These conditions include, among others, that the property was built by a qualified nonprofit, there is an enforceable restriction on the use of the land between the nonprofit and qualified low-income buyer and the property is held in a tenancy-in-common agreement that:

- gives the low-income buyer an undivided, unequal interest in the property based on the size of the dwelling,
- gives the nonprofit a right of first refusal to buy back the property if the buyer wishes to sell,
- requires the buyer to occupy the residence as his or her principal residence, and
- contains affordability restrictions on the sale or conveyance of the property ensuring that the property will remain low-income housing for at least 45 years.

This new, narrow exception appears to be a concession aimed at a particular project or model.

Note that this exception is not automatic. The local agency must choose to provide it, and it will likely be of only limited interest to most jurisdictions where there is no qualified nonprofit ready to proceed under this model.

### The Bottom Line

Nearly every — if not every — city and county in the state will need to amend its ADU ordinance in time to take effect before Jan. 1, or the ordinance will be void and the agency will have to approve ADUs ministerially without applying any architectural, landscaping, zoning or development standard.

*With California's housing shortage reaching crisis levels, the state Legislature and Gov. Gavin Newsom approved a slew of new bills this session aimed at helping the situation. Using a mix of carrots and sticks, these laws will change how cities and counties address housing shortages in their own communities. Watch for more Legal Alerts analyzing the new laws and how they impact your agency*.

**Also in BB&K's Housing Series:**

- Omnibus Housing Bill Adds Teeth to Housing Element Law Enforcement
- Surplus Land Act Requirements Expand for Local Agencies
- Tenant Protection Act Sets Statewide Rent Caps and Eviction Rules
- SB 330 Limits Local Laws Over Housing Developments
- Housing Density Bonus and Reporting Changes for Local Agencies

If you have any questions about new ADU laws and how they may impact your agency, please contact the authors of this Legal Alert listed to the right in the firm's Municipal Law practice group, or your BB&K attorney.

Please feel free to share this Legal Alert or subscribe by clicking here. Follow us on Facebook @BestBestKrieger and on Twitter @BBKlaw.

*Disclaimer: BB&K Legal Alerts are not intended as legal advice. Additional facts or future developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information in this communiqué.*

---

[1] "When, during a calendar year, two or more bills amending the same code section become law, the bill enacted last (with a higher chapter number) becomes law and prevails over ('chapters out') the code section in the bill or bills previously enacted. Chaptering out can be prevented with the adoption of 'double jointing' amendments." (Cal. State Legisl. Glossary, s.v. chaptering out.) AB 68 was "double-jointed" with AB 881 and SB 13, and AB 881 was enacted last, so sections 1.5 and 2.5 of AB 881 are the operative provisions resulting from the passage of all three bills in the order in which they were enacted.
[2] AB 671 and AB 139 were double-jointed bills. Section 1.5 of AB 671 governs because it was enacted last.

LEGAL ALERTS | OCT 17, 2019

# Housing Density Bonus and Reporting Changes for Local Agencies

Part 6: New California Housing Laws

As part of the 2019 housing package, Gov. Gavin Newsom signed a number of bills modifying density bonus rules, and information and reporting rules. Each of these bills is designed to increase housing production by easing regulations on development or making information readily available to potential developers.

**Density Bonus**

Assembly Bill 1763 amends California's density bonus law to authorize significant development incentives to encourage 100 percent affordable housing projects. In response to a need for housing for low- and moderate-income households, the bill allows up to 20 percent of the units to be available for moderate income households, while the remainder of the units must be affordable to lower income households. The affordability restrictions apply to both the base units and the extra units granted through the density bonus.

These 100 percent affordable housing projects can receive an 80 percent density bonus from the otherwise maximum allowable density on the site. If the project is within 1/2 mile of a major transit stop, the city may not apply any density limit to the project. In addition to the density bonus, qualifying projects will receive four regulatory concessions. And, if the project is within 1/2 mile of a major transit stop, it will also receive a height increase of up to three additional stories, or 33 feet. The 100 percent affordable housing projects are also not subject to any minimum parking requirements.

Essentially, this bill encourages 100 percent affordable housing projects to provide as many units as possible on the site, and the limits on project size come from other standards, such as maximum height limits and setbacks (which are also subject to any allowable deviations through the four available concessions). Under existing law, cities are already required to have an ordinance that implements the state density bonus law. Cities should update

## People

**Megan K. Garibaldi**
PARTNER
(949) 263-6592

**Lauren Langer**
PARTNER
(310) 220-2176

**Victoria "Tori" Hester**
ASSOCIATE
(619) 525-1365

## Related Practices

Economic Development, Real Estate & Affordable Housing

Land Use, Planning & Zoning

## Related Industries

their density bonus ordinances to codify this new bonus for 100 percent affordable projects.

**Information and Reporting Requirements**

Under existing law, counties are required to establish a central inventory of all surplus governmental property located in the county. AB 1255 amends the Government Code to extend this obligation to cities. It requires that on or before Dec. 31 of each year, each county and city create an inventory of surplus land (land no longer necessary for the agency's use) and excess land (land in excess of the agency's foreseeable needs) within its jurisdiction. Upon request, the agencies are required to make the inventory available to a citizen, limited dividend corporation or nonprofit corporation free of charge. For each site identified in the inventory, the agency must provide a description of the parcel and its present uses, and report that information to the California Department of Housing and Community Development before April 1 of each year. HCD must then report that information to the Department of General Services for inclusion in an inventory of all state-owned parcels that are in excess of state needs.

Similar to AB 1255, Senate Bill 6 requires DGS to develop and host a publicly available database on its website that lists the "inventory sites" that local agencies have identified as suitable and available for residential development in their respective housing elements. Under existing law — including, specifically, Housing Element Law section 65583(a)(3) — these inventory sites are required to be included in each local agency's housing element. However, SB 6 obligates local agencies to prepare their respective inventory sites consistent not only with existing law, but also with standards, form, and definitions adopted by HCD. SB 6 further authorizes HCD to adopt, amend and repeal these standards, forms, and definitions to implement Housing Element Law section 65583(a) .

Beginning Jan. 1, 2021, all agencies that amend or adopt their housing element must deliver to HCD, along with the copy of its adopted housing element or amendment, an electronic copy of their inventory sites. HCD is responsible for then furnishing the DGS with the list of inventory sites to be included in the database. DGS' database will also include State lands determined or declared excess pursuant to Government Code section 11011.

AB 1483 creates more transparency requirements. Existing law requires public agencies to provide a development project applicant with a detailed list of the information that will be required from the applicant. Existing law also requires a local agency that establishes or increases a fee as a condition of a development project's approval to determine a reasonable relationship between the fee's use and the type of development project on which the fee is imposed. AB 1483 adds section 65940.1 to the Government Code to require that a city,

county, or special district post on its website all of the following:

1. a current schedule of fees, exactions and affordability requirements imposed by the agency that are applicable to a proposed housing development project (defined as a residential project, mixed used project or transitional or supportive housing project),

2. all zoning ordinances and development standards, including an identification of the zoning ordinances and development standards applicable to each parcel,

3. the list of information required from a development project applicant

4. the current and five previous annual fee reports or annual financial reports and

5. an archive of impact fee nexus studies or cost of service studies conducted by the public agency after Jan. 1, 2018.

The public agency must update this information within 30 days of any changes.

AB 1483 also amends the Health and Safety Code to add new requirements for HCD regarding its updates to the California Statewide Housing Plan, completed every 4 years. AB 1483 requires that HCD include in the next revision (due on or after Jan. 1), and each subsequent revision, a 10-year housing data strategy. This includes, among other things, an assessment of data submitted by annual reports, and a strategy to achieve more consistent terminology for housing data across the State. In establishing the data strategy, HCD is required to establish a workgroup that includes representatives from local governments, the Department of Technology and other groups.

**Next Year**

It should be noted that there were a number of housing-related bills that did not make it out of the Legislature, but may be back next year. The most well-known was SB 50, which would have created new incentives for developers to build apartments and condominiums near train and bus stations, even in areas zoned strictly for single-family homes. As proposed, it would waive or relax local minimum parking requirements and density restrictions for developers looking to build housing near train stations and “high-quality” bus stops. It also allows developers to build up to four-stories within 1/2 mile of a train station and up to five stories within 1/4 mile. SB 50 was converted to a 2-year bill and will be back in the process in January.

A second bill that was proposed but didn’t make it out of the Legislature was Assembly Constitutional Amendment 1. ACA 1 was the repeal of Article XXXIV. Article XXXIV requires a vote of the people before a local agency can provide financial support for an affordable housing project where the local

agency restricts more than 49 percent of the units to be built. Although its future is less certain than SB 50, it is possible this bill will be reintroduced in the near future.

*With California's housing shortage reaching crisis levels, the state Legislature and Gov. Gavin Newsom approved a slew of new bills this session aimed at helping the situation. Using a mix of carrots and sticks, these laws will change how cities and counties address housing shortages in their own communities.*

**Also in BB&K's Housing Series:**

- Omnibus Housing Bill Adds Teeth to Housing Element Law Enforcement
- Surplus Land Act Requirements Expand for Local Agencies
- Tenant Protection Act Sets Statewide Rent Caps and Eviction Rules
- SB 330 Limits Local Laws Over Housing Developments
- California Paves Way for More ADUs

If you have any questions about new housing laws and how they may impact your agency, please contact the authors of this Legal Alert listed to the right in the firm's Municipal Law practice group, or your BB&K attorney.

Please feel free to share this Legal Alert or subscribe by clicking here. Follow us on Facebook @BestBestKrieger and on Twitter @BBKlaw.

*Disclaimer: BB&K Legal Alerts are not intended as legal advice. Additional facts or future developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information in this communiqué.*

Holland & Knight

# California's 2020 Housing Laws: What You Need to Know

A Statewide Rent Control Measure, New Procedural Protections, Significant Steps Forward for Accessory Dwelling Units, Surplus Land Amendments and Regional Funding Authorities Are Among the Highlights

October 18, 2019

*Holland & Knight Alert*

Chelsea Maclean | Daniel R. Golub | Kevin John Ashe | Paloma Perez-McEvoy

## Highlights

- The biggest news out of Sacramento in housing law is a historic measure providing statewide rent control and "just cause" eviction requirements for California renters.
- For advocates of increased housing production, the most significant effort enacted into law is the "Housing Crisis Act," which creates important new vesting rights for housing developments and limits on local review procedures.
- The California Legislature also again embraced Accessory Dwelling Units (ADU), with a package of laws that some are calling "the end of single-family zoning," allowing most single-family homes to be converted into three separate housing units.
- In its first year, the Newsom Administration is focusing on planning for housing development on surplus state lands and further reforming the regional housing needs allocation process. It remains to be seen whether next year's legislative session will yield the major steps forward on streamlining housing approvals that will be necessary for the administration to come close to meeting its goal of building 3.5 million homes by 2025.

---

As California's housing supply and homelessness crisis continues, the State Legislature has for the past several years passed numerous pieces of housing legislation in each legislative session. (See Holland & Knight's previous alerts, "A Closer Look at California's New Housing Production Laws," Dec. 6, 2017 and "California's 2019 Housing Laws: What You Need to Know," Oct. 8, 2018.) This year was no exception, with more than 30 individual pieces of housing legislation enacted into law.

This Holland & Knight alert takes a closer look at these laws, grouped into following categories:

- **Tenant Protections.** A statewide rent control measure that will take effect in 2020, among other tenant protection measures.
- **Streamlining, Increasing Density and Reducing Barriers to Production.** Sen. Nancy Skinner's "Housing Crisis Act" creates important new vesting rights for housing developments, and the Legislature has also enacted important new reforms to the Density Bonus Law and clarifications to SB 35's Streamlined Ministerial Approval Process.
- **Accessory Dwelling Units and "Triplexes."** A groundbreaking package of new laws that some are calling "the end of single-family zoning" will create new incentives and streamlined processes to build ADUs and triplexes.
- **Surplus Land Availability / Planning and Impact Fee Data.** New laws significantly expand Surplus Lands Act requirements for local agencies in an effort to achieve more affordable housing on surplus publicly owned properties.
- **CEQA and Housing.** The major transit stop definition was broadened to make more projects eligible for streamlining and a handful of limited California Environmental Quality Act (CEQA) exemptions were created for specific homelessness projects.

Holland & Knight

- **Funding.** Gov. Gavin Newsom vetoed a bill that would have created an "Affordable Housing and Community Development Investment Program" that would have revived redevelopment, but he signed a number of smaller funding bills, including laws that will create new regional finance agencies in the Bay Area and the San Gabriel Valley.

This alert also includes some observations about the important work California still needs to do to stem the housing crisis, and consider what may be around the corner in the 2020 legislative session. Except where noted, these new laws take effect Jan. 1, 2020.

## Tenant Protections

The most significant housing law of the 2019 legislative session was the enactment of a statewide rent control law.

**AB 1482 (Assembly Member David Chiu) – The Tenant Protection Act of 2019** enacts a cap of 5 percent plus inflation per year on rent increases statewide for the next 10 years. The new law does not apply a cap to vacant units, and owners can continue to reset rents to market rate at vacancy. It also prevents landlords from evicting certain tenants without landlords first providing a reason for the eviction and requires relocation assistance. The law does not apply to properties built in the last 15 years, nor does it apply to single-family home rentals (unless owned by large corporations) or to projects already under construction or under current rent control schemes. The new law defers to more stringent local measures, including existing local rent control with lower limits and local just cause eviction laws. The law's anti-eviction protections, which would limit evictions to lease violations or require relocation assistance, will kick in after a tenant has lived in an apartment for a year. Gov. Newsom's enactment of a rent cap comes less than a year after California voters rejected a ballot measure that would have expanded local rent control policies statewide, which would have likely resulted in tighter restrictions in some cities than those now offered by AB 1482. (For additional detail, please see Holland & Knight's previous alert, "Rent Control Bill Gets Gov. Newsom's Support as Clock Ticks on Deadline for New Laws," Sept. 9, 2019.)

**AB 1110 (Assembly Member Laura Friedman) – Noticing Rent Increases** requires 90-day notice, rather than 60-day notice, before a landlord may increase the rent of a month-to-month tenant by more than 10 percent.

**SB 329 (Assembly Member Holly Mitchell) – Housing Discrimination** prohibits landlords from discriminating against tenants who rely on housing assistance paid directly to landlords, such as a Section 8 voucher, to help them pay the rent.

**SB 18 (Sen. Nancy Skinner) – The Keep Californians Housed Act** removes the Dec. 31, 2019, sunset date on a state law which gives tenants at least 90 days' notice before their tenancy can be terminated if a landlord loses ownership of their rental property as a result of a foreclosure sale.

## Streamlining, Increasing Density and Reducing Barriers to Production

Sen. Skinner's SB 330, the "Housing Crisis Act of 2019," stands out as the most important new law affecting large-scale housing developments.

**SB 330 (Skinner) – Housing Crisis Act of 2019** includes a number of new procedural protections, including the following:

- *Preliminary Application Protections* – limitations on a jurisdiction's ability to change development standards and zoning applicable to the project once a "preliminary application" is submitted
- *Application Completeness Streamlining* – amends the Permit Streamlining Act to specify what constitutes a "preliminary application" and states that a jurisdiction has one chance to identify incomplete items in an initial application and after that may not request the submission of any new information that was not in the initial list of

missing items

- *Fees/Exactions Limitations* – prevents jurisdictions from increasing exactions or fees during a project's application period, but allows such increases if the resolution or ordinance establishing the fee calls for automatic increases in the fee over time
- *Hearing Limitations* – prohibits cities or counties from conducting more than five hearings if a proposed housing development complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete
- *Downzoning Prohibitions* – prohibits a jurisdiction (with some exceptions) from enacting development policies, standards or conditions that would change current zoning and general plan designations of land where housing is an allowable use to "lessen the intensity of housing"; from placing a moratorium or similar restrictions on housing development; from imposing subjective design standards established after Jan. 1, 2020; and limiting or capping the number of land use approvals or permits that will be issued in the jurisdiction, unless the jurisdiction is predominantly agricultural

Some of the most important provisions in SB 330 sunset on Jan. 1, 2025, if not extended. (For additional detail on SB 330, see Holland & Knight's previous alert, "California Legislature Passes Housing Crisis Act of 2019 and Rent Control Bill, Among Others," Sept. 12, 2019; For background on the Housing Accountability Act, upon which SB 330 builds, see Holland & Knight's previous alert, "California Governor Signs into Law Major Reforms to Housing Accountability Act," Sept. 29, 2017.)

**AB 1763 (Chiu) – Density Bonuses for 100 Percent Affordable Projects** creates enhanced density bonus options, including a potential 80 percent increase in base density and unlimited density bonuses for qualifying projects within a half-mile of a major transit stop, under the State Density Bonus Law. However, this only applies to projects that consist of 100 percent affordable housing (no more than 20 percent moderate-income, and the remainder for lower-income).

**AB 1484 (Assembly Member Buffy Wicks) – Amendments to SB 35's Streamlined Ministerial Approval Process** makes a number of important clarifications to SB 35 of 2017, a law that allows qualifying housing and housing-rich mixed-use projects to qualify for a streamlined, ministerial CEQA-exempt approval process if the project meets the local government's objective zoning, subdivision and design review standards, provides a specific minimum number of affordable housing units, agrees to pay prevailing wages to construction workers, and meets other qualifying criteria. AB 1484 amends SB 35 in several ways:

- *Moderate-Income Options* – broadens eligibility for SB 35 to Bay Area projects that provide 20 percent of their units for moderate-income households (less than 120 percent of area median income), under certain conditions
- *Calculating "Two-Thirds" Mixed-Use Projects* – clarifies that the calculation to determine if a project qualifies for SB 35 where it consists of two-thirds residential excludes underground space such as parking garages and basements
- *Approval Expiration Dates* – clarifies that the three-year expiration for SB 35 approvals in case of litigation expires three years after a final judgment upholding the approval, and clarifies that the approval also remains valid as long as vertical construction of the development has begun and is in progress
- *Subsequent Permits* – clarifies that local governments must issue subsequent permits – such as demolition, grading, building permits and final maps – without unreasonable delay, as long as those subsequent permit applications substantially comply with the approved SB 35 permit
- *Standards of Review and Consistency with Other Laws* – clarifies that the standard for determining whether a project qualifies for SB 35 is highly deferential *to the project applicant*: a project complies with SB 35's criteria as long as "there is substantial evidence that would allow a reasonable person to conclude" that the development

Holland & Knight

complies

- *Housing Accountability Act*– clarifies that under existing law, SB 35 projects are entitled to protection under the Housing Accountability Act

(For further information on SB 35's streamlined ministerial approval process, see Holland & Knight's previous alerts, "California Issues Initial Implementation Guidance on 2017 Housing Laws," Feb. 15, 2018, and "A Closer Look at California's New Housing Production Laws," Dec. 6, 2017.)

