Beverly Hills City Council Liaison / Legislative/Lobby Committee will conduct a Special Meeting, at the following time and place, and will address the agenda listed below:

CITY HALL
455 North Rexford Drive
Beverly Hills, CA 90210
Teleconference/Video Conference Meeting

Beverly Hills Liaison Meeting
https://www.gotomeet.me/BHLiaison

You can also dial in by phone:
United States (Toll Free): 1-866-899-4679 or United States: 1-646-749-3117
Access Code: 660-810-077

Tuesday, September 8, 2020
11:00 AM

Pursuant to Executive Order N-25-20 members of the Beverly Hills City Council and staff may participate in this meeting via a teleconference. In the interest of maintaining appropriate social distancing, members of the public can participate in the teleconference/video conference by using this link: https://www.gotomeet.me/BHLiaison or by phone at 1-866-899-4679 or 1-646-749-3117, Access Code: 660-810-077. Written comments may be emailed to mayorandcitycouncil@beverlyhills.org and will be read at the meeting.

AGENDA

A. Oral Communications

1. Public Comment
   Members of the public will be given the opportunity to directly address the Committee on any item listed on the agenda.
   Video: https://www.gotomeet.me/BHLiaison
   Phone: 1-866-899-4679 or 1-646-749-3117
   Access Code: 660-810-077

B. Direction

1. H.R. 2339 – Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020
   Comment: This item seeks direction on H.R. 2339, which would, among other provisions, prohibit the manufacture and sale of all flavored tobacco products and require the removal of all flavored electronic nicotine delivery system products from the market within 30 days of enactment.

2. H.R. 7197 - The Restaurant Act of 2020
   Comment: This item seeks direction on H.R. 7197, which would establish a new $120 billion grant program – Restaurant Stabilization Grants – to provide relief to independent restaurants through 2020.
3. **H.R. 7671 - The Small Business Comeback Act**

Comment: This item seeks direction on H.R. 7671, which would create a Small Business Recovery Fund intended to supplement the Paycheck Protection Program and other provisions of the CARES Act passed this spring.

4. **S. 4431 - The Emergency Wildfire and Public Safety Act of 2020**

Comment: Senator Feinstein has requested the City consider taking a position on S. 4431, which would help protect communities from catastrophic wildfires by implementing wildfire mitigation projects; sustaining healthier forests that are more resilient to climate change; and provide important energy and retrofitting assistance to businesses and residences to mitigate future risks from wildfires.

5. **Assembly Bill 831 (Grayson) - Planning and zoning: housing: development application modifications**

Comment: This item seeks direction on AB 831, which would make changes to the process for development projects approved by the streamlined, ministerial process created by SB 35 (Wiener, 2017). The change provides a path to modify approved development projects prior to the issuance of the final building permit required for construction, including provisions on how local governments must treat such an application for a modification. This bill also specifies how local governments must approve and construct public improvements provided in conjunction with the streamlined, ministerial development project in a manner that would not inhibit, chill, or preclude the development.

6. **Assembly Bill 1506 (McCarty) - Police use of force**

Comment: The City has a position of support on AB 1506; however, this bill was amended on August 25, 2020. Due to the changes, several peace officer unions have moved from a position of support to oppose. This item requests the Legislative/Lobby Liaisons to reconsider the position of the City on this bill.

7. **Assembly Bill 2405 (Burke) - Right to safe, decent, and affordable housing**

Comment: This item seeks direction on AB 2405. This bill would declare as a state policy that every individual in California has the right to safe, decent, and affordable housing. It would also require the implementation of the policy to consider several components.

8. **Assembly Bill 2617 (Gabriel) - Firearms: gun violence restraining orders**

Comment: This item seeks direction on AB 2617, which would require California to honor similar or equivalent Gun Violence Restraining Orders (GVRO), as specified, that are issued by states other than California and clarifies the time frame for a law enforcement officer to file a copy of a temporary emergency GVRO with the court.

9. **Senate Bill 1138 (Wiener) - Housing element: emergency shelters: rezoning of sites**

Comment: This item seeks direction on SB 1138, which would add additional specificity to where emergency shelters must be zoned, and expedites required rezoning for localities that fail to adopt a legally compliant housing element within 120 days of the statutory deadline.

10. **Senate Bill 1159 (Hill) - Workers’ compensation: COVID-19: critical workers**

Comment: This item seeks direction on SB 1159, which would among other provisions, codify a recent executive order (N-62-20) to create a rebuttable presumption that illness or death related to COVID-19 (novel coronavirus) is an occupational injury and therefore eligible for workers’ compensation benefits.
11. **Senate Bill 1383** (Jackson) - Unlawful employment practice: family leave

Comment: This item seeks direction on SB 1383, which would revise and recast specified provisions to make it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as specified. The bill would require an employer who employees' both parents of a child to grant leave to each employee.

12. **Request by Councilmember Mirisch for the City to Consider a Request from Action on Smoking and Health (ASH) to Sign the Global Project Sunset Letter to Phase Out the Commercial Sale of Cigarettes**

Comment: This item presents a request from Councilmember Mirisch for the City to consider a request from ASH to sign the global Project Sunset Letter to phase out the global commercial sale of combustible tobacco products.

13. **Resolution for Local Control**

Comment: The City has received a request from Councilmember Mike Griffiths from the City of Torrance to consider adopting a resolution in support of local control.

14. **State and Federal Legislative Updates**

Comment: The City’s state and federal lobbyists will provide a verbal update to the Liaisons on state and federal issues.

C. **Adjournment**

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George Chavez, City Manager

Posted: September 4, 2020

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**A DETAILED LIAISON AGENDA PACKET IS AVAILABLE FOR REVIEW AT WWW.BEVERLYHILLS.ORG**

Pursuant to the Americans with Disabilities Act, the City of Beverly Hills will make reasonable efforts to accommodate persons with disabilities. If you require special assistance, please call (310) 285-1014 (voice) or (310) 285-6881 (TTY). Providing at least forty-eight (48) hours advance notice will help to ensure availability of services.
Item B-1
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Michael George, Management Analyst
DATE: September 8, 2020
SUBJECT: H.R. 2339 – Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020
ATTACHMENTS: 1. Summary Memo – H.R. 2339
2. Bill Text – H.R. 2339

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform. H.R. 2339 – Protecting American Lungs and Reversing the Youth Tobacco Epidemic of 2020 (“H.R. 2339”) involves a policy matter not specifically addressed within the language of the adopted 2020 Legislative Platform. However, this item is philosophically consistent with the strong public health policies of the City Council related to tobacco and smoking, including the prohibition of the sale of flavored tobacco products and the subsequent prohibition of the sale of all tobacco products in the City.

H.R. 2339 would, among other provisions, prohibit the manufacture and sale of all flavored tobacco products and require the removal of all flavored electronic nicotine delivery system products from the market within 30 days of enactment. The City’s federal lobbyist, David Turch & Associates, provided a summary memo for H.R. 2339 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of H.R. 2339, the Liaisons may recommend the following actions:

1) Support H.R. 2339;
2) Support if amended H.R. 2339;
3) Oppose H.R. 2339
4) Oppose unless amended H.R. 2339
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on H.R. 2339, then staff will place the item on a future City Council agenda for concurrence.
Attachment 1
Representative Frank Pallone of New Jersey, chairman of the House Energy and Commerce Committee, introduced H.R. 2339 on April 18, 2019. The bill amends the Federal Food, Drug, and Cosmetic Act (FFDCA) to strengthen the authority of the Food and Drug Administration (FDA) over tobacco products and provides a comprehensive approach to address the youth tobacco epidemic, which has surged in recent years with the introduction of electronic nicotine delivery system (ENDS) products, such as electronic cigarettes (e-cigarettes). The House of Representatives passed H.R. 2339 by a vote of 213-195 on February 28, 2020. Five Republicans voted for the bill and 17 Democrats voted against the measure. In the face of GOP opposition, H.R. 2339 is unlikely to move in the Senate before the end of this Congress (January 3, 2021).

H.R. 2339 prohibits the manufacture and sale of all flavored tobacco products and requires the removal of all flavored electronic nicotine delivery system products from the market within 30 days of enactment of the bill; makes it unlawful to market, advertise, or promote ENDS products to individuals under the age of 21 (this provision was adopted in the Consolidated Appropriations Act for FY 2020 and is now law); and directs the FDA to prohibit non-face-to-face sales of certain tobacco products. The bill, moreover, grants the FDA the authority to collect user fees from all classes of tobacco products, including ENDS products, and increases the annual user fees collected for tobacco products. In addition, H.R. 2339 requires the Federal Trade Commission (FTC) to issue an annual report to Congress on the domestic sales, advertising, and promotional activities of cigarette, cigar, smokeless tobacco, and ENDS manufacturers. Chairman Pallone argues that his bill takes the necessary steps to prevent the loss of a new generation to a lifetime of nicotine addiction by enhancing FDA’s regulatory authority to restrict the marketing and sale of tobacco products that appeal to young people and reverse the epidemic levels of youth tobacco usage.

Among other provisions, the bill:

- Requires the Food and Drug Administration (FDA) to finalize its rule mandating graphic health warnings for cigarette packages;
- Extend the FDA regulations on the sale, distribution and use of cigarettes and smokeless tobacco to all deemed tobacco products, including e-cigarettes;
• Instructs FDA to regulate products containing synthetic nicotine or nicotine that is not made or derived from tobacco;
• Provides funding to provide comprehensive tobacco cessation treatment in Community Health Centers;
• Invests in research to develop and improve cessation strategies;
• Provide funding for outreach to medically underserved areas, updating youth tobacco prevention campaigns, and providing educational materials for health care providers;
• Establishes an excise tax on nicotine manufactured in or imported into the United States; and
• Establishes and provides funding through FY2025 for a demonstration grant program to develop strategies for smoking cessation (including of the use of menthol-flavored tobacco products) in medically underserved communities.

BACKGROUND:

According to Chairman Pallone, tobacco use remains the leading cause of preventable deaths, disability, and disease in the United States. Each year, nearly half a million Americans died prematurely from smoking or exposure to secondhand smoke, and another 16 million Americans live with a serious illness caused by smoking. Despite this, the Centers for Disease Control and Prevention (CDC) estimates that more than 49 million adults in the United States continue to use tobacco products, including combustible cigarettes, cigars, e-cigarettes and smokeless tobacco, among others. Even more concerning to supporters of the bill, about 6.2 million U.S. middle and high school students were current (past 30 days) users of some type of tobacco product.