**AB 101 – Housing Development and Housing 2019-20 Budget Act –** requires local governments to provide "by right," CEQA-exempt approvals to certain qualifying navigation centers that move homeless Californians into permanent housing. The law, which took effect on July 31, 2019, also creates additional incentives for cities to comply with their mandates to plan for sufficient housing in their Housing Elements, and provides some modest additional remedies that the state can use in court when cities fail to comply with housing element law. These reforms fall well short of Gov. Newsom's proposal at the beginning of 2019 to withhold state money from cities that fail to plan for and approve sufficient housing.

**AB 430 (Assembly Member James Gallagher) – The Camp Fire Housing Assistance Act of 2019** is intended to create housing relief in areas of Butte County, where the housing stock was devastated by the 2018 Camp Fire. The new law creates a streamlined, ministerial CEQA-exempt approval process in and adjacent to the cities of Biggs, Corning, Gridley, Live Oak, Orland, Oroville, Willows and Yuba City for qualifying housing developments that comply with those localities' objective zoning, subdivision and design review standards.

**AB 1763 (Robert Rivas) – Farmworker Housing** creates a streamlined, ministerial CEQA-exempt approval process for qualifying agricultural employee housing developments on land zoned primarily for agricultural uses.

## Accessory Dwelling Units and "Triplexes"

Accessory Dwelling Units (ADU) are additional living quarters on the same lot as a primary dwelling unit. While California laws have paved the way for increased ADU development, some cities have enacted ordinances that render ADU development infeasible or cost prohibitive. By further reducing barriers to ADU development, the new bills discussed below could bring tens of thousands of new ADUs online over the next few years.

**AB 68 (Assembly Member Phil Ting) / AB 881 (Assembly Member Richard Bloom) – Processing Timelines, Ordinance Prohibitions and Triplexes** requires local agencies to either approve or deny an ADU project within 60 days of receiving a complete building permit application on a ministerial (CEQA-exempt) basis. The new law further prohibits local agencies from adopting ADU ordinances that: impose minimum lot size requirements for ADUs; set certain maximum ADU dimensions; require replacement off-street parking when a "garage, carport or covered parking structure" is demolished or converted to construct the ADU. Notably, the new law allows for an ADU as well as a "junior" ADUs where certain access, setback and other criteria are met – this has been referred to the "tripelex-ation" of single-family zoning. The new law has also explicitly identified opportunities for ADUs in multifamily buildings, including storage rooms, boiler rooms, etc., where building standards are met. New enforcement mechanisms have also been added. The Department of Housing and Community Development (HCD) may now notify the Attorney General's Office of any violations of these new provisions.

**SB 13 (Sen. Bob Wieckowski) – Owner-Occupancy Prohibitions and Fee Limitatio**ns provides, until Jan. 1, 2025, that cities may not condition approval of ADU building permit applications on the applicant being the "owner-applicant" of either the primary dwelling or the ADU. Additionally, agencies cannot impose impact fees on ADUs under 750 square feet.

**AB 587 (Friedman) – Separate Conveyances** provides that local agencies may now allow ADUs to be sold or

Holland & Knight

conveyed separately from a primary residence if certain conditions are met. Prior law that prohibited ADUs from being sold or conveyed separately from the primary residence in which they are co-located hindered shared ownership models, such as tenancies in common. This law, therefore, is expected to increase the ability of affordable housing organizations to sell deed-restricted ADUs to eligible low-income homeowners.

**AB 670 (Friedman) – HOA Limitations** prevents homeowners' associations from barring ADUs. Many single-family neighborhoods in California were established as common-interest developments under the Davis-Stirling Common Interest Development Act. These properties are typically governed by a set of Covenant, Conditions and Restrictions (CC&Rs), which often restrict the types of construction that can occur within and adjacent to a member's home. AB 670 makes unlawful any HOA condition that "prohibits or unreasonably restricts" the construction of ADUs on single-family residential lots.

**AB 671 (Friedman) – Local Government Assistance** requires local governments to include in their General Plan housing elements plans to incentivize and promote the creation of affordable ADUs. The law also requires HCD to develop, by Dec. 31, 2020, a list of state grants and financial invectives for ADU development.

## Surplus Land Availability, Planning and Impact Fee Data

Several new laws intend to collect and make information available regarding surplus state and local land suitable for affordable residential development and to revamp the Surplus Lands Act procedures to ensure that affordable housing entities have early opportunities to purchase available land. (For additional information on HCD's release of interactive maps identifying surplus properties, see Holland & Knight's previous alert, "New California Surplus Lands Maps and Legislation to Facilitate Affordable Housing," Sept. 17, 2019.) Other notable laws require reporting on impact fees and HCD to prepare a 10-year housing data strategy.

**AB-1486 (Ting) – Surplus Lands Act Process Amendments** expands the Surplus Lands Act's (Act) requirements for local agencies in an effort to achieve more affordable housing on surplus properties. Existing law requires agencies, when disposing of surplus land, to first offer it for sale or lease for the purpose of developing affordable housing. The bill analysis states that local agencies have attempted to circumvent the Act process in the past. Notable amendments include a new requirement for a local agency to provide information about its disposition process to HCD and for HCD to submit, within 30 days, written findings of any process violations that have occurred. Amendments also provide that a local agency that violates the Act is liable for 30 percent to 50 percent of the final sale price.

**SB 6 (Sen. James Beall) – Available Residential Land** requires local agencies preparing a housing element or amendment on or after Jan. 1, 2021, to submit an inventory of land suitable residential development. Additionally, new law requires HCD to provide to the Department of General Services a list of lands suitable and available for residential development that were identified by a local government as part of the housing element. The Department of General Services must create a database of information regarding available local and state lands available and searchable by the public online.

**AB 1255 (Rivas) – Surplus Public Land Inventory** further requires agencies to make a central inventory of all surplus land and to report such information to HCD by April 1 of each year, beginning April 1, 2021. Agencies are further required to provide a list of its surplus land to requesting parties without charge. HCD must then report the information to the Department of General Services for inclusion in a digitized inventory or surplus properties.

**AB 1483 (Assembly Member Tim Grayson) – Housing Impact Fee Data Collection and Reporting** requires local agencies to make information available on housing development fees, applicable zoning ordinances and standards, annual fee reports and archived nexus fee studies. Such agencies are then required to update the information within 30 days of any changes. Additionally,HCD will be required, on or after Jan. 1, 2020, to prepare a 10-year housing data strategy that identifies the data useful to enforce existing housing laws and inform state housing policymaking. Among

other information requirements, the strategy must include information that provides a better understanding of project appeals, approvals, delays and denials and provides an understanding of the process, certainty, costs and time to approve housing.

**SB 235 (Sen. Bill Dodd) – Napa Regional Housing Need Allocation Reporting** allows the City of Napa (city) and County of Napa (county) to reach an agreement under which the county would be allowed to count housing units built within the city in connection with the approximately 700 unit Napa Pipe project toward the county's regional housing needs assessment requirement. The governor's signing statement included an unusually direct message that the governor "expects permits will be issued expeditiously by the local jurisdictions, allowing [the] project to proceed immediately."

## CEQA and Housing

Legislative efforts regarding CEQA include an important revision broadened the definition of a major transit stop as well as streamlining the process for supportive housing and homeless shelter projects.

**AB 1560 (Friedman) – Defining "major transit stop"** broadens the definition of a "major transit stop" under Public Resources Code Section 21064.3 to include bus rapid transit. Projects located within a half-mile of a qualifying bus rapid transit stop that meet other qualifying conditions may qualify for multiple benefits: parking reductions pursuant to the State Density Bonus Law; CEQA infill housing, aesthetic and parking exemptions; SB 375 streamlining for qualifying transit priority projects; a less than significant Vehicle Miles Traveled (VMT) impact presumption. The new definition also applies to local incentives, such as those adopted per Measure JJJ and implemented in the City of Los Angeles' Transit Oriented Guidelines, for residential projects located within 1,500 feet of a major transit stop.

**SB 744 (Sen. Anna Caballero) – No Place Like Home Projects** streamlines the approval process for supportive housing projects by clarifying that a decision to seek funding through the No Place Like Home program is not a project for the purpose of CEQA. No Place Like Home is a voter-approved bond measure that will allocate up to $2 billion for the development of permanent supportive housing and wrap around mental health services. The new law also provides a number of clarifying amendments that ensures a local government's design standards, impact fees and exactions are applied similarly to supportive housing projects as other residential projects in the same zone.

**AB 1197 (Assembly Member Miguel Santiago) – CEQA Exemption for Supportive Housing and Emergency Shelters** exempts from CEQA, until Jan. 1, 2025, any action taken by certain local public agencies to convey, lease, encumber land or provide financial assistance in furtherance of providing emergency shelters or supportive housing in the City of Los Angeles. The legislation carried an urgency clause, making the new law effective on Sept. 26, 2019.

## Funding

Hopes of a return to Redevelopment Authority days were dashed when Gov. Newsom vetoed SB 5 (Beall), which would have created the "Affordable Housing and Community Development Investment Program,"a program similar to redevelopment in which cities and counties could redirect local property tax revenues toward projects such as affordable housing. In his veto message, Gov. Newsom cited the potential for the program to cost $2 billion annually. The governor and Legislature did, however, successfully enact into law a number of bills aimed at increasing overall funding for housing development, including laws that will create new regional finance agencies in the Bay Area and the San Gabriel Valley. Such housing bills include:

**AB 1487 (Chiu) – Bay Area Housing Finance Authority** (BAHFA) establishes a new regional authority to raise, administer and allocate funding for affordable housing in the San Francisco Bay area, and provide technical assistance at a regional level for tenant protection, affordable housing preservation and new affordable housing production. BAHFA will be governed by the Metropolitan Transportation Commission (MTC) Board and staffed with MTC personnel, but will operate as a separate legal entity than MTC. The law permits BAHFA, with approval from the

Holland & Knight

Association of Bay Area Governments, to place measures on the regional ballot measure to raise funding for affordable housing, including parcel taxes (on per parcel basis) or special taxes on businesses (measured by gross receipts).

**SB 751 (Sen. Susan Rubio) – San Gabriel Valley Regional Housing Trust** (Trust) authorizes the creation of the Trust, a joint powers authority, by the County of Los Angeles and any or all of the cities within the jurisdiction of the San Gabriel Valley Council of Governments, with the stated purpose of funding housing to assist the homeless population and persons and families of extremely low, very low and low income within the San Gabriel Valley. SB 751 authorizes the Trust to fund the planning and construction of housing, receive public and private financing and funds, and issue bonds.

**AB 116 (Ting) – Enhanced Infrastructure Financing District Creation** removes the requirement that Enhanced Infrastructure Financing Districts (EIFDs) must receive voter approval prior to issuing bonds. EIFDs were created by the Legislature in 2014 after the demise of redevelopment in order to allow local governments to devote tax-increment financing for public and private projects such as transportation facilities, environmental remediation and affordable housing. Instead of requiring voter approval, the law will now permit the EIFD's governing body to issue bonds as long as its resolution to do so contains specified information related to the issuance of the bonds, and the board holds at least three public hearings on an enhanced infrastructure financing plan. (For more information on EIFDs and related infrastructure financing mechanisms that could assist your project, see Holland & Knight's previous alerts, "Enhanced Infrastructure Financing Districts," Nov. 12, 2014, and "What's Old, What's New and What Works," October 2016.)

**SB 196 (Beall) – Community Land Trust Tax Exemption** enacts a new welfare exemption for property owned by a Community Land Trust (CLT) that is being or will be developed or rehabilitated as housing. Traditionally, under California law property used for religious, hospital, scientific or charitable purposes is exempt from property taxes under the "welfare exemption." The new legislation extends the exemption during the construction phase until the homes are sold, but provides that a CLT will be liable for property taxes if the property was not developed, rehabilitated, or in the course of construction within 5 years of the lien date following its acquisition.

**AB 1743 (Bloom) – Welfare Exemption** expands the properties that are exempt from Community Facilities District (CFD) taxes to include properties that qualify for the property tax welfare exemption, and limits the ability of local agencies to reject housing projects because they qualify for the exemption.

**SB 113 (Committee on Budget and Fiscal Review) – National Mortgage Special Deposit Fund** (Fund) enables $331 million in state funds to be transferred to the Fund to provide funding for borrower relief and legal aid to vulnerable homeowners and renters.

**AB 1010 (Assembly Member Eduardo Garcia) – Housing Program Eligible Entities** allows duly constituted governing bodies of Native American reservations and Rancherias eligible applicants to participate in various state affordable housing programs.

## Conclusion

The Legislature's housing output is certainly impressive in terms of total volume – and the new ADU package and SB 330 are important steps forward for homebuilders and housing advocates alike. But it is important to put these efforts within the context of the immense scale of California's housing supply crisis.

California home values remain the highest in the nation, and California renters pay 43 percent above the nationwide median, leading to immense strain on low- to moderate-income households. The homelessness crisis is evident on the streets of every city, and the state's homeless residents represent a quarter of the national total. Yet homebuilding in California has averaged less than 100,000 new units per year, much slower than in other states.

Holland & Knight

Prompted by the important work of the "Three P's" Coalition for Housing Production, Protection and Preservation, the governor pushed for a major effort that would take dramatic steps forward on all three of these areas, by limiting the ability of local governments to obstruct housing development, and even promising to withhold state transportation funding from local governments that fail to approve their fair share of affordable housing.

In the end, the Legislature's statewide rent control bill represented an historic step forward for "Protection" and "Preservation." But laws that would have represented a comparably dramatic step forward for housing production, such as Sen. Scott Wiener's SB 50, were not enacted. (SB 50, which will return next session, would eliminate highly restrictive zoning rules near existing job centers and public transportation.) The governor abandoned his proposal to withhold transportation funds from local governments that fail to meet their fair share of housing goals. Meanwhile, midyear statistics show that 2019 new housing starts may even decline in production from prior years – and certainly will come nowhere near the 500,000 units annually that would be necessary to stay on pace to meet the administration's goals.

In this year's package of housing laws, the Legislature has continued emphasizing (as seen in AB 68, AB 881, AB 101, AB 1484, SB 744, AB 1197, AB 1763 and AB 430) that it believes that the best way to build housing is to reform and streamline the local review process and move toward a "by right" model for housing that complies with local zoning and planning rules. However, the Legislature continues to apply this principle on a very limited scale rather than to advance the construction of the 3.5 million homes that Gov. Newsom has said must be built by 2025. In next year's session, builders and housing advocates must be active and vocal to ensure that California rises to the challenge of the housing crisis.

---



---

## Authors

**Chelsea Maclean** is a California attorney in Holland & Knight's West Coast Land Use and Environment Practice Group who counsels clients on all aspects of land use development.

415.743.6979 | Chelsea.Maclean@hklaw.com

**Daniel R. Golub** is an attorney in the West Coast Land Use and Environment Group in Holland & Knight's San Francisco office. Mr. Golub brings nearly a decade of policy, planning and political organizing experience to his practice, as well as litigation experience gained during an 18-month clerkship for the Honorable Jon S. Tigar of the U.S. District Court for the Northern District of California.

415.743.6976 | Daniel.Golub@hklaw.com

415.743.6972 | Kevin.Ashe@hklaw.com

**Paloma Perez-McEvoy** is an attorney in the West Coast Land Use and Environmental Group in Holland & Knight's Los Angeles office. Ms. Perez-McEvoy brings more than 15 years of government relations, public policy, and planning and land use experience to the firm.

213.896.2564 | Paloma.Perez-McEvoy@hklaw.com

meyers | nave

# CALIFORNIA HOUSING LAW UPDATE

***20+ New Housing Laws in 2019***: Governor Newsom signed more than 20 bills into law during the 2019 legislative session that address different components of California's housing crisis. Together, the laws create new, complex and sometimes vague and conflicting requirements for public agencies, municipalities, businesses, and non-profit organizations involved in the state's housing sector.

## SUMMARY OF SIGNIFICANT 2019 HOUSING LEGISLATION

This document summarizes the most important of the new laws divided into five categories:

I. Municipal control over housing development
II. Availability of housing sites
III. Homeless issues
IV. Finance and development of affordable housing
V. Tenant rights

The summary was prepared by Meyers Nave housing law experts John Bakker, Jon Goetz and Alex Mog. They are available by email or phone (800.464.3559) to answer questions.

## I. New Laws Affecting Municipal Control Over Housing Development

A. **SB 330** [Housing Crisis Act of 2019]

Until January 1, 2025, the Housing Crisis Act of 2019 suspends certain restrictions on the development of new housing and expedites the permitting of housing in urbanized areas of the state. SB 330 prohibits an "affected" city or county from enacting or enforcing moratoria on housing development or certain growth-control ordinances and prohibits changes to a "less intensive use," including "anything that would lessen the intensity of housing."

The law also strengthens the Housing Accountability Act by prohibiting an agency from disapproving a housing project or approving the project at a lower density if it complies with the applicable, objective standards in place when a project submits a complete "preliminary application" containing certain required information.

In addition, the Act contains other provisions designed to eliminate delays in the production of housing, such as prohibiting a jurisdiction from holding more than five hearings of any kind for projects that meet all applicable, objective standards. In order to implement SB 330, jurisdictions are required to develop checklists identifying information required for a project to be considered complete and for a "preliminary application." the various provisions remain operative only until January 1, 2025.

## I. New Laws Affecting Municipal Control Over Housing Development (continued)

B. **AB 68, AB 587, AB 670, 671, AB 881, SB 13** [Accessory Dwelling Units]

The Governor signed a series of bills that significantly limit local jurisdictions' ability to restrict the development of accessory dwelling units ("ADUs"). Under the new law, a jurisdiction must ministerially approve a detached ADU that is less than 800 square feet, is shorter than 16 feet, and has at least four foot rear and side-yard setbacks, as well as a second "junior" ADU meeting certain requirements constructed within a single-family dwelling on the same parcel.

The legislation includes numerous other restrictions, such as prohibitions on lot coverage restrictions, lot size restrictions, and owner-occupancy requirements. Jurisdictions must generally review and approve compliant ADUs within 60 days, and are prohibited from imposing development impact fees, excluding connect fee or capacity charges, on ADUs smaller than 750 square feet. A jurisdiction may now choose to allow the sale of an ADU in certain circumstances.

In addition, AB 670 prohibits homeowners associations and other common interest developments from prohibiting or unreasonably restricting the development of ADUs. The laws remain in effect until January 1, 2025.

C. **AB 1485, SB 235** [SB 35 Expansion]

SB 35 (Government Code section 65913.4) allows for streamlined ministerial approvals of multifamily residential projects that meet certain criteria. Where a jurisdiction has produced less than its share of the above-moderate RHNA during the reporting period, a developer is eligible for the streamlined process if, among other requirements, 10% of the units in the development are affordable to households making at or below 80% of the area median income.

In those circumstances, AB 1485 and SB 235 will allow developments in the nine-county San Francisco Bay region the option of instead producing 20% of the units affordable to households making at or below 120% of the area median income, with an average income of 100% of area median income. Households in these units may not spend more than 30% of their incomes on housing. The bills make various other minor changes to SB 35.

## I. New Laws Affecting Municipal Control Over Housing Development (continued)

D. **SB 450, SB 744** [CEQA Exemption for Transitional or Supportive Housing]

SB 450 provides that the conversion of a structure certified for occupancy as a motel, hotel, residential hotel, or hostel into a supportive or transitional housing facility is exempt from CEQA. In order for this exception to apply, the conversion may not result in more than a 10% expansion of the floor area in any living unit within the structure, or result in any significant effects relating to traffic, noise, air quality, or water quality.

SB 744 adopts changes to the circumstances under which a supportive housing project must be treated as a permitted use, and provides that applying for funding for supportive housing projects under California's No Place Like Home Program is not a project under CEQA.

## II. New Laws Enhancing Availability of Housing Sites

A. **AB 1486, AB 1255** [Strengthening Surplus Lands Act]

The Surplus Land Act requires local agencies to notify other public agencies and certain non-profit housing developers and engage in good faith negotiations with them prior to disposing of surplus property. The purpose of these requirements is to make land available for open space, recreation, and affordable housing. AB 1486 continues the Legislature's recent tightening of those requirements. Among other things, it requires an agency, prior to disposing property, to either declare it surplus or exempt surplus property; expands the definition of exempt surplus property; prohibits negotiations prior to the notification; requires notification of HCD of compliance with the Surplus Lands Act's requirements; and establishes a penalty of 30% of sales price.

Additionally, AB 1255 also requires cities to create a "central inventory" of its surplus lands and report the following information to HCD as part of its annual progress report: address, parcel numbers, existing use, and size. HCD is required to make the information available in an existing publicly available database of state-owned surplus land.

B. **SB 6** [Inventories of Land Suitable for Residential Development]

Cities and counties are required to identify land suitable for residential development in their housing elements. SB 6 requires local agencies to submit an electronic copy of "inventories of land suitable residential development" included in their housing elements that are adopted on or after January 1, 2021. The submittal must be made using standards, forms, and definitions adopted by HCD. HCD in turn will make this information available to the Department of General Services, which is required to include the information in an internet-accessible database.

## II. New Laws Enhancing Availability of Housing Sites (continued)

C. **AB 1483** [Housing Data and Collection]

AB 1483 adds Government Code section 65940.1 to require cities, counties and special districts to put various housing development-related information on their websites and update it within 30 days of any changes. The reported information includes a schedule of fees, exactions, and affordability requirements; zoning ordinances and development standards; the list of information required of applicants for development projects under Government Code section 65940; financial reports on fees required by the Mitigation Fee Act; and an archive of impacts fee studies prepared on or after January 1, 2018.

The Legislature asserts that the foregoing are not unfunded mandates because local agencies have the authority to levy fees to pay for the effort. AB 1483 also requires HCD to develop a housing data strategy that identifies the date useful to enforce existing housing laws and inform state housing policy making.

## III. New Laws Targeting Homeless Issues

A. **AB 101** [Budget Trailer Bill]

The Attorney General is authorized to enforce the Housing Element Law and various related provisions. AB 101 establishes a process that HCD must follow prior to the Attorney General doing so. It goes on to require fines of at least $10,000, and up to $100,000, per month for a jurisdiction's failure to comply with a court order to bring its housing element into compliance with state law.

AB 101 also makes "Low Barrier Navigation Centers" a "by right use" in areas "zoned for mixed use and nonresidential zones permitting multifamily uses." Finally, AB 101 directs HCD to "develop a recommended improved regional housing need allocation process and methodology that promotes and streamlines housing development and substantially addresses California's housing shortage." HCD must submit its report to the Legislature by December 31, 2022.

B. **AB 761** [Use of State Armories as Homeless Shelters]

Currently, state owned armories in certain counties are available to the city or county in which the armory is located for use as a temporary homeless shelter during the winter months. AB 761 would authorize, at the sole discretion of the Adjutant General, the head of the California National Guard, any vacant armory to be used throughout the year as a shelter from hazardous weather for homeless individuals.

## IV. New Laws Assisting in the Finance and Development of Affordable Housing

A. **AB 1763** [Density Bonus for 100% Affordable Housing Projects]

AB 1763 provides an 80% density bonus and four incentives or concessions for housing projects that contain 100% affordable units (including the density bonus units but excluding manager's units) for low and very low income households. If the project is located within a half mile of a major transit stop, the bill goes even further by eliminating all restrictions on density, and allowing a height increase of up to three stories or 33 feet. For housing projects that qualify as a special needs or supportive housing development, the legislation eliminates all local parking requirements.

The legislation is particularly suited to projects obtaining low income housing tax credits, as it adopts rent affordability standards from the low income housing tax credit program. It is also designed to be compatible with the state's Mixed Income Loan Program, which provides financing for projects restricting units up to 120% of area median income.

B. **AB 1487** [Bay Area Housing Finance Authority]

AB 1487 creates the Bay Area Housing Finance Authority within the nine-county San Francisco Bay Area. The Authority is jointly governed by the Board of MTC and ABAG's executive board. The Authority is authorized, subject to voter approval where required, to levy parcel taxes, business license taxes, special business taxes based on number of employees, and commercial linkage fees. It can also issue general obligation bonds. Any ballot measure authorizing one of the levies can be placed on the ballot of as few as four of the Bay Area counties.

Authority revenue must be used for construction of new affordable housing, affordable housing preservation, tenant protection programs, planning and technical assistance related to affordable housing, and for infrastructure to support housing. The law also contains guidelines for how the revenue will be distributed across the region.

C. **AB 1743** [Affordable Housing Project Exemption from Mello-Roos Taxes; Housing Accountability Act]

AB 1743 (Bloom) provides that affordable housing properties receiving a welfare exemption from property taxes are exempt from Mello-Roos district special taxes adopted after January 1, 2020. This bill further provides that under the Housing Accountability Act, obtaining a welfare exemption is not considered an "adverse impact" on public health or safety allowing a local government to disapprove a proposed housing project.

## IV. New Laws Assisting in the Finance and Development of Affordable Housing (cont.)

D. **SB 196** [Property Tax Exemption for Community Land Trust Property]

SB 196 (Beall) provides a "welfare exemption" from property taxes for property owned by a community land trust that will be developed or rehabilitated for an affordable ownership or rental housing development. The exemption remains in effect from the time of the community land trust's acquisition of the property until the completion and sale of the affordable homes. For completed homes located on 99 year community land trust leases, the bill establishes a rebuttable presumption that the sales price of the home is the value of the property for property tax assessment purposes.

This bill is an important protection for community land trusts, which are nonprofit organizations that promote affordable housing by retaining permanent ownership of land underlying affordable for sale and rental housing.

E. **AB 101** [Budget Trailer Bill]

The Governor's proposed Budget hinted at the possibility of withholding state funds for jurisdictions that failed to meet state housing requirements. Ultimately, the Legislature took a carrot rather than a stick approach in the final budget. Jurisdictions will be given additional points in competitive grant programs for jurisdictions designated by HCD as "prohousing." The legislation defines "prohousing local policies" as "policies that facilitate the planning, approval, or construction of housing."

Such bonus points will be awarded in the following grant programs: (1) Affordable Housing and Sustainable Communities Program; (2) The Transformative Climate Communities Program; (3) The Infill Incentive Grant Program of 2007; and "other state grant programs where already allowable by state law."

## V. New Laws Adding Tenants' Rights

A. **SB 329** [Prohibition on Discrimination against Section 8 Participants]

SB 329 (Mitchell) prohibits landlords from discriminating against tenants or applicants for tenancy on the basis of their use of Section 8 or other housing vouchers. State law has long prohibited housing discrimination on the basis of a tenant's source of income, but this is the first time that the law has specifically prohibited landlords from refusing to rent to holders of housing vouchers. Many landlords dislike the burdensome administrative requirements of the Section 8 program, and widespread refusal to honor vouchers has made it difficult for voucher holders to secure rental housing.

While this new law will prevent landlords from barring voucher holders, it does not impact a landlord's right to disapprove applicants for other reasons.

## V. New Laws Adding Tenants' Rights (continued)

B. **AB 1482** [Tenant Protection Act of 2019]

*AB 1482 (Chiu) aims to protect tenants from "rent gouging" and evictions by adopting a cap on annual rent increases and "just cause eviction" requirements.*

Beginning January 1, 2020, landlords may not increase rents more than the increase in the consumer price index plus five percent, up to ten percent per twelve month period. In recent years, the increase in the consumer price index has typically been in the range of two to three percent, so this would translate to typical rent increase caps of seven to eight percent per year. Rents which increased after March 15, 2019 in amounts higher than the cap must be rolled back on January 1 to the capped amount. The limits apply to existing tenants only, and landlords are not restricted in the initial amounts they can charge to new tenants.

There are a number of exceptions to the rent cap requirement, including housing less than fifteen years old, deed-restricted affordable housing, single family homes and condominiums (except those owned by REITs and corporations), and duplexes where the owner occupies one of the units. The AB 1482 rent cap does not preempt local rent control ordinances, which remain in effect.

*AB 1482's "just cause" limits on evictions may prove to have even more impact than the rent cap.*

The legislation eliminates landlords' ability to evict long-term tenants for no reason, something that is currently permitted primarily for month-to-month tenants. Tenants who have lived in the property for more than a year can only be evicted for specified "at-fault" or "no-fault" reasons. At-fault events include typical lease defaults such as nonpayment of rent, breach of other lease terms, or criminal activity, nuisance or waste. Landlords can terminate leases for at-fault reasons after providing tenants written notice and an opportunity to cure the default. No-fault events include things such as owners and their family members moving into the unit, removal of the unit from the rental market, or substantial remodels (not mere cosmetic changes) that require the tenants to vacate the unit for more than thirty days.

Landlords must pay tenants or waive one month of rent as a relocation payment for no-fault evictions. The exceptions from the just cause eviction rules are similar to the exemptions from the rent cap requirements. The legislation's "just cause" provisions do not apply in jurisdictions that had just cause ordinances in effect prior to September 1, 2019.

**AB-881 Accessory dwelling units.** (2019-2020)

**SECTION 1.** Section 65852.2 of the Government Code is amended to read:

**65852.2.** (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria that may include, but are not limited to,~~ the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. *A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.*

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, ~~lot coverage,~~ landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic ~~Places.~~ *Resources. These standards shall not include requirements on minimum lot size.*

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit may be rented separate from the primary residence, ~~buy~~ *but* may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily use and includes a proposed or existing single-family dwelling.

(iii) The accessory dwelling unit is either attached *to,* or located ~~within the living area of the~~ *within, the* proposed or existing primary ~~dwelling or~~ *dwelling, including attached garages, storage areas or similar uses, or an accessory structure or* detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) ~~The total area of floorspace of~~ *If there is an existing primary dwelling, the total floor area of* an attached accessory dwelling unit shall not exceed 50 percent of the ~~proposed or existing primary dwelling living area or 1,200 square feet.~~ *existing primary dwelling.*

(v) The total *floor* area ~~of floorspace~~ for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing ~~garage~~ *living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure* that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than ~~five~~ *four* feet from the side and rear lot lines shall be required for an accessory dwelling unit that is ~~constructed above a garage.~~ *not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.*

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, ~~and~~ the local agency ~~requires~~ *shall not require* that those ~~offstreet~~ *offstreet* parking spaces be ~~replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).~~ *replaced.*

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) ~~When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application~~ *A permit application to create an accessory dwelling unit or a junior accessory dwelling unit* shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use ~~permits, within 120 days after receiving the application.~~ *permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.* A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency ~~subsequent to the effective date of the act adding this paragraph~~ shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. ~~In the event that~~ *If* a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void ~~upon the effective date of the act adding this paragraph~~ and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be ~~utilized~~ *used* or imposed, *including an owner-occupant requirement,* except that a local agency may require ~~an applicant for a permit issued pursuant to this subdivision to be an owner occupant or that the property~~ *the property to* be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision ~~(a) within 120 days after receiving the application.~~ *(a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.*

*(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.*

*(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:*

*(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.*

*(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:*

*(i) 850 square feet.*

*(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.*

~~(c)~~ *(C)* ~~A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum~~ *Any other minimum* or maximum size for an accessory dwelling unit, ~~or~~ size based upon a percentage of the proposed or existing primary dwelling, ~~shall be established by ordinance~~ *or limits on lot coverage, floor area ratio, open space, and minimum lot size,* for either attached or detached dwellings that does not permit at least an ~~efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.~~ *800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.*

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile *walking distance* of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) *(1)* Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit ~~to create within a zone for single family use one accessory dwelling unit per single family lot if the unit is contained within the existing space of a single family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory~~

~~dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.~~ *within a residential or mixed-use zone to create any of the following:*

*(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:*

*(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.*

*(ii) The space has exterior access from the proposed or existing single-family dwelling.*

*(iii) The side and rear setbacks are sufficient for fire and safety.*

*(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.*

*(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:*

*(i) A total floor area limitation of not more than 800 square feet.*

*(ii) A height limitation of 16 feet.*

*(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.*

*(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.*

*(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.*

*(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.*

*(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.*

*(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.*

*(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.*

*(6) Notwithstanding subdivision (c) and paragraph (1), a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.*

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered by a local agency, special district, or water corporation to be a new residential use for ~~the~~ purposes of calculating connection fees or capacity charges for utilities, including

water and sewer ~~service.~~ *service, unless the accessory dwelling unit was constructed with a new single-family dwelling.*

(A) For an accessory dwelling unit described in *subparagraph (A) of paragraph (1) of* subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity ~~charge.~~ *charge, unless the accessory dwelling unit was constructed with a new single-family home.*

(B) For an accessory dwelling unit that is not described in *subparagraph (A) of paragraph (1) of* subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) ~~Local~~ *(1)* ~~agencies~~ *A local agency* shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. ~~The department may review and comment on this submitted ordinance.~~ *After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.*

*(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.*

*(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:*

*(i) Amend the ordinance to comply with this section.*

*(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.*

*(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.*

*(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.*

*(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.*

~~(i)~~ *(j)* As used in this section, the following terms mean:

~~(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.~~

~~(2) "Local agency" means a city, county, or city and county, whether general law or chartered.~~

~~(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.~~

~~(4)~~ *(1)* "Accessory dwelling unit" means an attached or a detached residential dwelling unit ~~which~~ *that* provides complete independent living facilities for one or more ~~persons.~~ *persons and is located on a lot with a proposed or existing primary residence.* It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family *or multifamily* dwelling is *or will be* situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

*(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.*

*(3) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.*

*(4) "Local agency" means a city, county, or city and county, whether general law or chartered.*

*(5) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.*

~~(5)~~ *(6)* "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

*(7) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.*

*(8) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.*

~~(6)~~ *(9)* "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

*(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.*

~~(j)~~ *(l)* Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

*(m) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.*

**SEC. 1.5.** Section 65852.2 of the Government Code is amended to read:

**65852.2.** (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily *dwelling residential* use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria that may include, but are not limited to,~~ the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. *A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.*

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, ~~lot coverage,~~ landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic ~~Places.~~ *Resources. These standards shall not include requirements on minimum lot size.*

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The *accessory dwelling* unit may be rented separate from the primary residence, ~~buy~~ *but* may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily *dwelling residential* use and includes a proposed or existing ~~single family~~ dwelling.