The CDC and the FDA, through their annual National Youth Tobacco Survey, which tracks youth usage of tobacco products for the last six years, reports e-cigarettes have been the most commonly used tobacco product among middle and high school students. Based on this 2019 data, more than one out of every four high school students are estimated to be current users of e-cigarettes. During the 2017-2018 period, current e-cigarette use by high schoolers increased by a whopping 78 percent. CDC attributed this significant rise in youth usage of e-cigarettes to the recent popularity of e-cigarettes shaped like a USB flash drive, such as JUUL. These products, it is maintained, can be used discreetly, have a high nicotine content, and come in flavors that appeal to youths.
Attachment 2
AN ACT

To amend the Federal Food, Drug, and Cosmetic Act with respect to the sale and marketing of tobacco products, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—FOOD AND DRUG ADMINISTRATION

Sec. 101. Cigarette graphic health warnings.
Sec. 102. Advertising and sales parity for all deemed tobacco products.
Sec. 103. Reducing child and adolescent nicotine addiction.
Sec. 104. Prohibition against remote retail sales.
Sec. 105. Fees applicable to all tobacco products.
Sec. 106. Regulation of products containing alternative nicotine.
Sec. 107. Update to youth tobacco prevention public awareness campaigns.
Sec. 108. Exemption from premarket review of certain tobacco products.
Sec. 109. Public education.
Sec. 110. Regulations for recordkeeping concerning tracking and tracing.

TITLE II—FEDERAL TRADE COMMISSION

Sec. 201. Advertising of tobacco products.

TITLE III—PUBLIC HEALTH PROGRAMS

Sec. 301. Outreach to medically underserved communities.
Sec. 302. Demonstration grant program to develop strategies for smoking cessation in medically underserved communities.
Sec. 303. Public awareness, education, and prevention campaign.
Sec. 304. Tobacco cessation treatment grants to health centers.
Sec. 305. Grants for research.

TITLE IV—NICOTINE OR VAPING ACCESS PROTECTION AND ENFORCEMENT

Sec. 401. Increasing civil penalties applicable to certain violations of restrictions on sale and distribution of tobacco products.
Sec. 402. Study and report on e-cigarettes.

TITLE V—EXCISE TAX ON NICOTINE USED IN VAPING, ETC.

Sec. 501. Imposition of tax on nicotine for use in vaping, etc.

TITLE VI—FURTHER HEALTH INVESTMENTS

Sec. 601. Waiving Medicare coinsurance for colorectal cancer screening tests.
Sec. 602. Safe harbor for high deductible health plans without deductible for certain inhalers.
TITLE I—FOOD AND DRUG ADMINISTRATION

SEC. 101. CIGARETTE GRAPHIC HEALTH WARNINGS.

(a) ISSUANCE DEADLINES.—Not later than March 15, 2020, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall publish a final rule pursuant to section 4(d) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(d)). If the Secretary fails to promulgate such final rule by March 15, 2020, then the proposed rule titled “Tobacco Products; Required Warnings for Cigarette Packages and Advertisements” published by the Food and Drug Administration on August 16, 2019 (84 Fed. Reg. 42754) shall be treated as a final rule beginning on March 16, 2020.

(b) CONFORMING CHANGE.—The first section 4(d) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(d)) (relating to graphic labeling statements) is amended by striking “Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary” and inserting “The Secretary”.

HR 2339 RFS
SEC. 102. ADVERTISING AND SALES PARITY FOR ALL DEEMED TOBACCO PRODUCTS.

(a) In General.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall promulgate a final rule amending part 1140 of subchapter K of title 21, Code of Federal Regulations, to apply the provisions of such part 1140 to all tobacco products, as applicable, to which chapter IX of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387a et seq.) applies pursuant to section 901(b) of such Act (21 U.S.C. 387a(b)), as amended by section 103(a) of this Act.

(b) Effective Date.—The final rule required by subsection (a) shall take effect on the date that is 2 years after the date of enactment of this Act.

SEC. 103. REDUCING CHILD AND ADOLESCENT NICOTINE ADDICTION.

(a) Applicability to All Tobacco Products.—

(1) In General.—Subsection (b) of section 901 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387a) is amended to read as follows:

“(b) Applicability.—This chapter shall apply to all tobacco products.”.

(2) Rule of Construction.—Paragraph (1) and the amendment made thereby shall not be con-
strued to limit the applicability of chapter IX of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387a et seq.) to—

(A) products that were listed in section 901(b) of such Act as in effect on the day before the date of enactment of this Act; and

(B) products that were deemed by regulation to be subject to such chapter pursuant to section 901(b) of such Act as in effect on the day before the date of enactment of this Act.

(b) Prohibiting Flavoring of Tobacco Products.—

(1) Prohibition.—

(A) In general.—Subparagraph (A) of section 907(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387g(a)(1)) is amended to read as follows:

“(A) Special rules.—

“(i) In general.—Beginning on the date that is 1 year after the date of enactment of the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020, a tobacco product (including its components, parts, and accessories, including the tobacco, filter, or
paper) that is not an electronic nicotine de-
dlivery system shall not contain, as a con-
stituent (including a smoke constituent) or
additive, an artificial or natural flavor
(other than tobacco) that is a character-
izing flavor of the tobacco product or to-
bacco smoke or an herb or spice, including
menthol, mint, mango, strawberry, grape,
orange, clove, cinnamon, pineapple, vanilla,
coconut, licorice, cocoa, chocolate, cherry,
or coffee.

“(ii) RULE OF CONSTRUCTION.—
Nothing in this subparagraph shall be con-
strued to limit the Secretary’s authority to
take action under this section or other sec-
tions of this Act applicable to any artificial
or natural flavor, herb, or spice.

“(iii) APPLICABILITY TO CERTAIN IN-
dIVIDUALS.—Notwithstanding any provi-
sion of this Act, no individual who pur-
chases for individual consumption, poss-
esses for individual consumption, or con-
sumes, a tobacco product that is in viola-
tion of the prohibition under this subpara-
graph, including a tobacco product that
contains a characterizing flavor of menthol,
shall be subject to any criminal penalty
under this Act for such purchase, posses-
sion, or consumption, nor shall such pur-
chase, possession, or consumption be used
as a justification to stop, search, or con-
duct any other investigative measure
against any individual.”.

(B) SAVINGS PROVISION.—Section
907(a)(1) of the Federal Food, Drug, and Cos-
metic Act (21 U.S.C. 387g(a)(1)), as in effect
on the date of enactment of this Act, shall re-
main in effect until the amendment made to
such section 907(a)(1) by this paragraph takes
effect.

(2) FLAVORED ELECTRONIC NICOTINE DELIV-
ERY SYSTEM.—Section 910 of the Federal Food,
Drug, and Cosmetic Act (21 U.S.C. 387j) is amend-
ed by inserting at the end the following:
“(h) FLAVORED ELECTRONIC NICOTINE DELIVERY
SYSTEMS.—

“(1) RESTRICTION.—Beginning on the date
that is 30 days after the date of enactment of the
Protecting American Lungs and Reversing the
Youth Tobacco Epidemic Act of 2020, any flavored
electronic nicotine delivery system that is a new to-
bacco product, including any solution or other com-
ponent or part (such as a liquid or its aerosol) shall
not contain an artificial or natural flavor (other than
tobacco) that is a characterizing flavor, including
menthol, mint, mango, strawberry, grape, orange,
clove, cinnamon, pineapple, vanilla, coconut, licorice,
cocoa, chocolate, cherry, or coffee, unless the Sec-
retary has issued a marketing order as described in
paragraph (2). Nothing in this paragraph shall be
construed to limit the Secretary's authority to take
action under this section or other sections of this
Act applicable to any artificial or natural flavor,
herb, or spice.

"(2) REVIEW.—The Secretary shall not issue a
marketing order under subsection (c)(1)(A)(i) or a
substantial equivalence order under subsection
(a)(2)(A)(i) for any electronic nicotine delivery sys-
tem, including any liquid, solution, or other compo-
nent or part or its aerosol, that contains an artificial
or natural flavor (other than tobacco) that is a char-
acterizing flavor, unless the Secretary issues an
order finding that the manufacturer has dem-
onstrated that—

"(A) use of the characterizing flavor—
“(i) will significantly increase the likelihood of smoking cessation among current users of tobacco products; and

“(ii) will not increase the likelihood that individuals who do not use tobacco products, including youth, will start using any tobacco product, including an electronic nicotine delivery system; and

“(B) such electronic nicotine delivery system is not more harmful to users than an electronic nicotine delivery system that does not contain any characterizing flavors.”.

(3) Definition of Electronic Nicotine Delivery System.—Section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387) is amended—

(A) by redesignating paragraphs (8) through (22) as paragraphs (9) through (23), respectively; and

(B) by inserting after paragraph (7) the following new paragraph:

“(8) Electronic nicotine delivery system.—The term ‘electronic nicotine delivery system’ means a tobacco product that is an electronic device that delivers nicotine, flavor, or another substance
via an aerosolized solution to the user inhaling from
the device (including e-cigarettes, e-hookah, e-cigars,
vape pens, advanced refillable personal vaporizers,
and electronic pipes) and any component, liquid,
part, or accessory of such a device, whether or not
sold separately.”.

(4) LIMITATION ON ENFORCEMENT.—A law en-
forcement officer of a State or political subdivision
thereof may not enforce (including by making any
stop, search, seizure, or arrest or by pursuing any
prosecution, trial, or punishment) any provision of
section 907(a)(1)(A) or 910(h) of the Federal Food,
Drug, and Cosmetic Act, as amended and added by
this subsection.

15 SEC. 104. PROHIBITION AGAINST REMOTE RETAIL SALES.

(a) IN GENERAL.—Paragraph (4) of section 906(d)
387f(d)) is amended to read as follows:

“(4) PROHIBITION AGAINST REMOTE RETAIL
SALES.—

“(A) PROHIBITION.—Not later than 18
months after the date of enactment of the Pro-
tecting American Lungs and Reversing the
Youth Tobacco Epidemic Act of 2020, the Sec-
raty shall promulgate a final regulation pro-
hibiting the retail sale of all tobacco products other than retail sales through a direct, face-to-face exchange between a retailer and a consumer.

“(B) EXCEPTION FOR CERTAIN CIGAR TOBACCO PRODUCTS.—

“(i) EXCEPTION.—The regulation required by subparagraph (A) shall not apply to tobacco products described in section 910(a)(2)(A)(iii).

“(ii) APPLICABLE REQUIREMENTS.—

Not later than 18 months after the date of enactment of the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020, the Secretary shall promulgate regulations regarding the sale and distribution of tobacco products described in section 910(a)(2)(A)(iii) that occur through means other than a direct, face-to-face exchange between a retailer and a consumer in order to prevent the sale and distribution of tobacco products described in section 910(a)(2)(A)(iii) to individuals who have not attained the minimum age established by applicable law for
the purchase of such products, including
requirements for age verification.

“(C) RELATION TO OTHER AUTHORITY.—

Nothing in this paragraph—

“(i) limits the authority of the Sec-
retary to take additional actions under
other provisions of this Act; or

“(ii) preempts the authority of a State
or local government to establish restric-
tions on the retail sale of tobacco products
that are in addition to, or more stringent
than, the prohibition under subparagraph
(A).”.

(b) APPLICABILITY.—Section 906(d)(4) of the Fed-
eral Food, Drug, and Cosmetic Act, as in effect on the
day before the date of enactment of this Act, shall con-
tinue to apply until the effective date of the regulations
required by section 906(d)(4) of such Act, as amended by
subsection (a).

SEC. 105. FEES APPLICABLE TO ALL TOBACCO PRODUCTS.

(a) INCREASE IN TOTAL AMOUNT.—Section
919(b)(1) of the Federal Food, Drug, and Cosmetic Act
(21 U.S.C. 387s(b)(1)) is amended by striking subpara-
graph (K) and inserting the following subparagraphs:
“(K) For fiscal years 2019 and 2020, $712,000,000.

“(L) For fiscal year 2021, $812,000,000.

“(M) For each subsequent fiscal year, the amount that was applicable for the previous fiscal year, increased by the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending June 30 preceding the fiscal year.”.

(b) APPLICABILITY.—

(1) FISCAL YEARS 2020 AND 2021.—Except as amended by subsection (a), for fiscal years 2020 and 2021, section 919 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s) shall apply as in effect on the day before the date of enactment of this Act.

(2) SUBSEQUENT FISCAL YEARS.—The amendments made by subsections (c) through (f) apply beginning with fiscal year 2022.

(c) ALLOCATIONS OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—Paragraph (2) of section 919(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)) is amended to read as follows:
"(2) Allocations of assessment by class of tobacco products.—

(A) In general.—The total user fees assessed and collected under subsection (a) each fiscal year (beginning with fiscal year 2022) with respect to each class of tobacco products to which this chapter applies shall be an amount that is equal to the applicable percentage of each class for the fiscal year multiplied by the amount specified in paragraph (1) for the fiscal year.

(B) Applicable percentage.—

(i) In general.—For purposes of subparagraph (A), the applicable percentage for a fiscal year for each class of tobacco product shall be the percentage determined by dividing—

(II) the product of the gross domestic volume of the class multiplied by the tax rate applicable to the class under section 5701 of the Internal Revenue Code of 1986; and

(II) the sum of the products determined under subclause (I) for all classes of tobacco products.
“(ii) Definition.—For purposes of clause (i), the term ‘gross domestic volume’ means the volume of tobacco products—

“(I) removed (as defined by section 5702 of the Internal Revenue Code of 1986); and

“(II) not exempt from tax under chapter 52 of the Internal Revenue Code of 1986 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).”.

(d) Allocation of Assessment Within Each Class of Tobacco Product.—Section 919(b)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)(4)) is amended by striking “shall be the percentage determined for purposes of allocations under subsections (e) through (h) of section 625 of Public Law 108–357” and inserting “shall be allocated on a pro rata basis among the manufacturers and importers of each class of tobacco products to which this chapter applies based on the percentage share of each manufacturer’s or importer’s share of gross domestic volume within such class on a quarterly basis, based on data for the second preceding quarter”.

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(e) OTHER AMENDMENTS.—Section 919(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)) is amended—

(1) by striking paragraph (5);

(2) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively; and

(3) by amending paragraph (6), as redesignated, to read as follows:

“(6) MEMORANDUM OF UNDERSTANDING; REPORTING.—

“(A) TRANSFER OF INFORMATION.—The Secretary shall request the appropriate Federal agency to enter into a memorandum of understanding that provides for the regular and timely transfer from the head of such agency to the Secretary of all necessary information regarding all tobacco product manufacturers and importers required to pay user fees. The Secretary shall maintain all disclosure restrictions established by the head of such agency regarding the information provided under the memorandum of understanding.

“(B) REPORTING.—

“(i) MANUFACTURER REPORTING.—

The Secretary may require the manufac-
turers and importers of each class of to-
bacco products to which this chapter ap-
plies to submit such information, by such
time, and in such manner, as the Secretary
determines to be necessary to implement
this section.

“(ii) REPORTS TO CONGRESS.—For fiscal year 2020 and each subsequent fiscal
year for which fees are collected under this section, the Secretary shall, not later than
120 days after the end of the respective fiscal year, submit to the Congress finan-
cial and performance reports with respect to such fees.”.

(f) PROHIBITED ACT.—Section 301(q)(1)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
331(q)(1)(B)) is amended by inserting “919(b)(6)(B),” before “or 920”.

SEC. 106. REGULATION OF PRODUCTS CONTAINING ALTERNATIVE NICOTINE.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Commissioner of
Food and Drugs, shall—

(1) not later than 1 year after the date of en-
actment of this Act, issue an interim final rule pro-
viding for the regulation of products containing al-
ternative nicotine under the Federal Food, Drug,
and Cosmetic Act (21 U.S.C. 301 et seq.); and

(2) not later than 2 years after such date of en-
actment, issue a final rule providing for such regula-
tion.

(b) ALTERNATIVE NICOTINE.—In this section, the
term “alternative nicotine” means nicotine that is not
made or derived from tobacco plants and may include nic-
etine that is chemically synthesized, synthesized from re-
combinant genetic technology, or extracted from non-to-
bacco plants.

SEC. 107. UPDATE TO YOUTH TOBACCO PREVENTION PUB-
LIC AWARENESS CAMPAIGNS.

(a) IN GENERAL.—The Secretary of Health and
Human Services shall—

(1) review all public health awareness cam-
paigns of the Department of Health and Human
Services designed to educate at-risk individuals
about the harmful effects of tobacco use, including
the use of e-cigarettes and other electronic nicotine
delivery systems; and

(2) as applicable, modify such campaigns to in-
clude awareness and education materials designed
for individuals who are 18 to 21 years of age.
(b) CONSULTATION.—In carrying out subsection (a),
the Secretary of Health and Human Services may consult
with medical and public health associations and nonprofit
organizations.

SEC. 108. EXEMPTION FROM PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

(a) IN GENERAL.—Section 910(a)(2) of the Federal
Food, Drug, and Cosmetic Act (21 U.S.C. 387j(a)(2)) is
amended—

(1) in subparagraph (A)—

(A) in clause (i)(II), by striking “or”;

(B) in clause (ii), by striking the period at
the end and inserting “; or”; and

(C) by adding at the end the following:

“(iii) subject to subparagraph (C), for
the period beginning on the date of the en-
actment of the Protecting American Lungs
and Reversing the Youth Tobacco Epi-
demic Act of 2020 and ending on Sept-
ember 30, 2028, the tobacco product is a
cigar and—

“(I) is wrapped in whole tobacco
leaf;

“(II) contains a 100-percent leaf
tobacco binder;
“(III) contains primarily long filler tobacco;

“(IV) does not have a characterizing flavor other than tobacco;

“(V) weighs more than 6 pounds per 1000 units;

“(VI) has no filter, tip, or non-tobacco mouthpiece;

“(VII)(aa) is made by combining manually the wrapper, filler, and binder and is capped by hand; or

“(bb) has a homogenized tobacco leaf binder and is made in the United States using human hands to lay the 100-percent leaf tobacco binder onto only one machine that bunches, wraps, and caps each individual cigar; and

“(VIII) has a retail price (after discounts or coupons) per cigar of no less than—

“(aa) for calendar years 2019 and 2020, $12; and

“(bb) for each subsequent calendar year, $12 multiplied by
any percent increase in the Consumer Price Index for all urban consumers (all items; U.S. city average) since calendar year 2020.”; and

(2) by adding at the end the following:

“(C) Determination of applicability.—

“(i) In general.—The Secretary shall, notwithstanding subparagraph (A)(iii) or any determination of substantial equivalence, if any of the conditions specified in clause (ii) are met—

“(I) withdraw any exemption applicable to a tobacco product or products described in such subparagraph;

“(II) require that applications for review under this section be submitted with respect to such product or products; and

“(III) require that manufacturers may only market such tobacco product after the issuance of an order under subsection (c)(1)(A)(i) with respect to such product or products.
“(ii) CONDITIONS.—The conditions specified in this clause are that—

“(I) the Secretary determines that the use of a tobacco product or products described in subparagraph (A)(iii) has resulted in an emerging public health threat;

“(II) data from a National Youth Tobacco Survey (or successor survey) conducted after the date of the enactment of the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020 identifies a rise in youth usage of tobacco products described in section 910(a)(2)(A)(iii); or

“(III) the Secretary determines that a tobacco product or products no longer meets the criteria specified in such subparagraph.”.

(b) NATIONAL ACADEMIES STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall enter into an agreement with the National Academies of Sciences, Engineer-
ing, and Medicine under which the National Acad-
eminies shall conduct a study on—

(A) the public health impact of having to-
bacco products described in subsection
(a)(2)(A)(iii) of section 910 of the Federal
Food, Drug, and Cosmetic Act (21 U.S.C.
387j), as amended by subsection (a), exempt
from premarket review under such section;

(B) the youth usage of such tobacco prod-
ucts; and

(C) the market share of such products.

(2) REPORT.—The agreement under paragraph
(1) shall include a requirement that the National
Academies of Sciences, Engineering, and Medicine
submit to Congress, not later than December 31,
2026, a report on the findings of the study con-
ducted under such paragraph.

SEC. 109. PUBLIC EDUCATION.

Section 906 of the Federal Food, Drug, and Cosmetic
Act (21 U.S.C. 387f) is amended by adding at the end
the following:

“(g) EDUCATION ON TOBACCO PRODUCTS.—

“(1) IN GENERAL.—Beginning not later than 6
months after the date of the enactment of the Pro-
tecting American Lungs and Reversing the Youth
Tobacco Epidemic Act of 2020, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs and in consultation with the Surgeon General of the Public Health Service, shall provide educational materials for health care providers, members of the public, and law enforcement officials, regarding—

“(A) the authority of the Food and Drug Administration with respect to the regulation of tobacco products (including enforcement of such regulation);

“(B) the general processes of the Food and Drug Administration for enforcing restrictions on the manufacture and sale of tobacco products;

“(C) the general enforcement actions the Food and Drug Administration may take to implement the prohibition on characterizing flavors in tobacco products under section 907(a)(1);

“(D) the public health impact of tobacco products with characterizing flavors; and

“(E) other information as the Secretary determines appropriate.
“(2) CONTENT.—Educational materials provided under paragraph (1) may include—

“(A) explanations of key statutory and regulatory terms, including the terms ‘tobacco product’, ‘component parts’, ‘accessories’, ‘constituent’, ‘additive’, ‘tobacco product manufacturer’, and ‘characterizing flavor’;

“(B) an explanation of the Food and Drug Administration’s jurisdiction to regulate tobacco products, including tobacco products with characterizing flavors under section 907(a)(1);

“(C) general educational information related to enforcement tools and processes used by the Food and Drug Administration for violations of the prohibition specified in section 907(a)(1);

“(D) information on the health effects of using tobacco products, including those with the characterizing flavors referred to in section 907(a)(1); and

“(E) information on resources available related to smoking cessation.