(iii) The accessory dwelling unit is either attached *to,* or located ~~within the living area of the~~ *within, the* proposed or existing primary ~~dwelling or~~ *dwelling, including attached garages, storage areas or similar uses, or an accessory structure or* detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) ~~The total area of floorspace of~~ *If there is an existing primary dwelling, the total floor area of* an attached accessory dwelling unit shall not exceed 50 percent of the ~~proposed or existing primary dwelling living area or 1,200 square feet.~~ *existing primary dwelling.*

(v) The total *floor* area ~~of floorspace~~ for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing ~~garage~~ *living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure* that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than ~~five~~ *four* feet from the side and rear lot lines shall be required for an accessory dwelling unit that is ~~constructed above a garage.~~ *not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.*

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per *accessory dwelling* unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to ~~a~~ *an accessory dwelling* unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, ~~and~~ the local agency ~~requires~~ *shall not require* that those ~~offstreet~~ *offstreet* parking spaces be ~~replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).~~ *replaced.*

*(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.*

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) ~~When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application~~ *A permit application for an accessory dwelling unit or a junior accessory dwelling unit* shall be considered *and approved* ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use ~~permits, within 120 days after receiving the application.~~ *permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.* A local agency may charge a fee to reimburse it for costs ~~that it incurs as a result of amendments to this~~

~~paragraph enacted during the 2001-02 Regular Session of the Legislature,~~ *incurred to implement this paragraph,* including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency ~~subsequent to the effective date of the act adding this paragraph~~ shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. ~~In the event that~~ *If* a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void ~~upon the effective date of the act adding this paragraph~~ and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the *delay or* denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot ~~zoned for residential use~~ that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be ~~utilized~~ *used* or imposed, *including any owner-occupant requirement,* except that a local agency may require ~~an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or~~ that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision ~~(a) within 120 days after receiving the application.~~ *(a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.*

*(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.*

*(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:*

*(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.*

*(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:*

*(i) 850 square feet.*

*(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.*

~~(c)~~ *(C)* ~~A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum~~ *Any other minimum* or maximum size for an accessory dwelling unit, ~~or~~ size based upon a percentage of the proposed or existing primary dwelling, ~~shall be established by ordinance~~ *or limits on lot coverage, floor area ratio, open space, and minimum lot size,* for either attached or detached dwellings that does not permit at least an ~~efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.~~ *800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.*

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile *walking distance* of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) *(1)* Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit ~~to create within a zone for single family use one accessory dwelling unit per single family lot if the unit is contained within the existing space of a single family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.~~ *within a residential or mixed-use zone to create any of the following:*

*(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:*

*(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.*

*(ii) The space has exterior access from the proposed or existing single-family dwelling.*

*(iii) The side and rear setbacks are sufficient for fire and safety.*

*(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.*

*(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:*

*(i) A total floor area limitation of not more than 800 square feet.*

*(ii) A height limitation of 16 feet.*

*(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.*

*(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.*

*(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.*

*(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.*

*(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.*

*(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.*

*(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.*

*(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.*

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) ~~Accessory~~ *An accessory* dwelling ~~units~~ *unit* shall not be considered by a local agency, special district, or water corporation to be a new residential use for ~~the~~ purposes of calculating connection fees or capacity charges for utilities, including water and sewer ~~service.~~ *service, unless the accessory dwelling unit was constructed with a new single-family dwelling.*

*(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.*

*(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.*

~~(A)~~ *(4)* For an accessory dwelling unit described in *subparagraph (A) of paragraph (1) of* subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity ~~charge.~~ *charge, unless the accessory dwelling unit was constructed with a new single-family home.*

~~(B)~~ *(5)* For an accessory dwelling unit that is not described in *subparagraph (A) of paragraph (1) of* subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its ~~size~~ *square feet* or the number of its ~~plumbing fixtures,~~ *drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials,* upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) ~~Local~~ *(1)* ~~agencies~~ *A local agency* shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. ~~The department may review and comment on this submitted ordinance.~~ *After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.*

*(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.*

*(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:*

*(i) Amend the ordinance to comply with this section.*

*(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.*

*(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.*

*(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.*

*(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.*

~~(i)~~ *(j)* As used in this section, the following terms mean:

~~(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.~~

~~(2) "Local agency" means a city, county, or city and county, whether general law or chartered.~~

~~(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.~~

~~(4)~~ *(1)* "Accessory dwelling unit" means an attached or a detached residential dwelling unit ~~which~~ *that* provides complete independent living facilities for one or more ~~persons.~~ *persons and is located on a lot with a proposed or existing primary residence.* It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family *or multifamily* dwelling is *or will be* situated. An accessory dwelling unit also includes the following:

*(A) An efficiency unit.*

*(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.*

*(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.*

~~(A)~~ *(3)* ~~An efficiency unit,~~ *"Efficiency unit" has the same meaning* as defined in Section 17958.1 of the Health and Safety Code.

~~(B)~~ *(4)* ~~A manufactured home, as defined in Section 18007 of the Health and Safety Code.~~ *"Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.*

*(5) "Local agency" means a city, county, or city and county, whether general law or chartered.*

*(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.*

*(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.*

~~(5)~~ *(8)* "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

*(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.*

*(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.*

~~(6)~~ *(11)* "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

*(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.*

~~(j)~~ *(l)* Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

*(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.*

*(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:*

*(1) The accessory dwelling unit was built before January 1, 2020.*

*(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.*

*(o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.*

***SEC. 2.*** *Section 65852.2 is added to the Government Code, to read:*

***65852.2.*** *(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use. The ordinance shall do all of the following:*

*(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.*

*(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places. These standards shall not include requirements on minimum lot size.*

*(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.*

*(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.*

*(D) Require the accessory dwelling units to comply with all of the following:*

*(i) The unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.*

*(ii) The lot is zoned to allow single-family or multifamily use and includes a proposed or existing single-family dwelling.*

*(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.*

*(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.*

*(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.*

*(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.*

*(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.*

*(viii) Local building code requirements that apply to detached dwellings, as appropriate.*

*(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.*

*(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.*

*(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.*

*(III) This clause shall not apply to a unit that is described in subdivision (d).*

*(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.*

*(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.*

*(3) A permit application to create an accessory dwelling unit or a junior accessory dwelling unit shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.*

*(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.*

*(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.*

*(6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision for an accessory dwelling unit created on or after January 1, 2025, to be an owner-occupant, or may require the property to be used for rentals of terms longer than 30 days.*

*(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.*

*(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.*

*(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.*

*(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.*

*(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.*

*(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:*

*(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.*

*(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:*

*(i) 850 square feet.*

*(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.*

*(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.*

*(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:*

*(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.*

*(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.*

*(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.*

*(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.*

*(5) When there is a car share vehicle located within one block of the accessory dwelling unit.*

*(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:*

*(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:*

*(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.*

*(ii) The space has exterior access from the proposed or existing single-family dwelling.*

*(iii) The side and rear setbacks are sufficient for fire and safety.*

*(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.*

*(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:*

*(i) A total floor area limitation of not more than 800 square feet.*

*(ii) A height limitation of 16 feet.*

*(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.*

*(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.*

*(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.*

*(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.*

*(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.*

*(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).*

*(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.*

*(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.*

*(7) Notwithstanding subdivision (c) and paragraph (1), a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.*

*(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).*

*(2) Accessory dwelling units shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.*

*(A) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.*

*(B) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.*

*(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.*

*(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.*

*(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.*

*(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:*

*(i) Amend the ordinance to comply with this section.*

*(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.*

*(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.*

*(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.*

*(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.*

*(j) As used in this section, the following terms mean:*

*(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:*

*(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.*

*(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.*

*(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.*

*(3) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.*

*(4) "Local agency" means a city, county, or city and county, whether general law or chartered.*

*(5) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.*

*(6) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.*

*(7) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.*

*(8) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.*

*(9) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.*

*(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.*

*(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.*

*(m) This section shall become operative on January 1, 2025.*

***SEC. 2.5.*** *Section 65852.2 is added to the Government Code, to read:*

***65852.2.*** *(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:*

*(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.*

*(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.*

*(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.*

*(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.*

*(D) Require the accessory dwelling units to comply with all of the following:*

*(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.*

*(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.*

*(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.*

*(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.*

*(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.*

*(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.*

*(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.*

*(viii) Local building code requirements that apply to detached dwellings, as appropriate.*

*(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.*

*(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.*

*(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.*

*(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).*

*(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.*

*(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.*

*(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.*

*(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.*

*(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts on ordinance that complies with this section.*

*(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.*

*(6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.*

*(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.*

*(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.*

*(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.*

*(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.*

*(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.*

*(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:*

*(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.*

*(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:*

*(i) 850 square feet.*

*(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.*

*(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.*

*(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:*

*(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.*

*(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.*

*(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.*

*(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.*

*(5) When there is a car share vehicle located within one block of the accessory dwelling unit.*

*(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:*

*(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:*

*(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.*

*(ii) The space has exterior access from the proposed or existing single-family dwelling.*

*(iii) The side and rear setbacks are sufficient for fire and safety.*

*(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.*

*(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:*

*(i) A total floor area limitation of not more than 800 square feet.*

*(ii) A height limitation of 16 feet.*

*(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.*

*(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and may shall allow up to 25 percent of the existing multifamily dwelling units.*

*(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.*

*(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.*

*(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.*

*(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).*

*(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.*

*(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.*

*(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may*

*impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.*

*(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).*

*(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.*

*(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.*

*(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.*

*(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.*

*(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.*

*(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.*

*(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.*

*(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.*

*(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:*

*(i) Amend the ordinance to comply with this section.*

*(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.*

*(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.*

*(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.*

*(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.*

*(j) As used in this section, the following terms mean:*

*(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:*

*(A) An efficiency unit.*

*(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.*

*(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.*

*(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.*

*(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.*

*(5) "Local agency" means a city, county, or city and county, whether general law or chartered.*

*(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.*

*(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.*

*(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.*

*(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.*

*(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.*

*(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.*

*(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.*

*(11) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.*

*(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.*

*(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.*

*(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.*

*(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:*

*(1) The accessory dwelling unit was built before January 1, 2020.*

*(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.*

*(o) This section shall become operative on January 1, 2025.*

***SEC. 3.*** *Sections 1.5 and 2.5 of this bill incorporates amendments to Section 65852.2 of the Government Code proposed by both this bill and Senate Bill 13. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 65852.2 of the Government Code, and (3) this bill is enacted after Senate Bill 13, in which case Sections 1 and 2 of this bill shall not become operative.*

***SEC. 4.*** *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

***SEC. 5.*** *The Legislature finds and declares that Sections 1 and 2 of this act amending, repealing, and adding Section 65852.2 of the Government Code addresses a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 1 of this act applies to all cities, including charter cities.*

**AB-1763 Planning and zoning: density bonuses: affordable housing.** (2019-2020)

**SECTION 1.** Section 65915 of the Government Code, as amended by Chapter 937 of the Statutes of 2018, is amended to read:

**65915.** (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city ~~or~~ *and* county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, "lower income students" means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

*(G) One hundred percent of the total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.*

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), *(F),* or ~~(F)~~ *(G)* of paragraph (1).

(3) For the purposes of this section, "total units," "total dwelling units," or "total rental beds" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) *(A)* An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. ~~Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code.~~

*(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.*

*(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:*

*(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.*

*(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.*

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known,

it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if ~~his or her~~ *the applicant's* application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is

listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

*(D) Four incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.*

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this ~~section,~~ *section* that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. ~~An~~ *Subject to paragraph (3), an* applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

*(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in*

*subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f).*

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

| Percentage Low-Income Units | Percentage Density Bonus |
|---|---|
| 10 | 20 |
| 11 | 21.5 |
| 12 | 23 |
| 13 | 24.5 |
| 14 | 26 |
| 15 | 27.5 |
| 17 | 30.5 |
| 18 | 32 |
| 19 | 33.5 |
| 20 | 35 |

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

| Percentage Very Low Income Units | Percentage Density Bonus |
|---|---|
| 5 | 20 |
| 6 | 22.5 |
| 7 | 25 |
| 8 | 27.5 |
| 9 | 30 |
| 10 | 32.5 |
| 11 | 35 |

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

*(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:*

*(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.*

*(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any*

*maximum controls on density.*

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

| Percentage Moderate-Income Units | Percentage Density Bonus |
|---|---|
| 10 | 5 |
| 11 | 6 |
| 12 | 7 |
| 13 | 8 |
| 14 | 9 |
| 15 | 10 |
| 16 | 11 |
| 17 | 12 |
| 18 | 13 |
| 19 | 14 |
| 20 | 15 |
| 21 | 16 |
| 22 | 17 |
| 23 | 18 |
| 24 | 19 |
| 25 | 20 |
| 26 | 21 |
| 27 | 22 |
| 28 | 23 |
| 29 | 24 |
| 30 | 25 |
| 31 | 26 |
| 32 | 27 |
| 33 | 28 |
| 34 | 29 |
| 35 | 30 |
| 36 | 31 |
| 37 | 32 |
| 38 | 33 |
| 39 | 34 |
| 40 | 35 |

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

| Percentage Very Low Income | Percentage Density Bonus |
|---|---|
| 10 | 15 |

| | |
|---|---|
| 11 | 16 |
| 12 | 17 |
| 13 | 18 |
| 14 | 19 |
| 15 | 20 |
| 16 | 21 |
| 17 | 22 |
| 18 | 23 |
| 19 | 24 |
| 20 | 25 |
| 21 | 26 |
| 22 | 27 |
| 23 | 28 |
| 24 | 29 |
| 25 | 30 |
| 26 | 31 |
| 27 | 32 |
| 28 | 33 |
| 29 | 34 |
| 30 | 35 |

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a ~~child care~~ *childcare* facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the ~~child care~~ *childcare* facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the ~~child care~~ *childcare* facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The ~~child care~~ *childcare* facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the ~~child care~~ *childcare* facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a ~~child care~~ *childcare* facility if it finds, based upon substantial evidence, that the community has adequate ~~child care~~ *childcare* facilities.

(4) ~~"Child care~~ *"Childcare* facility," as used in this section, means a child ~~day care~~ *daycare* facility other than a family ~~day care~~ *daycare* home, including, but not limited to, infant centers, preschools, extended ~~day care~~ *daycare* facilities, and schoolage ~~child care~~ *childcare* centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of

vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs ~~(2)~~ *(2), (3),* and ~~(3)~~ *(4),* upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health

and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

~~(C)~~ *(4)* ~~If the development is~~ *Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either* a special needs housing development, as defined in Section 51312 of the Health and Safety Code, ~~the ratio shall not exceed 0.3 spaces per unit. The development~~ *or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development* shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

~~(4)~~ *(5)* If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

~~(5)~~ *(6)* This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

~~(6)~~ *(7)* This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

~~(7)~~ *(8)* Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

~~(8)~~ *(9)* A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

***SEC. 2.*** *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*

**AB-1485 Housing development: streamlining.** (2019-2020)

**SECTION 1.** Section 65913.4 of the Government Code, as amended by Section 8 of Chapter 159 of the Statutes of 2019, is amended to read:

**65913.4.** (a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and is not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development is located on a site that satisfies all of the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation. *The square footage of the development shall not include underground space, such as basements or underground parking garages.*

(3) (A) The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower *or moderate* income housing units required pursuant to subparagraph (B) of paragraph (4) shall remain available at affordable housing costs or rent to persons and families of lower *or moderate* income for no less than the following periods of time:

(i) Fifty-five years for units that are rented.

(ii) Forty-five years for units that are owned.

(B) The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.

(4) The development satisfies ~~both of the following:~~ *subparagraphs (A) and (B) below:*

(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting

period. In addition, if the project contains more than 10 units of housing, the project ~~seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income. If the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.~~ *does either of the following:*

*(I) The project dedicates a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.*

*(II) (ia) If the project is located within the San Francisco Bay area, the project, in lieu of complying with subclause (I), dedicates 20 percent of the total number of units to housing affordable to households making below 120 percent of the area median income with the average income of the units at or below 100 percent of the area median income. However, a local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the area median income, or requires that any of the units be dedicated at a level deeper than 120 percent. In order to comply with this subclause, the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the area median income shall not exceed 30 percent of the gross income of the household.*

*(ib) For purposes of this subclause, "San Francisco Bay area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.*

(ii) The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making *at or* below 80 percent of the area median ~~income, unless~~ *income. However, if* the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making *at or* below 80 percent of the area median income, ~~in which case~~ that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

*(C) (i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances or the Density Bonus Law in Section 65915, provided that the development proponent complies with the applicable requirements in the state or local law.*

*(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).*

*(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).*

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local

government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee ~~though~~ *through* a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred

dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

*(3) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.*

(c) (1) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development

within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(d) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(e) (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making *at or* below 80 percent of the area median income.

(2) *(A)* If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making *at or* below 80 percent of the area median income, that approval shall ~~automatically expire after three years except that a project may receive a one-time, one year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.~~ *remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided that vertical construction of the development has begun and is in progress. For purposes of this subdivision, "in progress" means one of the following:*

*(i) The construction has begun and has not ceased for more than 180 days.*

*(ii) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.*

*(B) Notwithstanding subparagraph (A), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.*

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining

whether to grant the foregoing extension shall be limited to considerations and ~~process~~ *processes* set forth in this section.

(f) *(1)* A local government shall not adopt *or impose* any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

*(2) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (b). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (b), and includes, but is not limited to, demolition, grading, and building permits and final maps, if necessary.*

(g) *(1)* This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

*(2) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.*

*(h) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:*

~~(h)~~ *(1)* ~~The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency or local government to lease, convey, or encumber land owned by the local government or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or to~~ *Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to* provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

*(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.*

(i) For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing cost" has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) "Affordable rent" has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development ~~which~~ *that* has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

*(7) "Moderate income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety*

*Code.*

~~(7)~~ *(8)* "Production report" means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

~~(8)~~ *(9)* "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

~~(9)~~ *(10)* "Subsidized" means units that are price or rent restricted such that the units are ~~permanently~~ affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

~~(10)~~ *(11)* "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

~~(11)~~ *(12)* "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(j) The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (b) is not a "project" as defined in Section 21065 of the Public Resources Code.

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

(m) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

**SEC. 1.1.** Section 65913.4 of the Government Code, as amended by Section 8 of Chapter 159 of the Statutes of 2019, is amended to read:

**65913.4.** (a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and is not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development is located on a site that satisfies all of the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation. *The square footage of the development shall not include underground space, such as basements or underground parking garages.*

(3) (A) The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower *or moderate* income housing units required pursuant to

subparagraph (B) of paragraph (4) shall remain available at affordable housing costs or rent to persons and families of lower *or moderate* income for no less than the following periods of time:

(i) Fifty-five years for units that are rented.

(ii) Forty-five years for units that are owned.

(B) The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.

(4) The development satisfies ~~both of the following:~~ *subparagraphs (A) and (B) below:*

(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building ~~permits~~ *permits, as shown on the most recent production report received by the department,* is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project ~~seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income. If the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.~~ *does either of the following:*

*(I) The project dedicates a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.*

*(II) (ia) If the project is located within the San Francisco Bay area, the project, in lieu of complying with subclause (I), dedicates 20 percent of the total number of units to housing affordable to households making below 120 percent of the area median income with the average income of the units at or below 100 percent of the area median income. However, a local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the area median income, or requires that any of the units be dedicated at a level deeper than 120 percent. In order to comply with this subclause, the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the area median income shall not exceed 30 percent of the gross income of the household.*

*(ib) For purposes of this subclause, "San Francisco Bay area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.*

(ii) The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making *at or* below 80 percent of the area median ~~income, unless~~ *income. However, if* the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making *at or* below 80 percent of the area median income, ~~in which case~~ that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

*(C) (i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances or the Density Bonus Law in Section 65915, provided that the development proponent complies with the applicable requirements in the state or local law.*

*(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).*

*(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).*

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law

(Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee ~~though~~ *through* a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

*(3) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.*

(c) (1) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(d) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(e) (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making *at or* below 80 percent of the area median income.