“(3) FORMAT.—Educational materials provided under paragraph (1) may be—
“(A) published in any format, including an
internet website, video, fact sheet, infographic,
webinar, or other format, as the Secretary de-
dtermines is appropriate and applicable; and

“(B) tailored for the unique needs of
health care providers, members of the public,
law enforcement officers, and other audiences,
as the Secretary determines appropriate.

“(4) FUNDING.—To carry out this subsection,
there is authorized to be appropriated, and there is
appropriated, out of any funds in the Treasury not
otherwise appropriated, $5,000,000 for each of fiscal
years 2021 through 2025. Funds made available by
the preceding sentence to carry out this subsection
shall be in addition to funds that are derived from
fees under section 919 and are otherwise made avail-
able to carry out this chapter.”.

SEC. 110. REGULATIONS FOR RECORDKEEPING CON-
CERNING TRACKING AND TRACING.

The Secretary of Health and Human Services, acting
through the Commissioner of Food and Drugs, shall pro-
mulgate the regulations required by section 920(b) of the
in accordance with the following schedule:
(1) Not later than 1 year after the date of enactment of this Act, the Secretary shall issue proposed regulations.

(2) Not later than 2 years after the date of enactment of this Act, the Secretary shall promulgate final regulations.

**TITLE II—FEDERAL TRADE COMMISSION**

**SEC. 201. ADVERTISING OF TOBACCO PRODUCTS.**

(a) Advertising of Electronic Nicotine Delivery Systems.—

(1) In general.—It shall be unlawful—

(A) to market, advertise, or promote any electronic nicotine delivery system in a manner that appeals to an individual under 21 years of age; or

(B) to market, advertise, promote, or endorse, or to compensate any person for the marketing, advertising, promotion, or endorsement of, any electronic nicotine delivery system without clearly disclosing that the communication is an advertisement, unless the communication is unambiguously identifiable as an advertisement.

(2) Enforcement by commission.—
(A) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of paragraph (1) shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(B) POWERS OF COMMISSION.—The Commission shall enforce paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such paragraph shall be subject to the penalties and entitlements provided in the Federal Trade Commission Act.

(3) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

(A) IN GENERAL.—If the attorney general of a State has reason to believe a violation of paragraph (1) has occurred or is occurring, the attorney general, in addition to any authority the attorney general may have to bring an action in State court under the law of the State,
may bring a civil action in any court of competent jurisdiction to—

(i) enjoin further such violation by the defendant;

(ii) enforce compliance with such paragraph;

(iii) obtain civil penalties in the same amount as may be obtained by the Commission in a civil action under section 5(m) of the Federal Trade Commission Act (15 U.S.C. 45(m)); or

(iv) obtain damages, restitution, or other compensation on behalf of residents of the State.

(B) NOTICE.—Before filing an action under subparagraph (A), the attorney general of a State shall provide to the Commission a written notice of such action and a copy of the complaint for such action. If the attorney general determines that it is not feasible to provide the notice described in this subparagraph before the filing of the action, the attorney general shall provide written notice of the action and a copy of the complaint to the Commission immediately upon the filing of the action.
(C) AUTHORITY OF FEDERAL TRADE COM-
MISSION.—

(i) IN GENERAL.—On receiving notice
under subparagraph (B) of an action
under subparagraph (A), the Commission
shall have the right—

(I) to intervene in the action;

(II) upon so intervene, to be
heard on all matters arising therein;

and

(III) to file petitions for appeal.

(ii) LIMITATION ON STATE ACTION
WHILE FEDERAL ACTION IS PENDING.—If
the Commission has instituted a civil ac-
tion for violation of paragraph (1) (re-
ferred to in this clause as the "Federal ac-
tion"), no attorney general of a State may
bring an action under subparagraph (A)
during the pendency of the Federal action
against any defendant named in the com-
plaint in the Federal action for any viola-
tion of such paragraph alleged in such
complaint.

(D) RELATIONSHIP WITH STATE-LAW
CLAIMS.—
(i) Preservation of State-law claims.—Nothing in this section shall prevent the attorney general of a State from bringing an action under State law for acts or practices that also violate paragraph (1).

(ii) Assertion in same civil action.—If the attorney general of a State has authority to bring an action under State law for acts or practices that also violate paragraph (1), the attorney general may assert the State-law claim and the claim for violation of such paragraph in the same civil action.

(E) Actions by other state officials.—In addition to civil actions brought by attorneys general under subparagraph (A), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under such subparagraph, subject to the same requirements and limitations that apply under this paragraph to civil actions brought by attorneys general.

(4) Rulemaking authority.—The Commission may promulgate regulations under section 553
of title 5, United States Code, to implement para-
graph (1).

(b) REPORT TO CONGRESS ON TOBACCO PRODUCT
ADVERTISING.—

(1) IN GENERAL.—Not later than 2 years after
the date of the enactment of this Act, and annually
thereafter, the Commission shall submit to Congress
a report relating to each category of products de-
dscribed in paragraph (2) (or a single report a por-
tion of which relates to each such category) that
contains the following:

(A) Information on domestic sales and ad-
vertising and promotional activity by the manu-
ufacturers that have the largest market shares of
the product category.

(B) Such recommendations for legislation
as the Commission may consider appropriate.

(2) PRODUCT CATEGORIES DESCRIBED.—The
categories of products described in this paragraph
are the following:

(A) Cigarettes.

(B) Cigars.

(C) Smokeless tobacco.

(D) Electronic nicotine delivery systems.
(c) **Preservation of Authority.**—Nothing in this section may be construed in any way to limit the Commission's authority under any other provision of law.

(d) **Definitions.**—In this section:

(1) **Cigar.**—The term "cigar" means a tobacco product that—

(A) is not a cigarette; and

(B) is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco.

(2) **Cigarette.**—The term "cigarette" has the meaning given such term in section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387).

(3) **Commission.**—The term "Commission" means the Federal Trade Commission.

(4) **Electronic Nicotine Delivery System.**—The term "electronic nicotine delivery system" means a tobacco product that is an electronic device that delivers nicotine, flavor, or another substance via an aerosolized solution to the user inhaling from the device (including e-cigarettes, e-hookah, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes) and any component, liquid, part, or accessory of such a device, whether or not sold separately.
(5) **ENDORSE.**—The term “endorse” means to communicate an advertising message (including a verbal statement, demonstration, or depiction of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by such party are identical to those of the sponsoring advertiser.

(6) **NICOTINE.**—The term “nicotine” has the meaning given such term in section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387).

(7) **SMOKELESS TOBACCO.**—The term “smokeless tobacco” has the meaning given such term in section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387).

(8) **TOBACCO PRODUCT.**—The term “tobacco product” has the meaning given such term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).
TITLE III—PUBLIC HEALTH PROGRAMS

SEC. 301. OUTREACH TO MEDICALLY UNDERSERVED COMMUNITIES.

Section 399V of the Public Health Service Act (42 U.S.C. 280g–11) is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(B) by inserting after paragraph (3) the following:

“(4) to educate and provide guidance to medically underserved communities, particularly racial and ethnic minority populations, regarding effective evidence-based strategies—

“(A) to prevent tobacco, e-cigarette, and nicotine addiction, including among youth; and

“(B) for smoking cessation, including cessation of the use of menthol-flavored tobacco products, and the cessation of the use of e-cigarettes and electronic nicotine delivery systems;”;

(2) in subsection (d)(1)(B), by inserting “, including chronic diseases related to and caused by tobacco use” after “diseases”; and
(3) in subsection (j), by striking "are author-
ized to be appropriated, such sums as may be nec-
essary to carry out this section for each of fiscal
years 2010 through 2014" and inserting "is author-
ized to be appropriated, and there is appropriated,
out of any funds in the Treasury not otherwise ap-
propriated, $75,000,000 to carry out this section for
each of fiscal years 2021 through 2025".

SEC. 302. DEMONSTRATION GRANT PROGRAM TO DEVELOP

STRATEGIES FOR SMOKING CESSATION IN

MEDICALLY UNSERVED COMMUNITIES.

Part B of title III of the Public Health Service Act
(42 U.S.C. 243 et seq.) is amended by inserting after sec-
tion 317U (42 U.S.C. 247b–23) the following:

"SEC. 317V. DEMONSTRATION GRANT PROGRAM TO DE-

VELOP STRATEGIES FOR SMOKING CES-

SATION IN MEDICALLY UNSERVED COM-

MUNITIES.

"(a) IN GENERAL.—The Secretary, acting through
the Director of the Centers for Disease Control and Pre-
vention, shall establish a demonstration program to award
grants to, or contract with, State, local, or Tribal public
health departments to support—

"(1) the development of improved evidence-

based strategies for smoking cessation, including
cessation of the use of menthol-flavored tobacco products, and the cessation of the use of e-cigarettes and electronic nicotine delivery systems, for populations in medically underserved communities, particularly racial and ethnic minority populations;

“(2) the development of improved communication and outreach tools to reach populations in medically underserved communities, particularly racial and ethnic minority populations, addicted to tobacco products, including e-cigarettes and menthol-flavored tobacco products; and

“(3) improved coordination, access, and referrals to services for tobacco cessation and the cessation of the use of e-cigarettes and electronic nicotine delivery systems, including tobacco cessation products approved by the Food and Drug Administration and mental health and counseling services.

“(b) APPLICATION.—To be eligible to receive a grant under subsection (a), a State, local, or Tribal public health department shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(c) Authorization of Appropriations.—To carry out this section, there is authorized to be appropriated, and there is appropriated, out of any funds in
the Treasury not otherwise appropriated, $75,000,000 for each of fiscal years 2021 through 2025.”.

SEC. 303. PUBLIC AWARENESS, EDUCATION, AND PREVENTION CAMPAIGN.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.), as amended by section 302, is further amended by inserting after section 317V the following new section:

“SEC. 317W. PUBLIC AWARENESS, EDUCATION, AND PREVENTION CAMPAIGN REGARDING TOBACCO.

“(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Surgeon General of the Public Health Service, shall develop and implement a national campaign to educate youth and young adults, parents, clinicians, health professionals, and others about the harms associated with the use by youth and young adults of tobacco products, including e-cigarettes.

“(b) REQUIREMENTS.—The campaign under this section shall—

“(1) be an evidence-based media and public engagement initiative;

“(2) be carried out through competitively bid contracts;
“(3) include the development of culturally and linguistically competent resources that may be tailored for communities with high rates of youth tobacco use;

“(4) be complementary to, and coordinated with, any other Federal efforts; and

“(5) include message testing to identify culturally and linguistically competent and effective messages for behavioral change.

“(c) OPTIONAL COMPONENTS.—The campaign under this section may include—

“(1) the use of—

“(A) television, radio, print, the internet, and other commercial marketing venues; and

“(B) in-person public communications; and

“(2) the award of grants to State, local, and Tribal public health departments to encourage partnerships with community organizations and health care providers to develop and deliver evidence-based strategies to prevent youth tobacco use.

“(d) FUNDING.—To carry out this section, there is authorized to be appropriated, and there is appropriated, out of any funds in the Treasury not otherwise appropriated, $45,000,000 for each of fiscal years 2021 through 2025.”.

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SEC. 304. TOBACCO CESSATION TREATMENT GRANTS TO HEALTH CENTERS.

(a) IN GENERAL.—Section 330 of the Public Health Service Act (42 U.S.C. 254b) is amended—

(1) by redesignating subsections (k) through (r) as subsections (l) through (s), respectively; and

(2) by adding after subsection (j) the following new subsection:

“(k) TOBACCO CESSATION GRANTS.—

“(1) IN GENERAL.—The Secretary may award grants to health centers to provide comprehensive tobacco cessation treatment, including counseling and tobacco cessation therapies.

“(2) FUNDING.—For the purpose of carrying out this subsection, in addition to other amounts available for such purpose, there is authorized to be appropriated, and there is appropriated, out of funds in the Treasury not otherwise appropriated, $125,000,000 for each of fiscal years 2021 through 2025.”.

(b) CONFORMING CHANGES.—Section 330 of the Public Health Service Act (42 U.S.C. 254b) is amended—

(1) in subsection (c)(3)(B), by striking ““(k)(3)(J)” and inserting ““(l)(3)(J)”;

(2) in subsection (e)(1)(B), by striking ““(k)(3)” each place it appears and inserting ““(l)(3)”;

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(3) in subsection (l)(3)(II), as redesignated, by striking “or (p)” and inserting “or (q)”;

(4) in subsection (m), as redesignated—

(A) by striking “(k)(3)” and inserting “(l)(3)”;

(B) by striking “(m)” and inserting “(n)”;

(5) in subsection (q), as redesignated, by striking “(k)(3)(G)” and inserting “(l)(3)(G)”;

(6) in subsection (s)(2)(A), as redesignated—

(A) by striking “(k)(3)” and inserting “(l)(3)”;

(B) by striking “(k)(3)(H)” and inserting “(l)(3)(II)”;

(7) in subsection (s)(3)(I), as redesignated, by striking “(q)(4)” and inserting “(r)(4)”.

(c) TECHNICAL CORRECTIONS.—

(1) Section 330(h)(5)(B) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(B)) is amended by striking “substance abuse” each place it appears and inserting “substance use disorder”.

(2) Subclause (II) of subsection (l)(3)(E)(i), as redesignated, of section 330 of the Public Health Service Act (42 U.S.C. 254b) is amended by moving the indentation 2 ems to the left.
SEC. 305. GRANTS FOR RESEARCH.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following new section:

"SEC. 399V-7. GRANTS FOR RESEARCH ON PREVENTION, AND CESSION, OF THE USE OF TOBACCO PRODUCTS.

(a) IN GENERAL.—The Secretary shall award grants to support—

(1) research to develop and improve effective strategies for prevention, and cessation, of the use of tobacco products, including—

(A) cessation of the use of flavored combustible cigarettes, including menthol-flavored cigarettes;

(B) cessation of the use of e-cigarette products; and

(C) prevention and cessation strategies targeted toward youth; and

(2) research to aid in the development of safe and effective tobacco cessation therapies, including therapies appropriate for populations under the age of 18.

(b) FUNDING.—To carry out this section, there is authorized to be appropriated, and there is appropriated, out of any funds in the Treasury not otherwise appro-
priated, $75,000,000 for each of fiscal years 2021 through 2025.”.

**TITLE IV—NICOTINE OR VAPING ACCESS PROTECTION AND ENFORCEMENT**

**SEC. 401. INCREASING CIVIL PENALTIES APPLICABLE TO CERTAIN VIOLATIONS OF RESTRICTIONS ON SALE AND DISTRIBUTION OF TOBACCO PRODUCTS.**

(a) Penalties.—Subparagraph (A) of section 103(q)(2) of the Family Smoking Prevention and Tobacco Control Act (21 U.S.C. 333 note) is amended to read as follows:

“(A) In general.—The amount of the civil penalty to be applied for violations of restrictions promulgated under section 906(d), as described in paragraph (1), shall be as follows:

“(i) With respect to a retailer with an approved training program, the amount of the civil penalty shall not exceed—

“(I) in the case of the first violation, $0, together with the issuance of a warning letter to the retailer;
“(II) in the case of a second violation within a 12-month period, $500;

“(III) in the case of a third violation within a 24-month period, $1,000;

“(IV) in the case of a fourth violation within a 24-month period, $4,000;

“(V) in the case of a fifth violation within a 36-month period, $10,000; and

“(VI) in the case of a sixth or subsequent violation within a 48-month period, $20,000 as determined by the Secretary on a case-by-case basis.

“(ii) With respect to a retailer that does not have an approved training program, the amount of the civil penalty shall not exceed—

“(I) in the case of the first violation, $500;
“(II) in the case of a second violation within a 12-month period, $1,000;

“(III) in the case of a third violation within a 24-month period, $2,000;

“(IV) in the case of a fourth violation within a 24-month period, $4,000;

“(V) in the case of a fifth violation within a 36-month period, $10,000; and

“(VI) in the case of a sixth or subsequent violation within a 48-month period, $20,000 as determined by the Secretary on a case-by-case basis.”.

(b) APPLICABILITY.—The amendment made by subsection (a) applies with respect to a violation of a restriction promulgated under section 906(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d)(1)), as described in section 103(q)(1) of the Family Smoking Prevention and Tobacco Control Act (21 U.S.C. 333 note), occurring on or after the day that is 6 months after the date of enactment of this Act. The penalties specified in
section 103(q)(2)(A) of the Family Smoking Prevention
and Tobacco Control Act (21 U.S.C. 333 note), as in ef-
fect on the day before the date of enactment of this Act,
shall continue to apply to violations occurring before the
day specified in the preceding sentence.

SEC. 402. STUDY AND REPORT ON E-CIGARETTES.

Not later than 5 years after the date of enactment
of this Act, the Comptroller General of the United States
shall—

(1) complete a study on—

(A) the relationship of e-cigarettes to to-
bacco cessation;

(B) the perception of the harmful effects of
e-cigarettes; and

(C) the effects of secondhand exposure to
smoke from e-cigarettes; and

(2) submit to the Congress a report on the re-
sults of such study, including recommendations
based on such results.

TITLE V—EXCISE TAX ON
NICOTINE USED IN VAPING, ETC.

SEC. 501. IMPOSITION OF TAX ON NICOTINE FOR USE IN
VAPING, ETC.

(a) IN GENERAL.—Section 5701 of the Internal Rev-
enue Code of 1986 is amended by redesignating subsection
(h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) NICOTINE.—On taxable nicotine, manufactured in or imported into the United States, there shall be imposed a tax equal to the dollar amount specified in section 5701(b)(1) (or, if greater, $50.33) per 1,810 milligrams of nicotine (and a proportionate tax at the like rate on any fractional part thereof).”.

(b) TAXABLE NICOTINE.—Section 5702 of such Code is amended by adding at the end the following new subsection:

“(q) TAXABLE NICOTINE.—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the term ‘taxable nicotine’ means any nicotine which has been extracted, concentrated, or synthesized.

“(2) EXCEPTION FOR PRODUCTS APPROVED BY FOOD AND DRUG ADMINISTRATION.—Such term shall not include any nicotine if the manufacturer or importer thereof demonstrates to the satisfaction of the Secretary of Health and Human Services that such nicotine will be used in—

“(A) a drug—

“(i) that is approved under section 505 of the Federal Food, Drug, and Cos-
metic Act or licensed under section 351 of
the Public Health Service Act; or
“(ii) for which an investigational use
exemption has been authorized under sec-
tion 505(i) of the Federal Food, Drug, and
Cosmetic Act or under section 351(a) of
the Public Health Service Act; or
“(B) a combination product (as described
in section 503(g) of the Federal Food, Drug,
and Cosmetic Act), the constituent parts of
which were approved or cleared under section
505, 510(k), or 515 of such Act.
“(3) COORDINATION WITH TAXATION OF OTHER
TOBACCO PRODUCTS.—Cigars, cigarettes, smokeless
tobacco, pipe tobacco, and roll-your-own tobacco
shall not be treated as containing taxable nicotine
solely because the nicotine naturally occurring in the
tobacco from which such product is manufactured
has been concentrated during the ordinary course of
manufacturing.”.
(c) TAXABLE NICOTINE TREATED AS A TOBACCO
PRODUCT.—Section 5702(c) of such Code is amended by
striking “and roll-your-own tobacco” and inserting “roll-
your-own tobacco, and taxable nicotine”.
(d) **Manufacturer of Taxable Nicotine.**—Section 5702 of such Code, as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(r) **Manufacturer of Taxable Nicotine.**—

"(1) **In general.**—Any person who extracts, concentrates, or synthesizes nicotine shall be treated as a manufacturer of taxable nicotine (and as manufacturing such taxable nicotine).

"(2) **Application of rules related to manufacturers of tobacco products.**—Any reference to a manufacturer of tobacco products, or to manufacturing tobacco products, shall be treated as including a reference to a manufacturer of taxable nicotine, or to manufacturing taxable nicotine, respectively."

(e) **Effective Date.**—

(1) **In general.**—The amendments made by this section shall apply to articles manufactured or imported in calendar quarters beginning more than 90 days after the date of the enactment of this Act.

(2) **Transition rule for permit and bond requirements.**—A person which is lawfully engaged in business as a manufacturer or importer of taxable nicotine (within the meaning of subchapter
A of chapter 52 of the Internal Revenue Code of 1986, as amended by this section) on the date of the enactment of this Act, first becomes subject to the requirements of subchapter B of chapter 52 of such Code by reason of the amendments made by this section, and submits an application under such subchapter B to engage in such business not later than 90 days after the date of the enactment of this Act, shall not be denied the right to carry on such business by reason of such requirements before final action on such application.

TITLE VI—FURTHER HEALTH INVESTMENTS

SEC. 601. WAIVING MEDICARE COINSURANCE FOR COLORECTAL CANCER SCREENING TESTS.

Section 1833(a) of the Social Security Act (42 U.S.C. 1395l(a)) is amended—

(1) in the second sentence, by striking “section 1834(0)” and inserting “section 1834(o)”;

(2) by moving such second sentence 2 ems to the left; and

(3) by inserting the following third sentence following such second sentence: “For services furnished on or after January 1, 2024, paragraph (1)(Y) shall apply with respect to a colorectal cancer screening
test regardless of the code that is billed for the es-

tablishment of a diagnosis as a result of the test, or

for the removal of tissue or other matter or other

procedure that is furnished in connection with, as a

result of, and in the same clinical encounter as the

screening test.”.