(2) *(A)* If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making *at or* below 80 percent of the area median income, that approval shall ~~automatically expire after three years except that a project may receive a one time, one year~~

~~extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.~~ *remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided that vertical construction of the development has begun and is in progress. For purposes of this subdivision, "in progress" means one of the following:*

*(i) The construction has begun and has not ceased for more than 180 days.*

*(ii) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.*

*(B) Notwithstanding subparagraph (A), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.*

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and ~~process~~ *processes* set forth in this section.

(f) *(1)* A local government shall not adopt *or impose* any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

*(2) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (b). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (b), and includes, but is not limited to, demolition, grading, and building permits and final maps, if necessary.*

(g) *(1)* This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

*(2) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.*

*(h) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:*

~~(h)~~ *(1)* ~~The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency or local government to lease, convey, or encumber land owned by the local government or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or to~~ *Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to* provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

*(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to*

*this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.*

(i) For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing cost" has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) "Affordable rent" has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development ~~which~~ *that* has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

*(7) "Moderate income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.*

~~(7)~~ *(8)* "Production report" means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

~~(8)~~ *(9)* "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

~~(9)~~ *(10)* "Subsidized" means units that are price or rent restricted such that the units are ~~permanently~~ affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

~~(10)~~ *(11)* "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

~~(11)~~ *(12)* "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(j) The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (b) is not a "project" as defined in Section 21065 of the Public Resources Code.

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

(m) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

**SEC. 1.2.** Section 65913.4 of the Government Code, as amended by Section 8 of Chapter 159 of the Statutes of 2019, is amended to read:

**65913.4.** (a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and is not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development is located on a site that satisfies all of the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation. *The square footage of the development shall not include underground space, such as basements or underground parking garages.*

(3) (A) The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower *or moderate* income housing units required pursuant to subparagraph (B) of paragraph (4) shall remain available at affordable housing costs or rent to persons and families of lower *or moderate* income for no less than the following periods of time:

(i) Fifty-five years for units that are rented.

(ii) Forty-five years for units that are owned.

(B) The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.

(4) The development satisfies ~~both of the following:~~ *subparagraphs (A) and (B) below:*

(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project ~~seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income. If the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.~~ *does either of the following:*

*(I) The project dedicates a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.*

*(II) (ia) If the project is located within the San Francisco Bay area, the project, in lieu of complying with subclause (I), dedicates 20 percent of the total number of units to housing affordable to households making below 120 percent of the area median income with the average income of the units at or below 100 percent of the area median income. However, a local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the area median income, or requires that any of the units be dedicated at a level deeper than 120 percent. In order to comply with this subclause, the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the area median income shall not exceed 30 percent of the gross income of the household.*

*(ib) For purposes of this subclause, "San Francisco Bay area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.*

(ii) The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making *at or* below 80 percent of the area median ~~income, unless~~ *income. However, if* the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making *at or* below 80 percent of the area median income, ~~in which case~~ that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

*(C) (i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances or the Density Bonus Law in Section 65915, provided that the development proponent complies with the applicable requirements in the state or local law.*

*(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).*

*(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).*

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee ~~though~~ *through* a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

*(3) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.*

(c) (1) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(d) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(e) (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making *at or* below 80 percent of the area median income.

(2) *(A)* If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making *at or* below 80 percent of the area median income, that approval shall ~~automatically expire after three years except that a project may receive a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.~~ *remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided that vertical construction of the development has begun and is in progress. For purposes of this subdivision, "in progress" means one of the following:*

*(i) The construction has begun and has not ceased for more than 180 days.*

*(ii) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.*

*(B) Notwithstanding subparagraph (A), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.*

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and ~~process~~ *processes* set forth in this section.

*(f) (1) A development proponent may request a modification to a development that has been approved under the streamlined, ministerial approval process provided by subdivision (b), if that request is submitted to the applicable local government before the issuance of the final building permit required for construction of the building within the development for which the modification is proposed. Except as otherwise provided in paragraph (3), the local government shall approve a modification if it determines that the modification is consistent with the objective planning standards specified in subdivision (a) that were in effect when the original development application was first submitted. The local government shall evaluate modification requested pursuant to this subdivision for consistency with the applicable objective planning standards using the same assumptions and analytical methodology that the local government originally used to assess consistency for the development that was approved for streamlined, ministerial approval pursuant to subdivision (b). Guidelines adopted or amended by the department pursuant to subdivision (k) after a development has been approved through the streamlined ministerial process that would change how objective planning standards are applied to a development shall not apply to proposed modifications.*

*(2) Upon receipt of the development proponent's written application requesting a modification, the local government shall determine if the requested modification is consistent with the applicable objective planning standards and either approve or deny the modification request within 60 days after submittal of the modification, or 90 days if design review is required.*

*(3) Notwithstanding paragraph (1), the local government may apply objective planning standards adopted after the applicable development application was first submitted to the requested modification in the following instances:*

*(A) The development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more.*

*(B) The development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more and subjecting the modified development to a planning standard beyond those in effect when a development application was submitted is necessary to mitigate or avoid a specific, adverse impact, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (j) of Section 65589.5, upon the public health or safety and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.*

*(C) Objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building, plumbing, electrical, fire, and grading codes, may be applied to all modifications.*

~~(f)~~ *(g) (1)* A local government shall not adopt *or impose* any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

*(2) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (b). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (b), and includes, but is not limited to, demolition, grading, and building permits and final maps, if necessary.*

~~(g)~~ *(h) (1)* This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

*(2) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.*

*(i) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:*

~~(h)~~ *(1)* ~~The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency or local government to lease, convey, or encumber land owned by the local government or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or to~~ *Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to* provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

*(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.*

~~(i)~~ *(j)* For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing cost" has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) "Affordable rent" has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development ~~which~~ *that* has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

*(7) "Moderate income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.*

~~(7)~~ *(8)* "Production report" means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

~~(8)~~ *(9)* "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

~~(9)~~ *(10)* "Subsidized" means units that are price or rent restricted such that the units are ~~permanently~~ affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

~~(10)~~ *(11)* "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

~~(11)~~ *(12)* "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

~~(j)~~ *(k)* The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(k)~~ *( l)* The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (b) is not a "project" as defined in Section 21065 of the Public Resources Code.

~~(l)~~ *(m)* It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply.

~~(m)~~ *(n)* This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

**SEC. 1.3.** Section 65913.4 of the Government Code, as amended by Section 8 of Chapter 159 of the Statutes of 2019, is amended to read:

**65913.4.** (a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and is not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development is located on a site that satisfies all of the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for

unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation. *The square footage of the development shall not include underground space, such as basements or underground parking garages.*

(3) (A) The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower *or moderate* income housing units required pursuant to subparagraph (B) of paragraph (4) shall remain available at affordable housing costs or rent to persons and families of lower *or moderate* income for no less than the following periods of time:

(i) Fifty-five years for units that are rented.

(ii) Forty-five years for units that are owned.

(B) The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.

(4) The development satisfies ~~both of the following:~~ *subparagraphs (A) and (B) below:*

(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building ~~permits~~ *permits, as shown on the most recent production report received by the department,* is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project ~~seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income. If the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.~~ *does either of the following:*

*(I) The project dedicates a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.*

*(II) (ia) If the project is located within the San Francisco Bay area, the project, in lieu of complying with subclause (I), dedicates 20 percent of the total number of units to housing affordable to households making below 120 percent of the area median income with the average income of the units at or below 100 percent of the area median income. However, a local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the area median income, or requires that any of the units be dedicated at a level deeper than 120 percent. In order to comply with this subclause, the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the area median income shall not exceed 30 percent of the gross income of the household.*

*(ib) For purposes of this subclause, "San Francisco Bay area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.*

(ii) The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making *at or* below 80 percent of the area median ~~income, unless~~ *income. However, if* the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making *at or* below 80 percent of the area median income, ~~in which case~~ that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

*(C) (i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances or the Density Bonus Law in Section 65915, provided that the development proponent complies with the applicable requirements in the state or local law.*

*(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).*

*(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).*

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on

maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee ~~though~~ *through* a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a

jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

*(3) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.*

(c) (1) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(d) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(e) (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making *at or* below 80 percent of the area median income.

(2) *(A)* If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making *at or* below 80 percent of the area median income, that approval shall ~~automatically expire after three years except that a project may receive a one-time, one year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.~~ *remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided that vertical construction of the development has begun and is in progress. For purposes of this subdivision, "in progress" means one of the following:*

*(i) The construction has begun and has not ceased for more than 180 days.*

*(ii) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.*

*(B) Notwithstanding subparagraph (A), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.*

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and ~~process~~ *processes* set forth in this section.

*(f) (1) A development proponent may request a modification to a development that has been approved under the streamlined, ministerial approval process provided by subdivision (b), if that request is submitted to the applicable local government before the issuance of the final building permit required for construction of the building within the development for which the modification is proposed. Except as otherwise provided in paragraph (3), the local government shall approve a modification if it determines that the modification is consistent with the objective planning standards specified in subdivision (a) that were in effect when the original development application was first submitted. The local government shall evaluate modification requested pursuant to this subdivision for consistency with the applicable objective planning standards using the same assumptions and analytical methodology that the local government originally used to assess consistency for the development that was approved for streamlined, ministerial approval pursuant to subdivision (b). Guidelines adopted or amended by the department pursuant to subdivision (k) after a development has been approved through the streamlined ministerial process that would change how objective planning standards are applied to a development shall not apply to proposed modifications.*

*(2) Upon receipt of the development proponent's written application requesting a modification, the local government shall determine if the requested modification is consistent with the applicable objective planning standards and either approve or deny the modification request within 60 days after submittal of the modification, or 90 days if design review is required.*

*(3) Notwithstanding paragraph (1), the local government may apply objective planning standards adopted after the applicable development application was first submitted to the requested modification in the following instances:*

*(A) The development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more.*

*(B) The development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more and subjecting the modified development to a planning standard beyond those in effect when a development application was submitted is necessary to mitigate or avoid a specific, adverse impact, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (j) of Section 65589.5, upon the public health or safety and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.*

*(C) Objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building, plumbing, electrical, fire, and grading codes, may be applied to all modifications.*

~~(f)~~ *(g) (1)* A local government shall not adopt *or impose* any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

*(2) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (b). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (b), and includes, but is not limited to, demolition, grading, and building permits and final maps, if necessary.*

~~(g)~~ *(h) (1)* This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

*(2) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.*

*(i) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:*

~~(h)~~ *(1)* ~~The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency or local government to lease, convey, or encumber land owned by the local government or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or to~~ *Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to* provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

*(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.*

~~(i)~~ *(j)* For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing cost" has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) "Affordable rent" has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development ~~which~~ *that* has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

*(7) "Moderate income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.*

~~(7)~~ *(8)* "Production report" means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

~~(8)~~ *(9)* "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

~~(9)~~ *(10)* "Subsidized" means units that are price or rent restricted such that the units are ~~permanently~~ affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

~~(10)~~ *(11)* "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

~~(11)~~ *(12)* "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

~~(j)~~ *(k)* The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(k)~~ *( l)* The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (b) is not a "project" as defined in Section 21065 of the Public Resources Code.

~~(l)~~ *(m)* It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply.

~~(m)~~ *(n)* This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

***SEC. 2.*** *(a) Section 1.1 of this bill incorporates amendments to Section 65913.4 of the Government Code proposed by both this bill and Senate Bill 235. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 65913.4 of the Government Code, (3) Senate Bill 592 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 235, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.*

*(b) Section 1.2 of this bill incorporates amendments to Section 65913.4 of the Government Code proposed by both this bill and Senate Bill 592. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 65913.4 of the Government Code, (3) Senate Bill 235 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 592 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.*

*(c) Section 1.3 of this bill incorporates amendments to Section 65913.4 of the Government Code proposed by this bill, Senate Bill 235, and Senate Bill 592. That section shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2020, (2) all three bills amend Section 65913.4 of the Government Code, and (3) this bill is enacted after Senate Bill 235 and Senate Bill 592, in which case Sections 1, 1.1 and 1.2 of this bill shall not become operative.*

***SEC. 3.*** *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*

**SB-330 Housing Crisis Act of 2019.** (2019-2020)

***SECTION 1.*** *This act shall be known, and may be cited, as the Housing Crisis Act of 2019.*

***SEC. 2.*** *(a) The Legislature finds and declares the following:*

*(1) California is experiencing a housing supply crisis, with housing demand far outstripping supply. In 2018, California ranked 49th out of the 50 states in housing units per capita.*

*(2) Consequently, existing housing in this state, especially in its largest cities, has become very expensive. Seven of the 10 most expensive real estate markets in the United States are in California. In San Francisco, the median home price is $1.6 million.*

*(3) California is also experiencing rapid year-over-year rent growth with three cities in the state having had overall rent growth of 10 percent or more year-over-year, and of the 50 United States cities with the highest United States rents, 33 are cities in California.*

*(4) California needs an estimated 180,000 additional homes annually to keep up with population growth, and the Governor has called for 3.5 million new homes to be built over the next 7 years.*

*(5) The housing crisis has particularly exacerbated the need for affordable homes at prices below market rates.*

*(6) The housing crisis harms families across California and has resulted in all of the following:*

*(A) Increased poverty and homelessness, especially first-time homelessness.*

*(B) Forced lower income residents into crowded and unsafe housing in urban areas.*

*(C) Forced families into lower cost new housing in greenfields at the urban-rural interface with longer commute times and a higher exposure to fire hazard.*

*(D) Forced public employees, health care providers, teachers, and others, including critical safety personnel, into more affordable housing farther from the communities they serve, which will exacerbate future disaster response challenges in high-cost, high-congestion areas and increase risk to life.*

*(E) Driven families out of the state or into communities away from good schools and services, making the ZIP Code where one grew up the largest determinate of later access to opportunities and social mobility, disrupting family life, and increasing health problems due to long commutes that may exceed three hours per day.*

*(7) The housing crisis has been exacerbated by the additional loss of units due to wildfires in 2017 and 2018, which impacts all regions of the state. The Carr Fire in 2017 alone burned over 1,000 homes, and over 50,000 people have been displaced by the Camp Fire and the Woolsey Fire in 2018. This temporary and permanent displacement has placed additional demand on the housing market and has resulted in fewer housing units available for rent by low-income individuals.*

*(8) Individuals who lose their housing due to fire or the sale of the property cannot find affordable homes or rental units and are pushed into cars and tents.*

*(9) Costs for construction of new housing continue to increase. According to the Terner Center for Housing Innovation at the University of California, Berkeley, the cost of building a 100-unit affordable housing project in the state was almost $425,000 per unit in 2016, up from $265,000 per unit in 2000.*

*(10) Lengthy permitting processes and approval times, fees and costs for parking, and other requirements further exacerbate cost of residential construction.*

*(11) The housing crisis is severely impacting the state's economy as follows:*

*(A) Employers face increasing difficulty in securing and retaining a workforce.*

*(B) Schools, universities, nonprofits, and governments have difficulty attracting and retaining teachers, students, and employees, and our schools and critical services are suffering.*

*(C) According to analysts at McKinsey and Company, the housing crisis is costing California $140 billion a year in lost economic output.*

*(12) The housing crisis also harms the environment by doing both of the following:*

*(A) Increasing pressure to develop the state's farmlands, open space, and rural interface areas to build affordable housing, and increasing fire hazards that generate massive greenhouse gas emissions.*

*(B) Increasing greenhouse gas emissions from longer commutes to affordable homes far from growing job centers.*

*(13) Homes, lots, and structures near good jobs, schools, and transportation remain underutilized throughout the state and could be rapidly remodeled or developed to add affordable homes without subsidy where they are needed with state assistance.*

*(14) Reusing existing infrastructure and developed properties, and building more smaller homes with good access to schools, parks, and services, will provide the most immediate help with the lowest greenhouse gas footprint to state residents.*

*(b) In light of the foregoing, the Legislature hereby declares a statewide housing emergency, to be in effect until January 1, 2025.*

*(c) It is the intent of the Legislature, in enacting the Housing Crisis Act of 2019, to do both of the following:*

*(1) Suspend certain restrictions on the development of new housing during the period of the statewide emergency described in subdivisions (a) and (b).*

*(2) Work with local governments to expedite the permitting of housing in regions suffering the worst housing shortages and highest rates of displacement.*

**SEC. 3.** 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.

(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:

(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.

(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~~ *Except as provided in subdivision (o), 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~~ *Except as provided in subdivision (o), 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~~ *Except as provided in subdivision (o), nothing in this section shall be construed to* 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 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) Notwithstanding any other law, until January 1, 2025, "deemed complete" means that the applicant has submitted a preliminary application pursuant to Section 65941.1.*

~~(5)~~ *(6)* "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.