SEC. 602. SAFE HARBOR FOR HIGH DEDUCTIBLE HEALTH

PLANS WITHOUT DEDUCTIBLE FOR CERTAIN

INHALERS.

(a) IN GENERAL.—Section 223(c)(2)(C) of the Inter-

nal Revenue Code of 1986 is amended—

(1) by striking “for preventive care” and insert-

ing “for one or more of the following:

“(i) Preventive care”, and

(2) by adding at the end the following new

clause:

“(ii) Inhalers or nebulizers for treat-

ment of any chronic lung disease (and any

medicine or drug which is delivered

through such inhaler or nebulizer for treat-

ment of such disease).”.

(b) CONFORMING AMENDMENT.—The heading for

section 223(c)(2)(C) of such Code is amended by striking

“PREVENTIVE CARE DEDUCTIBLE” and inserting “CER-

TAIN DEDUCTIBLES”.
(c) **Effective Date.**—The amendments made by this section shall apply to months beginning after the date of the enactment of this Act.


Attest: CHERYL L. JOHNSON,

*Clerk.*
Item B-2
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: September 8, 2020
SUBJECT: H.R. 7197 - The Restaurant Act of 2020
ATTACHMENTS: 1. Summary Memo – H.R. 7197
                2. Bill Text – H.R. 7197

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

H.R. 7197 - The Restaurant Act of 2020 (H.R. 7197) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language. This item is being presented to the City Council Liaison/Legislative/Lobby Committee for consideration as various members of the City Council and the community have expressed an interest in aiding businesses who have seen a decrease in revenue during COVID-19. H.R. 7197 would establish a new $120 billion grant program – Restaurant Stabilization Grants – to provide relief to independent restaurants through 2020.

The City’s federal lobbyist, David Turch & Associates, provided a summary memo for H.R. 7197 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of H.R. 7197, the Liaisons may recommend the following actions:

1) Support H.R. 7197;
2) Support if amended H.R. 7197;
3) Oppose H.R. 7197;
4) Oppose unless amended H.R. 7197;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on H.R. 7197, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
Representative Earl Blumenauer (D-OR) introduced H.R. 7197, the Restaurant Act, on June 15, 2020. The legislation establishes a new $120 billion grant program – Restaurant Stabilization Grants – to provide relief to independent restaurants through 2020. The bill has secured 182 Democratic cosponsors including Representative Ted Lieu (D-CA). H.R. 7197 has been referred to the House Ways and Means Committee, the Budget Committee and the Financial Services Committee.

On the Senate side, Republican Senator Roger Wicker of Mississippi and Democratic Senator Kyrsten Sinema of Arizona introduced a related bill – similar to the House bill but different in one very significant respect, which has garnered bipartisan support from 27 cosponsors including Senators Dianne Feinstein, Kamala Harris Lindsey Graham (R-SC) and Chuck Grassley (R-IA). Unlike the House bill, S.4012 includes restaurants and food eateries that are part of larger chains on the rationale that restaurants, irrespective of their business model, are all facing the same dire, long-term challenges. S.4012 has been referred to the Senate Finance Committee.

**H.R. 7197 SUMMARY:**

- Grants will be available to food service or drinking establishments, including caterers, that are not publicly traded or part of a chain with 20 or more locations doing business under the same name;

- Grant values will cover the difference between revenues from 2019 and projected revenues through 2020;

- Paycheck Protection Program or Economic Injury Disaster Loan funding recipients must subtract funds received that do not need to be paid back from the maximum Restaurant Stabilization Grant value;

- Restaurant Stabilization Grants do not need to be paid back and funding is made available through 2020;

- Eligible expenses include: payroll (not including employee compensation exceeding $100,000/year), benefits, mortgage, rent, utilities, maintenance, supplies (including protective equipment and cleaning materials), food, debt obligations to suppliers, and any other expenses deemed essential by the Secretary of the Treasury;
• Recipients must certify that current economic conditions make the grant request necessary, that the funds will be used to retain workers, maintain payroll, and make other payments (as specified above), and that the recipient is only applying for and would only receive one grant;

• If a restaurant permanently ceases operations before the end of 2020, unspent funds must be returned. If the grant award exceeds the actual end-of-year revenues the grant is converted to a loan with a 10-year term at 1% interest;

• The first 14 days of funds will only be made available to restaurants with annual revenues of $1.5 million or less to target local small restaurants, particularly those that are women, veteran, or minority-owned and operated eligible entities that are owned or operated by women or people of color; and

• The Treasury Department is tasked with administering the program.

SUPPORT

The Independent Restaurant Coalition (IRC) supports H.R. 7197 as currently drafted. The National Restaurant Association has supported a bigger $240 billion Restaurant Fund that would include chains and franchisees.

Arguments for adoption of H.R. 7197 include:

  o The COVID-19 pandemic has damaged every sector of the economy, but none more than independent restaurants who employ 11 million workers;

  o Restaurants are the beating heart of a community but the COVID-19 pandemic is putting their survival in jeopardy.

  o In April alone, 5.5 million restaurant workers lost their jobs, accounting for 27% of total job losses in the month;

  o There are approximately 500,000 independent restaurants in the United States, which account for approximately 76% of the 658,000 total restaurants and bars in the country;

  o According to a recent Independent Restaurant Coalition study, about 5.9 million restaurant jobs (an estimated 4.5 million of which are from independent restaurants) have vanished within a matter of weeks—the most of any industry and nearly double the figure from the next most affected industry.

  o Independent restaurants are more at risk of permanently going out of business due to the pandemic because consumer spending at these establishments has been disproportionately affected and they lack the same access to capital markets than chain restaurants.

  o Restaurants are facing months of massive revenue losses due to government mandated social distancing, rising costs of supplies, new expenses for personal protective equipment, and a decrease in the public’s willingness to dine out;

  o Previous efforts to help small businesses such as the Paycheck Protection Program are too restrictive for restaurants and do not address their specific challenges;

  o According to the Independent Restaurant Association, the Stabilization Fund will generate at least $183 billion in primary benefits and $65 billion in secondary benefits—more than double the amount of the proposed grants.
OPPOSITION

With food businesses making up a significant part of franchising, the International Franchise Association (IFA) has raised concerns with members of Congress that the House version of the Restaurant Act contains language that excludes franchisees from participating in the Restaurant Stabilization Fund, thereby discriminating against franchise restaurants.

In a letter to the Senate sponsors, IFA wrote, “We encourage the U.S. House to follow your leadership and eliminate franchise discrimination from H.R. 7197, which discriminates against franchise owners by disallowing a single-unit franchise owner of a sandwich shop one side of the street from accessing relief while the non-franchised sandwich shop on the other side of the street is eligible.” The IFA also urged the sponsors of the bill to include other affected industries, such as hotels, salons, gyms in their proposal or in future proposals.
Attachment 2
116TH CONGRESS
2D SESSION

H. R. 7197

To establish a $120,000,000,000 Restaurant Revitalization Fund to provide structured relief to food service or drinking establishments through December 31, 2020, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2020

Mr. BLUMENAUER (for himself, Mr. FITZPATRICK, Ms. BONAMICI, Mr. EVANS, Ms. KUSTER of New Hampshire, Mr. PANETTA, Ms. PINGREE, Mr. SMITH of Washington, Mr. WELCH, and Ms. WILD) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Ways and Means, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To establish a $120,000,000,000 Restaurant Revitalization Fund to provide structured relief to food service or drinking establishments through December 31, 2020, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Real Economic Sup-
5 port That Acknowledges Unique Restaurant Assistance
1 Needed To Survive Act of 2020” or the “RESTAURANTS Act of 2020”.

3 SEC. 2. DEFINITIONS.

4 In this Act:

5 (1) COVERED PERIOD.—The term “covered period” means the period beginning on February 15, 2020, and ending on December 31, 2020.

6 (2) ELIGIBLE ENTITY.—The term “eligible entity”—

7 (A) means a restaurant, food stand, food truck, food cart, caterer, saloon, inn, tavern, bar, lounge, or other similar place of business—

8 (i) in which the public or patrons assemble for the primary purpose of being served food or drink; and

9 (ii) that, as of March 13, 2020, is not part of a chain or franchise with not less than 20 locations doing business under the same name, regardless of the type of ownership of the locations; and

10 (B) does not include an entity described in subparagraph (A) that is—

11 (i) publicly traded, including a subsidiary or affiliate thereof; or
(ii) part of a State or local govern-
ment facility, not including an airport.

(3) FUND.—The term “Fund” means the Re-
taurant Revitalization Fund established under sec-
tion 3.

(4) PAYROLL COSTS.—The term “payroll costs”
has the meaning given the term in section
7(a)(36)(A) of the Small Business Act (15 U.S.C.
636(a)(36)(A)).

(5) SECRETARY.—The term “Secretary” means
the Secretary of the Treasury.

SEC. 3. RESTAURANT REVITALIZATION FUND.

(a) IN GENERAL.—There is established in the Treas-
ury of the United States a fund to be known as the Re-
taurant Revitalization Fund.

(b) APPROPRIATIONS.—

(1) IN GENERAL.—There is appropriated to the
Fund, out of amounts in the Treasury not otherwise
appropriated, $120,000,000,000, to remain available
until December 31, 2020.

(2) REMAINDER TO TREASURY.—Any amounts
remaining in the Fund after December 31, 2020,
shall be deposited in the general fund of the Treas-
ury.
(c) USE OF FUNDS.—The Secretary shall use amounts in the Fund to make grants described in section 4.

SEC. 4. RESTAURANT REVITALIZATION GRANTS.

(a) IN GENERAL.—The Secretary shall award grants to eligible entities in the order in which the application is received by the Secretary.

(b) REGISTRATION.—The Secretary shall register each grant awarded under this section using the employer identification number of the eligible entity.

(c) APPLICATION.—

(1) IN GENERAL.—An eligible entity desiring a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(2) CERTIFICATION.—An eligible entity applying for a grant under this section shall make a good faith certification—

(A) that the uncertainty of current economic conditions makes necessary the grant request to support the ongoing operations of the eligible entity;

(B) acknowledging that funds will be used to retain workers, maintain payroll, and for
other allowable expenses described in subsection (e);

(C) that the eligible entity does not have an application pending for a grant under subsection (a)(36) or (b)(2) of section 7 of the Small Business Act (15 U.S.C. 636) for the same purpose and duplicative of amounts applied for or received under this section; and

(D) during the covered period, that the eligible entity has not received amounts under subsection (a)(36) or (b)(2) of section 7 of the Small Business Act (15 U.S.C. 636) for the same purpose and duplicative of amounts applied for or received under this section.