*(7) "Lower density" includes any conditions that have the same effect or impact on the ability of the project to provide housing.*

*(8) Until January 1, 2025, "objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.*

*(9) Notwithstanding any other law, until January 1, 2025, "determined to be complete" means that the applicant has submitted a complete application pursuant to Section 65943.*

(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 *housing development project's* application is deemed ~~complete pursuant to Section 65943,~~ *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 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)~~ *(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.~~ *record, and with the requirements of subdivision (o).*

(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~~ *application was deemed* 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:

(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)~~ *(k)* ~~For~~ *(1) (A) (i)* ~~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.~~ *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 any of the following are met, the court shall issue an order pursuant to clause (ii):*

*(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.*

*(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.*

*(III) (ia) Subject to sub-subclause (ib), the local agency, in violation of subdivision (o), required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted.*

*(ib) This subclause shall become inoperative on January 1, 2025.*

~~(k)~~ *(ii)* ~~(1)~~ *If* ~~(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~~ *the* 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~~ *one of the conditions in clause (i) is met, 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 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) (1) Subject to paragraphs (2), (6), and (7), and subdivision (d) of Section 65941.1, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.*

*(2) Paragraph (1) shall not prohibit a housing development project from being subject to ordinances, policies, and standards adopted after the preliminary application was submitted pursuant to Section 65941.1 in the following circumstances:*

*(A) In the case of a fee, charge, or other monetary exaction, to an increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee or other monetary exaction.*

*(B) A preponderance of the evidence in the record establishes that subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety, as defined in subparagraph (A) of paragraph (1) of subdivision (j), and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.*

*(C) Subjecting the housing development project to an ordinance, policy, standard, or any other measure, beyond those in effect when a preliminary application was submitted is necessary to avoid or substantially lessen an impact of the project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).*

*(D) The housing development project has not commenced construction within two and one-half years following the date that the project received final approval. For purposes of this subparagraph, "final approval" means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits and either of the following is met:*

*(i) The expiration of all applicable appeal periods, petition periods, reconsideration periods, or statute of limitations for challenging that final approval without an appeal, petition, request for reconsideration, or legal challenge having been filed.*

*(ii) If a challenge is filed, that challenge is fully resolved or settled in favor of the housing development project.*

*(E) The housing development project is revised following submittal of a preliminary application pursuant to Section 65941.1 such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).*

*(3) This subdivision does not prevent a local agency from subjecting the additional units or square footage of construction that result from project revisions occurring after a preliminary application is submitted pursuant to Section 65941.1 to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.*

*(4) For purposes of this subdivision, "ordinances, policies, and standards" includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.*

*(5) This subdivision shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section.*

*(6) This subdivision shall not restrict the authority of a public agency or local agency to require mitigation measures to lessen the impacts of a housing development project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).*

*(7) With respect to completed residential units for which the project approval process is complete and a certificate of occupancy has been issued, nothing in this subdivision shall limit the application of later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential units, such as ordinances relating to rental housing inspection, rent stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing.*

*(8) This subdivision shall become inoperative on January 1, 2025.*

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

***SEC. 4.*** *Section 65905.5 is added to the Government Code, to read:*

***65905.5.*** *(a) Notwithstanding any other law, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, after the application is deemed complete, a city, county, or city and county shall not conduct more than five hearings pursuant to Section 65905, or any other law, ordinance, or regulation requiring a public hearing in connection with the approval of that housing development project. If the city, county, or city and county continues a hearing subject to this section to another date, the continued hearing shall count as one of the five hearings allowed under this section. The city, county, or city and county shall consider and either approve or disapprove the application at any of the five hearings allowed under this section consistent with the applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).*

*(b) For purposes of this section:*

*(1) "Deemed complete" means that the application has met all of the requirements specified in the relevant list compiled pursuant to Section 65940 that was available at the time when the application was submitted.*

*(2) "Hearing" includes any public hearing, workshop, or similar meeting conducted by the city or county with respect to the housing development project, whether by the legislative body of the city or county, the planning agency established pursuant to Section 65100, or any other agency, department, board, commission, or any other designated hearing officer or body of the city or county, or any committee or subcommittee thereof. "Hearing" does not include a hearing to review a legislative approval required for a proposed housing development project, including, but not limited to, a general plan amendment, a specific plan adoption or amendment, or a zoning amendment, or any hearing arising from a timely appeal of the approval or disapproval of a legislative approval.*

*(3) "Housing development project" has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.*

*(c) (1) For purposes of this section, a housing development project 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 is consistent, compliant, or in conformity.*

*(2) 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 complies with the written documentation requirements of paragraph (2) of subdivision (j) of Section 65589.5, the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning that 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.*

*(d) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.*

*(e) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.*

***SEC. 5.*** *Section 65913.10 is added to the Government Code, to read:*

***65913.10****. (a) For purposes of any state or local law, ordinance, or regulation that requires the city or county to determine whether the site of a proposed housing development project is a historic site, the city or county shall make that determination at the time the application for the housing development project is deemed complete. A determination as to whether a parcel of property is a historic site shall remain valid during the pendency of the housing development project for which the application was made unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.*

*(b) For purposes of this section:*

*(1) "Deemed complete" means that the application has met all of the requirements specified in the relevant list compiled pursuant to Section 65940 that was available at the time when the application was submitted.*

*(2) "Housing development project" has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.*

*(c) (1) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.*

*(2) Nothing in this section supersedes, limits, or otherwise modifies the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).*

*(d) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.*

**SEC. 6.** Section 65940 of the Government Code is amended to read:

**65940.** (a) *(1)* Each ~~state agency and each local agency~~ *public agency* shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. Each ~~local~~ *public* agency shall revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information.

*(2) An affected city or affected county, as defined in Section 66300, shall include the information necessary to determine compliance with the requirements of subdivision (d) of Section 66300 in the list compiled pursuant to paragraph (1).*

(b) ~~(1)~~ The list of information required from any applicant shall include, where applicable, identification of whether the proposed project is located within 1,000 feet of a military installation, beneath a low-level flight path or within special use airspace as defined in Section 21098 of the Public Resources Code, and within an urbanized area as defined in Section 65944.

~~(2) The information described in paragraph (1) shall be based on information provided by the Office of Planning and Research pursuant to paragraph (2) of subdivision (d) as of the date of the application. Cities, counties, and cities and counties shall comply with paragraph (1) within 30 days of receiving this notice from the office.~~

(c) (1) A ~~city, county, or city and county~~ *public agency* that is not beneath a low-level flight path or not within special use airspace and does not contain a military installation is not required to change its list of information required from applicants to comply with subdivision (b).

(2) A ~~city, county, or city and county~~ *public agency* that is entirely urbanized, as defined in subdivision (e) of Section 65944, with the exception of a jurisdiction that contains a military installation, is not required to change its list of information required from applicants to comply with subdivision (b).

(d) ~~(1)~~ *This* ~~Subdivision (b) as it relates to the identification of special use airspace, low-level flight paths, military installations, and urbanized areas shall not be operative until the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations, at a scale and in an electronic format that is acceptable to the Office of Planning and Research.~~ *section shall remain in effect only until January 1, 2025, and as of that date is repealed.*

~~(2) Within 30 days of a determination by the Office of Planning and Research that the information provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet.~~

***SEC. 7.*** *Section 65940 is added to the Government Code, to read:*

***65940.*** *(a) Each public agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. Each public agency shall revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information.*

*(b) The list of information required from any applicant shall include, where applicable, identification of whether the proposed project is located within 1,000 feet of a military installation, beneath a low-level flight path or within special use airspace as defined in Section 21098 of the Public Resources Code, and within an urbanized area as defined in Section 65944.*

*(c) (1) A public agency that is not beneath a low-level flight path or not within special use airspace and does not contain a military installation is not required to change its list of information required from applicants to comply with subdivision (b).*

*(2) A public agency that is entirely urbanized, as defined in subdivision (e) of Section 65944, with the exception of a jurisdiction that contains a military installation, is not required to change its list of information required from applicants to comply with subdivision (b).*

*(d) This section shall become operative on January 1, 2025.*

***SEC. 8.*** *Section 65941.1 is added to the Government Code, to read:*

***65941.1.*** *(a) An applicant for a housing development project, as defined in paragraph (2) of subdivision (h) of Section 65589.5, shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee:*

*(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.*

*(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.*

*(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.*

*(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.*

*(5) The proposed number of parking spaces.*

*(6) Any proposed point sources of air or water pollutants.*

*(7) Any species of special concern known to occur on the property.*

*(8) Whether a portion of the property is located within any of the following:*

*(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.*

*(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).*

*(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.*

*(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.*

*(E) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.*

*(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.*

*(9) Any historic or cultural resources known to exist on the property.*

*(10) The number of proposed below market rate units and their affordability levels.*

*(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.*

*(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.*

*(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.*

*(14) For a housing development project proposed to be located within the coastal zone, whether any portion of the property contains any of the following:*

*(A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.*

*(B) Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.*

*(C) A tsunami run-up zone.*

*(D) Use of the site for public access to or along the coast.*

*(15) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.*

*(16) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.*

*(17) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.*

*(b) (1) Each local agency shall compile a checklist and application form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application.*

*(2) The Department of Housing and Community Development shall adopt a standardized form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application if a local agency has not developed its own application form pursuant to paragraph (1). Adoption of the standardized form shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.*

*(3) A checklist or form shall not require or request any information beyond that expressly identified in subdivision (a).*

*(c) After submittal of all of the information required by subdivision (a), if the development proponent revises the project such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, the housing development project shall not be deemed to have submitted a preliminary application that satisfies this section until the development proponent resubmits the information required by subdivision (a) so that it reflects the revisions. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).*

*(d) (1) Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5.*

*(2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.*

*(3) This section shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application or a development application for purposes of compliance with this section.*

*(e) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.*

**SEC. 9.** Section 65943 of the Government Code is amended to read:

**65943.** (a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the *application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete. If the* written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted ~~materials,~~ *materials described in subdivision (a),* the public agency shall determine in writing whether ~~they are~~ *the application as supplemented or amended by the submitted materials is* complete and shall immediately transmit that determination to the applicant. *In making this determination, the public agency is limited to determining whether the application as supplemented or amended includes the information required by the list and a thorough description of the specific information needed to complete the application required by subdivision (a).* If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of

the application fee charged for the development permit.

*(f) Each city and each county shall make copies of any list compiled pursuant to Section 65940 with respect to information required from an applicant for a housing development project, as that term is defined in paragraph (2) of subdivision (h) of Section 65589.5, available both (1) in writing to those persons to whom the agency is required to make information available under subdivision (a) of that section, and (2) publicly available on the internet website of the city or county.*

*(g) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.*

***SEC. 10.** Section 65943 is added to the Government Code, to read:*

***65943.** (a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.*

*(b) Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.*

*(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.*

*There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.*

*(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.*

*(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.*

*(f) This section shall become operative on January 1, 2025.*

**SEC. 11.** Section 65950 of the Government Code is amended to read:

**65950.** (a) A public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) ~~One hundred twenty~~ *Ninety* days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c).

(3) ~~Ninety~~ *Sixty* days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c) and all of the following conditions are met:

(A) At least 49 percent of the units in the development project are affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively. Rents for the lower income units shall be set at an affordable rent, as that term is defined in Section 50053 of the Health and Safety Code, for at least 30 years. Owner-occupied units shall be available at an affordable housing cost, as that term is defined in Section 50052.5 of the Health and Safety Code.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).

(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.

(4) Sixty days from the date of adoption by the lead agency of the negative declaration, if a negative declaration is completed and adopted for the development project.

(5) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if the project is exempt from that act.

(b) This section does not preclude a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of paragraphs (2) and (3) of subdivision (a) and Section 65952, "development project" means a ~~use consisting of either of the following:~~ *housing development project, as that term is defined in paragraph (2) of subdivision (h) of Section 65589.5.*

~~(1) Residential units only.~~

~~(2) Mixed use developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50 percent of the total square footage of the development and are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.~~

(d) For purposes of this section, "lead agency" and "negative declaration" have the same meaning as defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

*(e) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.*

***SEC. 12.*** *Section 65950 is added to the Government Code, to read:*

***65950.*** *(a) A public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:*

*(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.*

*(2) One hundred twenty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a development project defined in subdivision (c).*

*(3) Ninety days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for a*

*development project defined in subdivision (c) and all of the following conditions are met:*

*(A) At least 49 percent of the units in the development project are affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively. Rents for the lower income units shall be set at an affordable rent, as that term is defined in Section 50053 of the Health and Safety Code, for at least 30 years. Owner-occupied units shall be available at an affordable housing cost, as that term is defined in Section 50052.5 of the Health and Safety Code.*

*(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).*

*(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.*

*(4) Sixty days from the date of adoption by the lead agency of the negative declaration, if a negative declaration is completed and adopted for the development project.*

*(5) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), if the project is exempt from that act.*

*(b) This section does not preclude a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.*

*(c) For purposes of paragraphs (2) and (3) of subdivision (a) and Section 65952, "development project" means a use consisting of either of the following:*

*(1) Residential units only.*

*(2) Mixed-use developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50 percent of the total square footage of the development and are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.*

*(d) For purposes of this section, "lead agency" and "negative declaration" have the same meaning as defined in Sections 21067 and 21064 of the Public Resources Code, respectively.*

*(e) This section shall become operative on January 1, 2025.*

***SEC. 13.** Chapter 12 (commencing with Section 66300) is added to Division 1 of Title 7 of the Government Code, to read:*

***CHAPTER 12. Housing Crisis Act of 2019***
***66300.** (a) As used in this section:*

*(1) (A) Except as otherwise provided in subparagraph (B), "affected city" means a city, including a charter city, that the Department of Housing and Community Development determines, pursuant to subdivision (e), is in an urbanized area or urban cluster, as designated by the United States Census Bureau.*

*(B) Notwithstanding subparagraph (A), "affected city" does not include any city that has a population of 5,000 or less and is not located within an urbanized area, as designated by the United States Census Bureau.*

*(2) "Affected county" means a census designated place, based on the 2013-2017 American Community Survey 5-year Estimates, that is wholly located within the boundaries of an urbanized area, as designated by the United States Census Bureau.*

*(3) Notwithstanding any other law, "affected county" and "affected city" includes the electorate of an affected county or city exercising its local initiative or referendum power, whether that power is derived from the*

*California Constitution, statute, or the charter or ordinances of the affected county or city.*

*(4) "Department" means the Department of Housing and Community Development.*

*(5) "Development policy, standard, or condition" means any of the following:*

*(A) A provision of, or amendment to, a general plan.*

*(B) A provision of, or amendment to, a specific plan.*

*(C) A provision of, or amendment to, a zoning ordinance.*

*(D) A subdivision standard or criterion.*

*(6) "Housing development project" has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.*

*(7) "Objective design standard" means a design standard that involve no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application.*

*(b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:*

*(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.*

*(B) (i) Imposing a moratorium or similar restriction or limitation on housing development, including mixed-use development, within all or a portion of the jurisdiction of the affected county or city, other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium or for projects specifically identified as existing restricted affordable housing.*

*(ii) The affected county or affected city, as applicable, shall not enforce a zoning ordinance imposing a moratorium or other similar restriction on or limitation of housing development until it has submitted the ordinance to, and received approval from, the department. The department shall approve a zoning ordinance submitted to it pursuant to this subparagraph only if it determines that the zoning ordinance satisfies the requirements of this subparagraph. If the department denies approval of a zoning ordinance imposing a moratorium or similar restriction or limitation on housing development as inconsistent with this subparagraph, that ordinance shall be deemed void.*

*(C) Imposing or enforcing design standards established on or after January 1, 2020, that are not objective design standards.*

*(D) Except as provided in subparagraph (E), establishing or implementing any provision that:*

*(i) Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city, as applicable.*

*(ii) Acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period.*

*(iii) Limits the population of the affected county or affected city, as applicable.*

*(E) Notwithstanding subparagraph (D), an affected county or affected city may enforce a limit on the number of approvals or permits or a cap on the number of housing units that can be approved or constructed if the*

*provision of law imposing the limit was approved by voters prior to January 1, 2005, and the affected county or affected city is located in a predominantly agricultural county. For the purposes of this subparagraph, "predominantly agricultural county" means a county that meets both of the following, as determined by the most recent California Farmland Conversion Report produced by the Department of Conservation:*

*(i) Has more than 550,000 acres of agricultural land.*

*(ii) At least one-half of the county area is agricultural land.*

*(2) Any development policy, standard, or condition enacted on or after the effective date of this section that does not comply with this section shall be deemed void.*

*(c) Notwithstanding subdivisions (b) and (f), an affected county or affected city may enact a development policy, standard, or condition to prohibit the commercial use of land that is designated for residential use, including, but not limited to, short-term occupancy of a residence, consistent with the authority conferred on the county or city by other law.*

*(d) Notwithstanding any other provision of this section, both of the following shall apply:*

*(1) An affected city or an affected county shall not approve a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished.*

*(2) An affected city or an affected county shall not approve a housing development project that will require the demolition of occupied or vacant protected units, unless all of the following apply:*

*(A) (i) The project will replace all existing or demolished protected units.*

*(ii) Any protected units replaced pursuant to this subparagraph shall be considered in determining whether the housing development project satisfies the requirements of Section 65915 or a locally adopted requirement that requires, as a condition of the development of residential rental units, that the project provide a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households, as specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code.*

*(iii) Notwithstanding clause (i), in the case of a protected unit that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power, and that is or was occupied by persons or families above lower income, the affected city or affected county may do either of the following:*

*(I) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years.*

*(II) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit is replaced. Unless otherwise required by the affected city or affected county's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.*

*(B) The housing development project will include at least as many residential dwelling units as the greatest number of residential dwelling units that existed on the project site within the last five years.*

*(C) Any existing residents will be allowed to occupy their units until six months before the start of construction activities with proper notice, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.*

*(D) The developer agrees to provide both of the following to the occupants of any protected units:*

*(i) Relocation benefits to the occupants of those affordable residential rental units, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.*

*(ii) A right of first refusal for a comparable unit available in the new housing development affordable to the household at an affordable rent, as defined in Section 50053 of the Health and Safety Code, or an affordable housing cost, as defined in 50052.5.*

*(E) For purposes of this paragraph:*

*(i) "Equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.*

*(ii) "Protected units" means any of the following:*

*(I) Residential dwelling units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.*

*(II) Residential dwelling units that are or were subject to any form of rent or price control through a public entity's valid exercise of its police power within the past five years.*

*(III) Residential dwelling units that are or were occupied by lower or very low income households within the past five years.*

*(IV) Residential dwelling units that were withdrawn from rent or lease in accordance with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 within the past 10 years.*

*(iii) "Replace" shall have the same meaning as provided in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915.*

*(3) This subdivision shall not supersede any objective provision of a locally adopted ordinance that places restrictions on the demolition of residential dwelling units or the subdivision of residential rental units that are more protective of lower income households, requires the provision of a greater number of units affordable to lower income households, or that requires greater relocation assistance to displaced households.*

*(4) This subdivision shall only apply to a housing development project that submits a complete application pursuant to Section 65943 on or after January 1, 2020.*

*(e) The Department of Housing and Community Development shall determine those cities and counties in this state that are affected cities and affected counties, in accordance with subdivision (a) by June 30, 2020. The department may update the list of affected cities and affected counties once on or after January 1, 2021, to account for changes in urbanized areas or urban clusters due to new data obtained from the 2020 census. The department's determination shall remain valid until January 1, 2025.*

*(f) (1) Except as provided in paragraphs (3) and (4) and subdivisions (h) and (i), this section shall prevail over any conflicting provision of this title or other law regulating housing development in this state to the extent that this section more fully advances the intent specified in paragraph (2).*

*(2) It is the intent of the Legislature that this section be broadly construed so as to maximize the development of housing within this state. Any exception to the requirements of this section, including an exception for the health and safety of occupants of a housing development project, shall be construed narrowly.*

*(3) This section shall not be construed as prohibiting the adoption or amendment of a development policy, standard, or condition in a manner that:*

*(A) Allows greater density.*

*(B) Facilitates the development of housing.*

*(C) Reduces the costs to a housing development project.*

*(D) Imposes or implements mitigation measures as necessary to comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).*

*(4) This section shall not apply to a housing development project located within a very high fire hazard severity zone. For purposes of this paragraph, "very high fire hazard severity zone" has the same meaning as provided in Section 51177.*

*(g) This section shall not be construed to void a height limit, urban growth boundary, or urban limit established by the electorate of an affected county or an affected city, provided that the height limit, urban growth boundary, or urban limit complies with subparagraph (A) of paragraph (1) of subdivision (b).*

*(h) (1) Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, Division 13 (commencing with Section 21000) of the Public Resources Code.*

*(2) Nothing in this section supersedes, limits, or otherwise modifies the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). For a housing development project proposed within the coastal zone, nothing in this section shall be construed to prohibit an affected county or an affected city from enacting a development policy, standard, or condition necessary to implement or amend a certified local coastal program consistent with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).*

*(i) (1) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.*

*(2) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use on a site that is a mobilehome park, as defined in Section 18214 of the Health and Safety Code, as of the effective date of this section, and the no net loss requirement in paragraph (1) shall not apply.*

*(j) Notwithstanding subdivisions (b) and (f), this section does not prohibit an affected city or an affected county from enacting a development policy, standard, or condition that is intended to preserve or facilitate the production of housing for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or housing types that traditionally serve lower income households, including mobilehome parks, single-room occupancy units, or units subject to any form of rent or price control through a public entity's valid exercise of its police power.*

***66301.** This chapter shall remain in effect only until January 1, 2025, and as of that date is repealed.*

***SEC. 14.** The Legislature finds and declares that the provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, the provisions of this act apply to all cities, including charter cities.*

***SEC. 15.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

*However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

***SEC. 16.** The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

Office of the City Manager

ACTION CALENDAR
May 15, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development Department

Subject: Referral Response: Repeal Existing Accessory Dwelling Unit Ordinance (Chapter 23D.10), Adopt New Accessory Dwelling Unit Ordinance (Chapter 23C.24) and Modify Applicable Sections of the Zoning Ordinance that Apply to Accessory Dwelling Units

## RECOMMENDATION

Adopt first reading of an ordinance amending the Zoning Ordinance to modify existing regulations for Accessory Dwelling Units (ADUs) in order to clarify and further streamline the permitting process for ADUs, repealing Berkeley Municipal Code Chapter 23D.10, enacting Berkeley Municipal Code Chapter 23C.24, and amending BMC Titles 23D, 23E, and 23F.