(3) HOLD HARMLESS.—An eligible entity applying for a grant under this section shall not be ineligible for a grant if the eligible entity is able to document—

(A) an inability to rehire individuals who were employees of the eligible entity on February 15, 2020; and

(B) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.
(d) PRIORITY IN AWARDING GRANTS.—During the initial 14-day period in which the Secretary awards grants under this section, the Secretary shall—

(1) prioritize awarding grants to marginalized and underrepresented communities, with a focus on women and minority-owned and operated eligible entities; and

(2) only award grants to eligible entities with annual revenues of less than $1,500,000.

(e) GRANT AMOUNT.—

(1) DETERMINATION OF GRANT AMOUNT.—

(A) IN GENERAL.—The amount of a grant made to an eligible entity under this section shall be based on the difference in revenues or estimated revenues of the eligible entity during a calendar quarter in 2020 as compared to the same calendar quarter in 2019.

(B) VERIFICATION.—An eligible entity shall submit to the Secretary such revenue verification documentation as the Secretary may require to determine the amount of a grant under subparagraph (A).

(C) REPAYMENT.—Any amount of a grant made under this section to an eligible entity based on estimated revenues in a calendar quar-
ter in 2020 that is above the actual revenues of
the eligible entity during that calendar quarter
shall be converted to a loan that has—

(i) an interest rate of 1 percent; and

(ii) a maturity date of 10 years begin-
nning on January 1, 2021.

(2) Reduction based on PPP forgiveness
or EIDL Emergency Grant.—If an eligible entity
has, at the time of application for a grant under this
section, received an emergency grant under section
1110(e) of the CARES Act (Public Law 116–136)
or loan forgiveness under section 1106 of such Act
related to expenses incurred during the covered pe-
period, the maximum amount of a grant awarded to
the eligible entity under this section shall be reduced
by the amount of funds expended by or forgiven for
the eligible entity for those expenses using amounts
received under such section 1110(e) or forgiven
under such section 1106.

(3) Limitation.—An eligible entity may not re-
ceive more than 1 grant under this section.

(f) Use of Funds.—

(1) In general.—During the covered period,
an eligible entity that receives a grant under this
section may use the grant funds for—
(A) payroll costs;

(B) payments of principal or interest on
any mortgage obligation;

(C) rent payments, including rent under a
lease agreement;

(D) utilities;

(E) maintenance, including construction to
accommodate outdoor seating;

(F) supplies, including protective equip-
ment and cleaning materials;

(G) food and beverage;

(H) debt obligations to suppliers that were
incurred before the covered period; and

(I) any other expenses that the Secretary
determines to be essential to maintaining the el-
igible entity.

(2) RETURNING FUNDS.—If an eligible entity
that receives a grant under this section permanently
ceases operations on or before December 31, 2020,
the eligible entity shall return to the Treasury any
funds that the eligible entity did not use for the al-
lowable expenses under paragraph (1).

(3) CONVERSION TO LOAN.—Any grant
amounts received by an eligible entity under this sec-
tion that are unused after December 31, 2020, shall
be immediately converted to a loan with—

(A) an interest rate of 1 percent; and

(B) a maturity date of 10 years.

(g) TAXABILITY.—For purposes of the Internal Rev-
enue Code of 1986—

(1) the amount of a grant awarded to an eligi-
ble entity under this section shall be excluded from
the gross income of the eligible entity;

(2) no deduction shall be denied or reduced, no
tax attribute shall be reduced, and no basis increase
shall be denied, by reason of the exclusion from
gross income provided by subsection; and

(3) an eligible entity that receives a grant under
this section shall not be eligible for the credit de-
scribed in section 2301 of the CARES Act (Public

(h) REGULATIONS.—Not later than 15 days after the
date of enactment of this Act, the Secretary shall issue
regulations to carry out this section without regard to the
notice and comment requirements under section 553 of
title 5, United States Code.

(i) APPROPRIATIONS FOR STAFFING AND ADMINIS-
TRATIVE EXPENSES.—
(1) In general.—There is appropriated to the Secretary, out of amounts in the Treasury not otherwise appropriated, $300,000,000, to remain available until December 31, 2020, for staffing and administrative expenses related to administering grants awarded under this section.

(2) Set aside.—Of amounts appropriated under paragraph (1), $60,000,000 shall be allocated for outreach to traditionally marginalized and underrepresented communities, with a focus on women, veteran, and minority-owned and operated eligible entities, including the creation of a resource center targeted toward these communities.

Sec. 5. Emergency Designation.

(a) In general.—The amounts provided by this Act are designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 933(g)).

(b) Designation in Senate.—In the Senate, this Act is designated as an emergency requirement pursuant to section 4112(a) of H. Con. Res. 71 (115th Congress), the concurrent resolution on the budget for fiscal year 2018.
Item B-3
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

H.R. 7671, the Small Business Comeback Act (H.R. 7671) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language. This item is being presented to the City Council Liaison/Legislative/Lobby Committee for consideration as various members of the City Council and the community have expressed an interest in aiding businesses who have seen a decrease in revenue during COVID-19. H.R. 7671 would create a Small Business Recovery Fund intended to supplement the Paycheck Protection Program and other provisions of the CARES Act passed this spring.

The City's federal lobbyist, David Turch & Associates, provided a summary memo for H.R. 7671 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of H.R. 7671, the Liaisons may recommend the following actions:

1) Support H.R. 7671;
2) Support if amended H.R. 7671;
3) Oppose H.R. 7671;
4) Oppose unless amended H.R. 7671;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on H.R. 7671, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
TO: Cindy Owens, Policy and Management Analyst  
City of Beverly Hills

FROM: Jamie Jones  
Jamie.jones@davidschur.com  
202-543-3744

DATE: August 27, 2020

RE: H.R. 7671, the Small Business Comeback Act

Representatives Filemon Vela (D-TX) and Lance Gooden (R-TX), introduced H.R. 7671, the Small Business Comeback Act, on July 20, 2020. The legislation would create a Small Business Recovery Fund intended to supplement the Paycheck Protection Program and other provisions of the CARES Act passed this spring. While 60 percent of PPP money must be spent on wages, the new fund is designed to be more flexible by providing grants that can be used to pay rent, state or local taxes, certain debt obligations and employee benefits such as health care.

Sponsors of the measure argue that it improves upon the framework used in the Paycheck Protection Program because it is designed to provide greater freedom and flexibility to the businesses who were harmed by mandated closures. In addition, the fund would have a simplified online application offering an immediate decision and direct deposit of funds within 15 days, addressing complaints that earlier programs were complicated and often took too long to get a response. The bill, moreover, prioritize support for businesses that serve rural and low- and moderate-income communities and women- and minority-owned businesses. H.R. 7671 is pending before the House Financial Services Committee.

The Small Business Comeback Act would:

- Offset operating expenses for small businesses most impacted by COVID-19, supporting their ability to retain and rehire employees, with benefits, and provide resources to help businesses stay open or reopen operations.
- Establish eligibility requirements that encourage businesses to retain employees exposed or ill from COVID-19, at full compensation and benefits.
- Complement business assistance provided under the CARES Act.
- Prioritize compensation payment for businesses operating in low- and moderate-income communities, minority- and women-owned businesses, and businesses most impaired by COVID-19.
- Create a streamlined relief fund operated by a Special Administrator appointed by the Secretary of the Treasury.
- Establish a robust process for filing an application, determining adequate compensation, payment, and auditing.
- Provide strong oversight and auditing by the Treasury Secretary and a Special Inspector General, with accountability to a Congressional Oversight Board.
- The maximum amount of recovery compensation an applicant may receive shall be the lesser of their average payment for total monthly expenses or $50 million.
- Among other requirements, an eligible entity must (1) be in an impaired sector as defined by the administrator; (2) have significant operations in, and a majority of its employees
based in, the United States; and (3) continue to pay salaries or wages to employees who tested positive for COVID-19 or were exposed to COVID-19 in the workplace. Allowable uses of recovery compensation include (1) payroll costs; (2) costs related to the continuation of group health care benefits; (3) insurance premiums; (4) paycheck protection loan and economic injury disaster loan repayment obligations; and (5) federal, state, and local tax obligations.

**SUPPORT:**

The bill has been endorsed by over 150 organizations including the International Franchise Associations (IFA), American Hotel and Lodging Association (AHLA) and a host of local chambers of commerce chapters including:


**OPPOSITION:**

I have not found any organized opposition to this bill either from members of Congress or from special interest groups.
Attachment 2
116TH CONGRESS  2D SESSION  

H. R. 7671

To provide for the establishment of a COVID–19 Small Business Recovery Fund, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2020

Mr. VELA (for himself and Mr. GOODEN) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To provide for the establishment of a COVID–19 Small Business Recovery Fund, and for other purposes.

1  Be it enacted by the Senate and House of Representa-
2  tives of the United States of America in Congress assembled,
3  SECTION 1. SHORT TITLE.
4  This Act may be cited as the “Small Business Come-
5  back Act”.
6  SEC. 2. DEFINITIONS.
7  In this Act, the following definitions apply:
8  (1) APPLICANT.—The term “applicant” means
9  a business filing an application for recovery com-
10  pensation under this Act.
(2) BUSINESS.—The term “business” is intended broadly to refer to any type of for-profit business concern, nonprofit organization, veteran’s organization, or Tribal business concern, and shall include individuals who operate under a sole proprietorship or as an independent contractor, and eligible self-employed individuals.

(3) COLLATERAL SOURCE.—The term “collateral source” means all compensation received by the applicant as a result of the losses for which the applicant is seeking compensation under this Act, including payments by Federal, State, or local governments, related to losses arising from the COVID–19 pandemic.


(5) ELIGIBLE APPLICANTS.—The term “eligible applicants” means any type of for-profit business concern, nonprofit organization, veteran’s organization, or Tribal business concern, and shall include individuals who operate under a sole proprietorship or as an independent contractor, and eligible self-employed individuals.
(6) **Eligible self-employed individual.**—
The term “eligible self-employed individual” has the
meaning given the term in section 7002(b) of the
Families First Coronavirus Response Act (Public

(7) **Financial institution.**—The term “fi-
nancial institution” means any institution the busi-
ness of which is engaging in financial activities as
described in section 4(k) of the Bank Holding Com-
pany Act (12 U.S.C. 1843(k)).

(8) **Low-to-moderate income community.**—
The term “low-to-moderate income community”
means a census tract where the annualized family
income of the households or residents in the census
tract are below 80 percent of the HUD median in-
come for the county where the census tract is lo-
cated.

(9) **Minority-owned business.**—The term
“minority-owned business” shall have the same
meaning given the term under section 342(g)(4) of
the Dodd-Frank Wall Street Reform and Consumer
Protection Act (12 U.S.C. 5452(g)(4)).

(10) **Secretary.**—The term “Secretary”
means the Secretary of the Treasury.
(11) **SPECIAL ADMINISTRATOR.**—The term “Special Administrator” means the Special Administrator appointed under this Act.

(12) **STATE.**—The term “State” means any State of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(13) **UNITED STATES.**—The term “United States” means the several States and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

(14) **WOMEN-OWNED BUSINESS.**—The term “women-owned business” shall have the same meaning given the term under section 342(g)(6) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5452(g)(6)).