## SUMMARY

In 2017, the City of Berkeley amended its ADU ordinance to comply with amendments to State ADU laws. Since then, the Planning Commission assessed the updated ADU ordinance and considered a range of additional modifications based on feedback from the community and direction from the City Council. The proposed amendments described in this report further clarify and streamline permitting of ADUs.

## FISCAL IMPACTS OF RECOMMENDATION

None.

## CURRENT SITUATION AND ITS EFFECTS

Government Code section 65852.2 (“State ADU Law”) was amended in January 2017 in order to streamline the permitting process for ADUs. This change required the City of Berkeley to expeditiously update its ADU ordinance in order to remain in compliance with State ADU Law. Berkeley adopted revised regulations in March 2017, and since that time has seen a significant uptick in ADU permitting:

| **Total Number of ADUs Permitted** | |
|---|---|
| 2016 | 2017 |
| 14 | 57 |

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7000 ● TDD: (510) 981-6903 ● Fax: (510) 981-7099
E-Mail: manager@CityofBerkeley.info Website: http://www.CityofBerkeley.info/Manager

In addition to implementing the State ADU Law, which encourages ADU development, on November 28, 2017, the Berkeley City Council adopted a Housing Action Plan that includes a high priority referral asking the Planning Commission to eliminate barriers to building and renting ADUs (for background see https://www.cityofberkeley.info/Clerk/City_Council/2017/11_Nov/Documents/2017-11-28_Item_22_Implementation_Plan_for_Affordable_Housing_-_Supp.aspx).[1]

In this context, City staff sought input from applicants and interest groups, reviewed Berkeley's regulations, re-examined State ADU Law, drafted clarifications and modifications to improve the ADU ordinance, and presented ideas to the Planning Commission. The Planning Commission held three public meetings, including a duly noticed public hearing, to discuss proposed modifications to the ADU ordinance. The Planning Commission considered public input and is recommending a set of changes to the ADU ordinance that clarify and encourage streamlined permitting of ADUs.

The following section summarizes the Planning Commission's recommendations, which have been drafted and supported by staff.

Planning Commission Actions

The Planning Commission considered modifications to Berkeley Municipal Code Chapter 23D.10 on October 4, 2017, November 15, 2017, and January 17, 2018. At its January 17, 2018 meeting the Planning Commission recommended by unanimous vote the following modifications to the ADU ordinance:

1. Expand zoning districts where ADUs are allowed to include all Commercial districts and the Mixed-Use Residential (MU-R) district where paired with an existing or new single-family residence. This modification would allow ADUs on parcels that are not in residential zoning districts, but that are serving a residential purpose because of the existence of a single-family home on the parcel. This modification requires:

    a. Updating the "Permitted Uses" tables in all Commercial districts and the Mixed Use-Residential (MUR) district to include ADUs.

2. Move the ADU ordinance from Subtitle 23D (Provisions Applicable in All Residential Districts) to Subtitle 23C (General Provisions Applicable in All Districts). If ADUs are allowed in all Commercial districts and in the MU-R District, this modification will be necessary to maintain structural integrity of the zoning ordinance. This modification requires:

    a. Repealing Chapter 23D.10 (Accessory Dwelling Units).

[1] The Council-adopted list of Housing Action Plan referrals from Nov. 28, 2017, including high priority referral #13 asking to eliminate obstacles to ADUs, can be found at https://www.cityofberkeley.info/Clerk/City_Council/2017/11_Nov/Documents/11-28_Annotated.aspx

b. Adopting Chapter 23C.24 (Accessory Dwelling Units).
c. Updating code references in applicable "Permitted Uses" tables.

3. Modify the following Development Standards:

   a. ADU Height: The current ADU ordinance allows a Maximum Height of 10 feet for flat roofs and 14 feet for peaked roofs. This development standard limits roof design and makes no accommodations for development on steep slopes in the Hillside Overlay District. The following modifications will provide design flexibility while maintaining control over impacts to neighbors:

      i. Set Maximum Height to 14 feet by-right.
      ii. Allow Maximum Height of up to 18 feet with an AUP.
      iii. Allow 14 feet Average Height in the Hillside Overlay with an AUP.
      iv. Allow Average Height of up to 18 feet in the Hillside Overlay with an additional AUP.

   b. ADU Gross Floor Area (GFA): GFA development standards are intended to create infill ADU development that is small scale and low impact. The following modifications allow for larger by-right ADUs and limit requests to exceed maximum GFA, thereby reducing the number of discretionary permits and encouraging by-right, streamlined ADUs:

      i. Increase maximum GFA to 850 square feet (was previously 750 square feet).
      ii. Remove limitation on ADU size set by "percentage of the square footage of the Primary Dwelling Unit" (was previously 75%).
      iii. Remove exception to exceed maximum GFA with an AUP.

   c. Allow ADU entrances on the front of the Primary Dwelling Unit. Current regulations attempt to limit aesthetic impacts to neighborhoods by requiring that separate entrances be located to the side or rear of a dwelling. This modification removes that possible barrier to ADU development. It provides design flexibility, addresses constraints due to odd lot configurations, and is expected to create minimal impact on neighbors.

4. Update the existing ADU definition and create a definition for Primary Dwelling Unit. This modification is necessary to clearly define an ADU in the Zoning Ordinance.

5. Remove obsolete references to ADUs in the Zoning Ordinance. After multiple amendments to the ADU ordinance, the following modifications are necessary to maintain referential integrity within the Zoning Ordinance:

a. Update parking tables in residential districts to remove obsolete references to ADU parking requirements.
b. Remove lot size requirement for ADUs from the R-1 district.

6. Clarify regulations to avoid ambiguity and the need for interpretations. Substantive changes to ADU regulations are stated in bullets 1 through 3 above. Some further modifications to internal cross-references do not change ADU regulations – they are intended to clarify language and improve administration of the ordinance.

7. Update the structure and wording of the ADU ordinance. Substitutive changes to ADU regulations are stated in bullets 1 through 3 above. Some further modifications to the structure of the ordinance do not change ADU regulations – they are intended to create an ordinance that is easier for the pubic to read and understand.

The Zoning Ordinance amendment is included as Attachment 1 (*Zoning Ordinance Amendment to Repeal Berkeley Municipal Code Chapter 23D.10, Adopt Berkeley Municipal Code Chapter 23C.24, and Amend Berkeley Municipal Code Sections 23D.16.030, 23D.16.070, 23D.16.080, 23D.20.030, 23D.20.080, 23D.28.030, 23D.28.080, 23D.32.030, 23D.32.080, 23D.36.030, 23D.36.080, 23D.40.030, 23D.40.080, 23D.44.030, 23D.44.080, 23D.48.030, 23D.52.030, 23E.36.030, 23E.40.030, 23E.44.030, 23E.48.030, 23E.52.030, 23E.56.030, 23E.60.030, 23E.64.030, 23E.68.030, 23E.84.030 and 23F.04.010 to Modify the Accessory Dwelling Unit Ordinance).* A version of Chapter 23D.10 with proposed edits is included as Attachment 2 (*Existing Berkeley Municipal Code Chapter 23D.10 Showing Red-lined Edits*).

## BACKGROUND

An ADU is a secondary Dwelling Unit on a lot that has one Primary Dwelling Unit. ADU development is one mechanism of a multi-pronged strategy that can help alleviate the current housing shortage. ADUs provide low-impact infill development that preserves neighborhood character and can potentially be more affordable to rent.

State ADU laws were amended in January 2017, requiring municipalities to streamline the permitting process for ADUs while adhering to broad minimum and maximum statewide standards and creating more specific local development standards (such as Setbacks, Maximum Height, and GFA) that:

1. Are consistent with State regulations;
2. Are appropriate to local conditions;
3. Maintain public health and safety of residents; and
4. Do not impede ADU development.

The intent of streamlining is to allow ADUs to be built with a limited planning permit process, as long as proposed ADUs meet local "by right" development standards. In Berkeley, "by right" approval means projects that are fully compliant with State and local standards, and can be developed with a Zoning Certificate (ZC) and a Building Permit. Because these are ministerial permits, they do not require notice to neighbors or public input and are not appealable or subject to environmental review.

The Planning Commission considered this item at three public meetings between October 2017 and January 2018. A wide range of possible modifications and updates to the existing ADU ordinance were discussed. The Commission concluded that ADU amendments fell into two categories: those that would be addressed by this effort and those that needed additional research and analysis:

Addressed in the Modified Ordinance

The Commission chose to focus on these components of the existing ADU ordinance, as they were identified to be of immediate benefit and would encourage streamlined by-right ADUs.

- Expanding allowable districts for ADUs
- Setting appropriate development standards
- Adjusting availability and level of discretion for modifying development standards
- Updating/adding definitions related to ADUs
- Updating findings related to ADUs
- Updating ADU ordinance structure
- Updating ADU ordinance wording
- Removing obsolete ADU references
- Clarifying regulations to avoid ambiguity and the need for interpretations
- Maintaining compliance with State ADU Law

Need Additional Research and Analysis

In addition to the areas of focus listed above, other options were discussed and determined to be more complex. The following considerations were set aside for future study and are not part of the Planning Commission's current recommendations:

- Removing the owner-occupancy requirement. (The ADU ordinance currently requires the property owner to live in either the ADU or the Primary Dwelling Unit. Many jurisdictions including Berkeley impose this regulation to ensure ADU infill development does not impact neighborhood character or quality. Whether Berkeley is willing to allow two non-owner occupied units remains to be discussed with the Planning Commission.)
- Modifying the 3-year exemption to owner-occupancy. (Berkeley currently allows a 3-year exemption to the owner-occupancy requirement to account for longer-term

owner absences such as sabbaticals. Whether and how this is enforced remains a topic for further conversation with the Planning Commission.)

- Regulating conversions versus demolitions of existing non-conforming buildings. (Conversions of existing buildings often end up being demolitions because of the extent of the work required to bring a building into a habitable condition that meets current codes. Non-conforming buildings can't usually be replaced with a habitable building without more substantial permitting because of possible impacts to neighbors.)
- Imposing affordability restrictions on ADU rentals. (Rent limitations are not generally applicable to new dwelling units.)
- Allowing multiple ADUs on a lot. (ADUs are meant as a support to the main dwelling and homeowner, and are generally expected to be minor in relation to the main dwelling. Multiple ADUs may not meet this expectation.)
- Allowing ADUs on lots with multi-family units. (ADUs were conceived as a means of promoting infill in single-family neighborhoods at a small scale. Multi-unit properties are already at a higher density and provide infill efficiencies. The State defines them as accessory to a main dwelling.)

The staff report and minutes from the Planning Commission's final public hearing on January 17, 2018 are included as Attachments 3 and 4 respectively.

ENVIRONMENTAL SUSTAINABILITY

Streamlining the permitting process for ADUs has the potential to modestly increase density in zoning districts where development potential is limited. Because Berkeley is well served by a variety of transit, bicycle and pedestrian options, as well as a wide range of local jobs and services, increased housing opportunities in Berkeley have the potential to decrease greenhouse gas (GHG) emissions by reducing vehicle miles traveled, because people can live closer to their Berkeley destinations and can use alternative means of travel. ADUs are also considered an effective strategy to reduce GHGs due to small building footprints and reduced energy and materials needed for their construction and maintenance.

RATIONALE FOR RECOMMENDATION

The proposed amendments to the Zoning Ordinance would address one of the City Council's high-ranking referrals in the Housing Action Plan. The amendments will make the ADU ordinance easier to understand, easier to administer and will help streamline the ADU permitting process.

ALTERNATIVE ACTIONS CONSIDERED

Delay City Council's review of the ADU ordinance while additional modifications are studied and discussed.

CONTACT PERSON

Alene Pearson, Associate Planner, Planning and Development, 981-7489

Attachments:

1. Zoning Ordinance Amendment to Repeal Berkeley Municipal Code Chapter 23D.10, Adopt Berkeley Municipal Code Chapter 23C.24, and Amend Berkeley Municipal Code Sections 23D.16.030, 23D.16.070, 23D.16.080, 23D.20.030, 23D.20.080, 23D.28.030, 23D.28.080, 23D.32.030, 23D.32.080, 23D.36.030, 23D.36.080, 23D.40.030, 23D.40. 080, 23D.44.030, 23D.44.080, 23D.48.030, 23D.52.030, 23E.36.030, 23E.40.030, 23E.44.030, 23E.48.030, 23E.52.030, 23E.56.030, 23E.60.030, 23E.64.030, 23E.68.030, 23E.84.030, and 23F.04.010 to modify the Accessory Dwelling Unit Ordinance.
2. Existing Berkeley Municipal Code Chapter 23D.10 Showing Red-lined Edits
3. January 17, 2018 Planning Commission Staff Report
4. January 17, 2018 Planning Commission meeting minutes

Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
May 2, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmembers Susan Wengraf, Lori Droste, and Ben Bartlett

Subject: Referral to Planning Commission to Provide Ordinance Language for the Creation of Junior ADUs

## RECOMMENDATION

Refer to the Planning Commission to provide ordinance language for the creation of Junior ADUs and return to City Council for adoption

## BACKGROUND

High housing costs, particularly in the Bay Area, along with demographic increases in our aging population, have prompted the City of Berkeley to find opportunities to encourage a variety of options in our housing stock.

Junior ADUs are created by re-purposing a bedroom and ancillary space within an existing home. State law limits Junior ADUs to a maximum of 500 square feet (sf) of living space contained entirely within an existing single-family structure. A Junior ADU unit may include separate bathroom facilities, or may share facilities with the existing structure. They have a private exterior entrance and are separate from the main living area, however, the connecting door remains and can be secured from both sides.

Junior ADUs do not redefine single-family homes, as the door adjoining the Junior Unit to the main living area remains in place. They do not increase density as the living and sleeping capacity of a home does not change (e.g., a four bedroom home converted to a three bedroom home with one Junior ADU still only has four bedrooms). The requirements for water and energy, the need for parking, and the impact on local roads have all been accounted for in the original permit for the home. All that is needed to create a Junior ADU is a bar sink, a standard set of electrical outlets to accommodate small kitchen appliances, access to a bathroom, and an exterior entrance.

Assembly member Tony Thurmond introduced legislation to remove financial and bureaucratic barriers to the creation of Junior ADU's in his Assembly Bill AB2406 which was signed into law by Governor Jerry Brown in September, 1916.

The ordinance authorized by AB 2406 must include the following requirements:

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7160 ● TDD: (510) 981-6903 ● Fax: (510) 981-7166
E-Mail: swengraf@cityofberkeley.info

- Limit to one JADU per residential lot zoned for single-family residences with a single-family residence already built on the lot.

- The single-family residence in which the JADU is created or JADU must be occupied by the owner of the residence.

- The owner must record a deed restriction stating that the JADU cannot be sold separately from the single family residence and restricting the JADU to the size limitations and other requirements of the JADU ordinance.
- The JADU must be located entirely within the existing structure of the single-family residence and JADU have its own separate entrance.

- The JADU must include an efficiency kitchen which includes a sink, cooking appliance, counter surface, and storage cabinets that meet minimum building code standards. No gas or 220V circuits are allowed.

- The JADU may share a bath with the primary residence or have its own bath.

AB 2406 prohibits a local JADU ordinance from requiring:

- Additional parking as a condition to grant a permit.
- Applying additional water, sewer and power connection fees. No connections are needed as these utilities have already been accounted for in the original permit for the home.
- AB 2406 clarifies that a JADU is to be considered part of the single-family residence for the purposes of fire and life protections ordinances and regulations, such as sprinklers and smoke detectors. The bill also requires life and protection ordinances that affect single-family residences to be applied uniformly to all single-family residences, regardless of the presence of a JADU.

FINANCIAL IMPLICATIONS
Staff time.

ENVIRONMENTAL SUSTAINABILITY
NA

CONTACT PERSON
Councilmember Susan Wengraf Council District 6 510-981-7160

# ANNOTATED AGENDA
# BERKELEY CITY COUNCIL MEETING
## Tuesday, February 27, 2018
## 6:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

TELECONFERENCE LOCATION:
OASIA HOTEL NOVENA - 8 SINARAN DRIVE, SINGAPORE, 307470

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

## Preliminary Matters

**Roll Call:** 6:04 p.m.

**Present:** Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Arreguin

**Absent:** Worthington

Councilmember Worthington present at 6:10 p.m.

### Ceremonial Matters:

1. Proclamation recognizing Winston Burton
2. Proclamation recognizing Center for Early Intervention for Deafness
3. Adjourned in Memory of the Victims of the Parkland, Florida School Shooting
4. Adjourned in Memory of Zachary Cruz, on the 9th anniversary of his fatality as a pedestrian

### City Auditor Comments:

The City Auditor provided updates on Items 25 and 28 related to audit status reports; noted the importance of monitoring program and service impacts and informing Council; noted the quick completion of audit recommendations by Parks, Recreation and Waterfront on the parks tax audit.

### City Manager Comments:

1. Reopening ceremony for Tom Bates Sports Fields on March 2 at 8:50 a.m.

**Public Comment on Non-Agenda Matters:** 6 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 3 speakers.

**22b. Companion Report: Wildland Urban Interface Fire Safety and Fire Safety Education**
**From: City Manager**
**Recommendation:** Recommend that City Council refer the specific operational items in the Disaster and Fire Safety Commission report to the budget process for consideration and review by impacted City departments.
**Financial Implications:** See report
Contact: David Brannigan, Fire, 981-3473

**Action:** 2 speakers. M/S/C (Hahn/Wengraf) to:

**A. Commend** the Disaster and Fire Safety Commission for their outstanding work in researching and putting together this set of recommendations.

**B. Take the following Action:**

1. To address long term fire, earthquake and disaster preparedness, response, and safety:

Refer all of the Proposed Measures from the Commission's report to the City Manager for review by the Fire Department, Public Works, Parks, Recreation & Waterfront and other affected departments to be considered and prioritized along with:

- Councilmember Bartlett's November 28, 2017 referrals,
- Councilmember Hahn's January 30, 2018 referrals, and
- The January 2018 Conceptual Study to Underground Utility Wires

All of these measures should be reviewed, evaluated and prioritized by the City Manager. Report the City Manager's prioritization to Council.

Commission Referral #5 revised to read: 5. Refer to the Planning Commission to consider Accessory Dwelling Units (ADUs) in the Very High Hazard Fire Zone to review public safety issues especially relevant to the risk of WUI fires. Amend Section 23D.10 to incorporate greater public safety considerations to be met before issuing an Administrative Use Permit (AUP);

2. To address the urgent firestorm risk demonstrated by the recent, devastating fires in Northern and Southern California:

Direct the City Manager to report back to Council identifying the most important, financially feasible measures that can be deployed immediately or with relative speed and will have the greatest impact on prevention and/or on the safety of both people and property in the event of a catastrophic fire, earthquake or other disaster. Include general information about existing sources of funding for each measure and an estimate of additional funds that might be required, as well as potential funding sources.

**Vote:** Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – None; Abstain – None; Absent – Worthington.

Recess 8:59 p.m. – 9:19 p.m.

# SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** **September 13, 2018**

**Item Number:** **25**

**Item Description:** **Accessory Dwelling Unit Ordinance Updates**

**Submitted by:** **Councilmember Harrison**

Remove Section 6 from the referral concerning potential impacts of ADUs on views, as this was not brought forward by the ADU taskforce and the question of how views can be considered in light of state housing laws is already before the Joint Subcommittee for the Implementation of State Housing Laws

CONSENT CALENDAR
June 12, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmembers Sophie Hahn, Susan Wengraf, and Kate Harrison
Subject: Accessory Dwelling Unit Ordinance Updates

## RECOMMENDATION

Refer to the Planning Commission to consider additional elements for Berkeley's Accessory Dwelling Unit Ordinance (BMC 23C.24), on an expedited basis, and refer to the Disaster and Fire Safety Commission bullet point #5, relating to potential obstruction of emergency vehicles, and request that their recommendations be sent directly to the Planning Commission to inform the Planning Commission's review and recommendations.

## FINANCIAL IMPLICATIONS

None

## BACKGROUND

On Tuesday May 15, 2018, the City Council unanimously passed amendments to the City's Accessory Dwelling Unit (ADU) ordinance, BMC Section 23C.24, and amendments to other affected provisions of the BMC. Simultaneous with passage of these ADU amendments, Councilmembers expressed the desire for a number of additional elements to be considered by the Planning Commission as soon as possible, for possible incorporation into the Ordinance.

The following items are referred for consideration:

1. **Incentives or requirements for Universal Design**. Because many ADUs are expected to be created at "ground level," including within the footprint of existing garages, a unique opportunity exists to create housing that is accessible to individuals with disabilities, seniors aging in place, and other residents who would most benefit from incorporation of Universal Design features. Consultation with individuals and organizations helping to house individuals with disabilities and supporting aging in place is encouraged, to determine needs and potential incentives or requirements for Universal Design in ADUs.

2. **Notice Requirements regarding rental opportunities and obligations for individuals creating ADUs, and notice for ADU tenants**. Consider requiring notice of rental opportunities and obligations, including a list of landlord/renter resources and written acknowledgement of receipt of such notice, to individuals seeking permits for ADUs. Such notice would clarify that Short Term Rentals are prohibited, and specify what Rent Control and/or Tenant Protections, if any, apply. In addition, consider requiring ADU owners to provide notice to their renters stating what rent control and/or

tenant protections, if any, apply to the rental relationship and, where not applicable, notice of the lack of such protections. Standard required language for such notices would be provided by the Rent Stabilization Board.

3. **Under Section 23C.24.050(C), consider how to allow for ADUs to be created through expansion of an existing structure at a level with a roof height above 14 or 18 feet**. As written, the code appears to preclude converting attic or second story space in an existing structure into an ADU if any expansion is required. If this was intentional, clarify the underlying concerns.

4. **Under Section 23C.24.050(D), consider removing paragraph (3)** which addresses a state-level concern that cities not require more than 5 foot side or rear setbacks. Pursuant to paragraph (2) of the same Section, Berkeley requires only a 4 foot setback, and with an Administrative Use Permit the 4 foot setback may be reduced. Thus, Berkeley's ADU ordinance as adopted fulfills the State's mandate and Section (3) appears to be redundant or moot.

5. **Consider allowing the Zoning Officer to require off street parking for ADUs on roadways with less than 26 feet in pavement width**, to mitigate the potential for obstruction of emergency vehicles. Under 23C.24.050(A) an ADU on a roadway with less than 26 feet of pavement width requires an Administrative Use Permit and findings under 23C.24.070 that the Fire Chief has determined that the project meets minimum fire and safety requirements. Consider amending the Parking Requirements at 23C.24.050(G) to allow the Zoning Officer to require a parking space if the Fire Chief determines that additional vehicles parked on the street may negatively impact access for emergency vehicles.

   Suggested language (underlined):
   a. 23C.24.050(G): Parking is not required for an Accessory Dwelling Unit, <u>but may be required in the case of an ADU subject to 23C.24.050(A), with the required finding in 23C.24.070(A).</u>
   b. 23C.24.070(A): In order to approve an AUP under Section 23c.24.050(A) [...] the Zoning Officer must be provided with evidence that the Fire Chief has determined that the project will meet minimum fire safety requirements<u>, including whether off-street parking is required to mitigate the potential for additional on-street parking to obstruct access for emergency vehicles.</u>

   Consider also whether a parking space should be required for two bedroom ADUs on streets with less than 26 feet in pavement width.

~~8. **Consider how to protect views from obstruction due to new building or building expansions for ADUs.** Views are significant elements for homes in Berkeley, and are recognized throughout the BMC as important interests to be considered in zoning approvals. This is true for homes in flatter/western portions of the city, where views of~~

~~the East Bay Hills, the Campanile, the Bay, Bridges, San Francisco Skyline, Alcatraz and Angel Islands, and Marin County are important features, for homes in the hilly/eastern portions of Berkeley with views of these same features, and for homes on the Eastern side of the Berkeley hills, whose views may include Wildcat Canyon and Tilden Park.~~

~~While height and size limits for ADUs mitigate the potential for ADUs to obstruct views, it is likely that some ADUs that conform to these limits will nevertheless obstruct neighbors' views, especially given new, taller ADU height limits. This is an outcome our ADU provisions must take into account and mitigate, especially in light of the fact that ADUs can be built in a variety of configurations and locations, and thus likely can be built in such a way that neighboring views are not overly impacted. Achieving both goals - production of new ADUs and preservation of important views, is optimal - and possible.~~

~~12.~~6. Explore alternatives to Deed Restrictions as means to enforce limitations on use of ADUs.

~~13.~~7. **From the items listed under the heading "<u>Need Additional Research and Analysis</u>" on pages 5 and 6 of the City Manager's May 15, 2018 Referral Response report**[1], the following should also be considered:

a. Regulating conversions versus demolition of existing non-conforming buildings; and
b. Incentivizing affordability restrictions on ADU rentals

All other items listed under this heading should be considered at a later time.

<u>ENVIRONMENTAL SUSTAINABILITY</u>
There are no environmental opportunities or risks associated with this recommendation

<u>CONTACT PERSON</u>
Councilmember Sophie Hahn, District 5, (510) 981-7150

[1]https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-15_Item_40_Referral_Response_Repeal.aspx

Commission on Disability

CONSENT CALENDAR
September 13, 2018

To: Honorable Mayor and Members of the City Council

From: Commission on Disability

Submitted by: Shira Ilana Leeder, Chairperson, Commission on Disability

Subject: Consideration of Accessibility in Accessory Dwelling Units

## RECOMMENDATION

The Commission on Disability is recommending that the Council, by resolution if needed, include input from the disability community, accessibility experts, and other related stakeholders, prior to finalization of the Accessory Dwelling Unit ordinance amendment process. We would like the Council to include special considerations for creating Accessory Dwelling Units that are visitable and accessible when possible, and consider incentives for accessibility. Changes in the Accessory Dwelling Unit ordinance represents an opportunity for increased accessible housing in Berkeley, with potential benefits to homeowners and future residents.

## SUMMARY

The City of Berkeley is poised to see an expansion in the number and use of Accessory Dwelling Units (hereinafter ADUs) in the coming years. We also have a vibrant disability community in need of accessible housing and an aging population that will result in yet more Berkeley residents with disabilities needing accessible housing. Finally, the State has passed new laws which requires our City to update our ADU ordinances. Because of their design – for example, many are converted garages – ADUs represent a valuable opportunity to construct more accessible and “visitable” housing. Therefore, as we revise our ADU ordinances, the Commission on Disability recommends that the City Council and other relevant City entities emphasize accessibility for any newly constructed or renovated units. The Commission requests that the City Council and Staff contact relevant disability stakeholders, including holding community meetings as needed, to gather input and develop the most inclusive ADU ordinances possible.

## FISCAL IMPACTS OF RECOMMENDATION

Staff time.

## CURRENT SITUATION AND ITS EFFECTS

There have been changes in the state laws for ADUs which require the City of Berkeley to review and amend Berkeley’s ADU ordinance. The creation of additional ADUs provides an opportunity for more housing, and in many cases the housing that is created could potentially be accessible or at least “visitable” for persons with disabilities. Units

that are accessible or visitable for those with disabilities are also beneficial to an aging population and intergenerational living.

One reason the Commission on Disability is particularly interested in the ADU issue is that design decisions in the initial creation or plan of a unit are more cost effective, and that many individuals or builders planning to create or convert an existing structure to an ADU may not consider simple design choices that will make their units accessible or inaccessible. These units that used to be called “in-law” or “granny” units can sometimes be designed for better access, such as including a level entrance (or ramp thereto), wider door, and a bathroom that allows a wheelchair. There may be other design modifications for inclusion of other disabilities, and modifications for safety in aging.

We are not currently aware of other municipalities with ADU accessibility/visitability ordinances.

It is in this context that on July 25, 2018 the Commission on Disability membership voted to redraft this previously authored but not submitted item and submit it. It was Moved by Walsh, Seconded by Singer, with Ghenis, Leeder and Weiss voting yes, Uphadhyay was absent and Schwartz was present but had filed a LOA, unrevoked, and so her yes vote is not counted.

BACKGROUND

The city of Berkeley is widely recognized as the birthplace of the modern “independent living” disability rights movement, which led to many people with disabilities living outside institutions and with agency over their own lives. Safe, healthy, accessible housing represents a cornerstone of disability integration and independence, and should be supported by our City. This includes construction and renovation of homes, apartments and other residential units in ways that allow for accessible entrances, pathways, common spaces, bedrooms and restrooms. Berkeley’s ongoing shortage of fully accessible housing stresses our existing residents with disabilities, placing a price premium on accessible owned and rental units for a community already experiencing economic inequities; further, the aging of Berkeley’s population will lead to a greater number of residents with disabilities and a related need for expanded accessible housing stock.

According to a 2017 policy note from the AARP Public Policy Institute,

> “In less than 15 years, one in five Americans will be age 50 and older. Our rapidly aging population will have a vast impact on our communities and how well suited they are to meet our range of needs at every life stage. Older adults want to remain in their homes and communities as they age. However the risk of developing health issues can increase with age and our homes must be able to support family members that might develop a disability.
>
> Right now, many homes across the country contain physical barriers that keep people isolated: difficult to move from room or room, have walkways and hallways

> too narrow to accommodate a wheelchair or lack features that allow people to bathe without significant help. Therefore it's imperative that we find and implement solutions to make homes safer and easier to navigate, especially for people with limited mobility."[1]

Increasing the number of accessible units benefits all Berkeley residents and potential visitors: residents without disabilities may acquire temporary or permanent disabilities at any time, so living in a universally-accessible unit or having many options for new housing is valuable; temporary visitors (i.e. visiting family members) with disabilities also have a right to accessibility across our City; and any residents or visitors with disabilities may have better social engagement if they can visit friends' or colleagues' accessible homes.

As the City revises its policies around ADUs, the Commission on Disability recommends that the City Council take actions to emphasize universal access in new construction and renovated units. ADUs represent a new opportunity to expand accessible housing options – whether permanent or temporary – in Berkeley. For example, many units are converted garages, which already rest at ground level and will be easy to construct without adding access barriers such as stairs. Given the costs and timelines of construction and renovation, it also benefits all parties (the unit's owner, any builder/renovator, and future residents/visitors) to prioritize accessibility as early and often as possible.

The importance of accessibility in any construction or remodels has been noted in multiple venues by a range of disability and construction experts. "When someone builds a home, they're not just building it for themselves — that home's going to be around for 100 years," Concrete Change founder Eleanor Smith[2] told The New York Times in 2002. "These things hurt nobody — and they help a lot of other people."[3]

ENVIRONMENTAL SUSTAINABILITY

Given that each round of construction or remodeling results in some environmental impact (sourcing construction materials, operating equipment, etc.), it is more sustainable to include visitability or accessible features in the first round of building or remodeling an ADU. Projects that pre-plan for individuals with disabilities and the aging of the population are more likely to last longer without modifications and related environmental impacts. Meanwhile, there is a negligible or non-existent difference in environmental footprint between constructing an accessible unit compared to one that does not provide access.

[1] https://bit.ly/2LG1VJW
[2] https://bit.ly/2LtDvnR
[3] https://nyti.ms/2AesvFH

RATIONALE FOR RECOMMENDATION

The conversion of garage to ADU is an example where an existing structure has features that make it potentially very accessible to those with mobility impairment, and choices about door size and layout can make a difference in the future potential uses of the unit. The Commission understands that not every ADU can be accessible to mobility impairments, and that some types of units may not significantly be made more accessible.

In units that are potentially mobility accessible, such as an existing level-in structure, one way to incentivize accessibility may be to provide some type of benefit to homeowners who build to an accessible standard, for example allowing some extra square feet if it is for an accessible bathroom. There are likely other ways to build accessibly, and likely other incentives, and these could be further considered.

The Commission on Disability recommends that the ADU ordinance strive for "universal access" wherever possible, but at least address visitability in any newly constructed or remodeled ADUs. According to the National Council on Independent Living's "Visitability" website[4],

**"A house is visitable when it meets three basic requirements:**

- one zero-step entrance.
- doors with 32 inches of clear passage space.
- one bathroom on the main floor you can get into in a wheelchair."

ALTERNATIVE ACTIONS CONSIDERED

On the January 24, 2017 City Council agenda, the Commission on Disability recommended including a section on each council submission template titled "Impact on Accessibility for Persons with Disabilities and Others."[5] The idea was that including a consideration of accessibility for each item as it was submitted might be an opportunity for earlier inclusion of discussion of access. This likely would have brought up considerations of access in the development of ADU ordinances – however, we believe this particular item warrants special focus and direction on the part of the Council.

The Commission on Disability was not asked to participate in the ADU ordinance amendment process that began in 2017. On discovering the ongoing process, the CoD did submit the suggestions contained herein, but it was too late. These suggestions are also contained in a letter of support included in the agenda packet for Councilperson Hahn's Item requesting the ADU ordinance amendment process be continued to consider Universal Design and 6 other areas of importance not addressed in the recently concluded amendment process.

[4] https://bit.ly/2mRQ9hK
[5] https://bit.ly/2Al4Kfa

CITY MANAGER
The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON
Ella Callow, Disability Services Specialist, Public Works, 1-510-981-6418

Attachments:
1: Resolution

RESOLUTION NO. -N.S.

EMPHASIZE ACCESSIBILITY IN ALTERNATIVE DWELLING UNITS (ADUS)

WHEREAS, the City of Berkeley is revising regulations and guidance regarding the construction of ADUs; and

WHEREAS, the residents of Berkeley have a strong history of advocating for disability rights, including physical access to temporary and permanent housing; and

WHEREAS, there is already an existing population of Berkeley residents with disabilities, as well as occasional visitors with disabilities, requiring accessible permanent and temporary housing; and

WHEREAS, the number of Berkeley residents with disabilities will continue to increase as our population ages, requiring yet more accessible housing and visitable spaces; and

WHEREAS, ADUs under construction or renovation provide a prime opportunity to develop and provide accessible housing and visitable spaces.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City ordinances addressing the construction and renovation of ADUs shall emphasize physical access for people with disabilities. The Council requests relevant staff to address access features including, but not limited to, barrier-free entryways, 32-inch-wide doorways, and wheelchair-accessible restrooms in guidance for construction and renovation of ADUs moving forward. Development of ordinances may include input from experts on accessibility and members of the Berkeley disability community.