**SEC. 3. PURPOSE.**

(a) It is the purpose of this Act to ensure domestic economic recovery from the COVID–19 pandemic by ensuring that businesses in impaired sectors can resume
their function as strong engines of the economy and emp-

loyers by—

(1) offsetting operating expenses for businesses
that are partially or completely shut down as a re-

sult of COVID–19 related closures, and supporting

employers’ ability to retain employees and rehire em-

ployees laid off as a result of the COVID–19 pan-
demic;

(2) encourage businesses to reopen by providing

them the necessary assistance and resources to sur-

vive the COVID–19 pandemic;

(3) assisting employees of eligible employers

who have contracted or have been exposed during

their employment to COVID–19, who are unable to

work and who would otherwise not be eligible for as-

sistance;

(4) providing support for small businesses and

women- and minority-owned businesses; and

(5) providing assistance in a manner that com-

plements the assistance programs established under

the Coronavirus Aid, Relief, and Economic Security

Act (Public Law 116–136).

(b) Any funds paid to an applicant under this Act
shall be used exclusively for the purpose of domestic eco-

nomic recovery as set forth in subsection (a).
(c) **PRIORITIZATION.**—The Special Administrator shall prioritize compensation payments under this Act, based on—

(1) the level of impairment a business is experiencing as a result of the COVID–19 pandemic;

(2) whether the business operates in a rural or low-to-moderate income community, as determined by the Special Administrator;

(3) whether the business is a women-owned business or a minority-owned business; and

(4) whether the business is a small business, including an independently owned franchise, as determined by the Special Administrator.

**SEC. 4. ADMINISTRATION.**

(a) **IN GENERAL.**—The Secretary shall appoint a Special Administrator on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, or public administration, and acting through such Special Administrator, shall—

(1) administer the recovery compensation program established under this Act;

(2) promulgate all procedural and substantive rules for the administration of this Act; and
(3) employ and supervise hearing officers and other administrative personnel to perform the duties of the Special Administrator under this Act.

(b) RECOVERY COMPENSATION SERVICES.—To the extent the Special Administrator determines is necessary to implement the provisions of this Act in a timely manner, the Special Administrator is authorized to contract with third parties to review business applications, recommend compensation determinations, arrange payments, and perform audits on behalf of the Special Administrator.

Any third party contracting to provide recovery compensation services pursuant to this subsection shall be compensated on a cost basis pursuant to guidelines established by the Special Administrator in consultation with the Oversight Board.

(c) LIMITATION OF LIABILITY.—

(1) The provisions of this Act and the services provided under subsection (b) shall be enforced by the Secretary. Any party contracting with the Special Administrator to assist in recovery compensation services pursuant to subsection (b) shall not bear any liability for the performance of such duties except for gross negligence, willful misconduct, or fraud.
(2) There shall be no liability imposed on any party for not contracting with the Special Administrator as described in paragraph (1). Any financial institution not contracting with the Special Administrator that provides assistance or information to an applicant with respect to the compensation program established under this Act without receiving compensation for providing such assistance or information shall not bear any liability for the provision of such assistance or information except for gross negligence, willful misconduct, or fraud, provided that nothing in this subsection shall be construed to alter any duty or obligation owed by such party to an applicant under otherwise applicable State or Federal law or by agreement with the applicant.

(3) State laws or regulations conflicting with the directions of the Special Administrator pursuant to subsection (b) are preempted to the extent of such actual or implied conflict.

(4) **GOVERNING LAW AND JURISDICTION.**—The district courts of the United States shall have original and exclusive jurisdiction over any action arising out of a contract described in subsection (b).

(d) **CONFIDENTIALITY.**—
(1) Retention of Privilege.—The submission of any nonpublicly available data and information by an applicant to the Special Administrator under this Act shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(2) Continued Application of Prior Confidentiality Agreements.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between an applicant and any third party which provides an applicant’s nonpublicly available data or information to the Special Administrator, regarding the privacy or confidentiality of any data or information in the possession of the third party, shall continue to apply to such data or information after the data or information has been provided to the Special Administrator under this Act.

(3) The Special Administrator, and any third party which obtains an applicant’s nonpublicly available data or information, is prohibited from sharing or selling such information except as required by
law. The Special Administrator or third party may share information as necessary to meet the obligations under this Act, so long as the third party agrees in writing to maintain the confidentiality of the information.

(e) Audit Authority.—

(1) In general.—The Secretary, and the Special Inspector General established by this Act, shall have access, for purposes of audit, to the records and other pertinent documents of the Special Administrator, any third party described in subsection (b), and any applicant, including with respect to collateral source records and documents, used in carrying out this Act.

(f) Reports.—

(1) In general.—The Special Administrator shall submit weekly reports to Congress that shall include—

(A) a listing of the eligible businesses receiving recovery compensation under this Act;

(B) a listing of each contract the Special Administrator made with third-party service providers under subsection (b), including information with respect to the services being provided under such contracts;
(C) a listing of all outstanding appeals of
compensation determinations; and

(D) an estimate of the total amount of re-
covery compensation payments made under this
Act that is current as of the date on which the
report is submitted.

(2) TIMING.—The reports required under this
subsection shall be submitted not later than 7 cal-
endar days after the date that recovery compensa-
tion is first paid under this Act, and every 7 cal-
endar days thereafter.

(g) SPECIAL ADMINISTRATOR.—The Special Admin-
istrator shall be subject to the prohibition on acts affecting
personal financial interest under section 208 of title 18,
United States Code, and shall be subject to limitations on
outside employment and outside income pursuant to title
App.).

(h) AUTHORIZATION OF APPROPRIATIONS.—There
are authorized to be appropriated such sums as may be
necessary to pay the administrative and support costs for
the Special Administrator (including the contracts de-
scribed in subsection (b)) in carrying out this Act.
SEC. 5. DETERMINATION OF ELIGIBILITY FOR RECOVERY

COMPENSATION.

(a) FILING OF APPLICATION FOR RECOVERY COMPENSATION CLAIM.—

(1) IN GENERAL.—An applicant may file an application for recovery compensation under this Act with the Special Administrator. Except as provided under paragraph (3), the application for recovery compensation shall be on the form developed under paragraph (2) and shall state the factual basis for eligibility for recovery compensation and the amount of recovery compensation sought.

(2) APPLICATION FORM.—

(A) IN GENERAL.—

(i) The Special Administrator shall develop an application form that shall be simple to file and audit for fraud that applicants shall use when submitting applications under paragraph (1).

(ii) The Special Administrator shall ensure that the form described in clause (i) can be filed electronically, if determined to be practicable.

(B) MULTIPLE LANGUAGES.—The form developed under subparagraph (A) shall be made available in English and Spanish, and the
Special Administrator may prioritize translation of the form into additional languages in order to serve the broadest pool of applicants.

(C) CONTENTS.—The form developed under subparagraph (A) shall require that an applicant disclose all known collateral compensation, and shall request information on the applicant's impairment that the Special Administrator deems necessary, including information relating to the applicant's expenses, payroll, and loss of revenue due to the COVID–19 pandemic.

(D) EXPENSES, PAYROLL, AND LOST REVENUE.—In developing the contents of the form under subparagraph (C), the Special Administrator may consider requiring information on payroll, operating expenses, lost revenue, and payments to employees with potential COVID–19-related illness. Such information required may include—

(i) the average total monthly payments by the applicant for payroll, payroll support (including paid sick, medical, or family leave, and costs related to the continuation of group health care benefits dur-
ing those periods of leave) during the 18-month period before March 13, 2020, except that, in the case of an applicant that is a seasonal employer, as determined by the Special Administrator, the average total monthly payments for payroll and payroll support shall be for the period beginning March 1, 2019, and ending June 30, 2019;

(ii) the average total monthly payments by the applicant for mortgage payments, rent payments, utilities, insurance payments, and payments on any debt obligations incurred prior to July 1, 2020, during the 18-month period before July 1, 2020;

(iii) to the extent that the Special Administrator is making available recovery compensation for lost revenue, the average monthly revenue, including unpaid accounts receivable, that does not include net profits for the applicant during the 18-month period before the date on which the application for recovery compensation is submitted; and
(iv) the wages, salary, or other payments made to employees who are unable to work because they tested positive for or were exposed to COVID–19.

(E) CONFIDENTIAL BUSINESS INFORMATION.—To the extent the information in the application is non-public information, the contents shall be deemed Confidential Business Information not subject to disclosure.

(3) INTERIM APPLICATION FILING.—During the period beginning on the date of enactment of this Act and ending on the date on which regulations are promulgated under this Act, an applicant may file with the Special Administrator an interim application for immediate relief without the use of an approved form, provided the application includes information described in subparagraph (C) of paragraph (2) of this subsection.

(4) LIMITATION.—No application may be filed under paragraph (1), or paid by the Special Administrator, with respect to losses accrued after the termination of the national emergency proclaimed by the President on March 13, 2020. Within a reasonable time after such termination, and subject to the provisions of this Act, the Special Administrator
shall notify Congress of the expected closure of the
program established under this Act, while ensuring
that all applications filed prior to the termination of
the national emergency receive due consideration.

(5) NEW BUSINESSES.—The Special Adminis-
trator shall provide guidelines on how applicants
that are operating new entities before March 13,
2020, shall substantiate their Expenses, Payroll, and
Lost Revenue.

(b) REVIEW AND DETERMINATION.—

(1) REVIEW.—The Special Administrator shall
review an application submitted under subsection
(a)(1) and determine—

(A) whether the applicant is an eligible ap-
plicant under subsection (c); and

(B) the amount of recovery compensation
the eligible applicant shall receive, on a monthly
basis, based on what is necessary to maintain
continuity of operations for the applicant with
respect to paying expenses and payroll and
compensating for lost revenue as described in
subparagraph (D) of subsection (a)(2); provided
that—

(i) the amount of recovery compensa-
tion the eligible applicant receives shall be
adjusted each month to take into account
increases or decreases in such applicant’s
revenue over the previous month;

(ii) the total amount of recovery com-
pensation to which the applicant is entitled
based on this subparagraph shall take into
account the amount of any interim com-
pensation awarded to the applicant pursu-
ant to paragraph (2); and

(iii) the maximum amount of recovery
compensation to which an eligible applicant
may be entitled shall be the lesser of—

(I) the applicant’s average total
monthly expense payments, as deter-
mined under subparagraph (C), for a
period not to exceed 4 months in ag-
gregate; and

(II) $50,000,000.

(C) AVERAGE TOTAL MONTHLY EXPENSE
PAYMENTS.—For purposes of clause (iii) of
subparagraph (B), an applicant’s average total
monthly expense payments shall be the average
monthly payments by the applicant during the
1 year prior to the date on which an application
is made (or in the case of a seasonal business
or new business, a period determined by the
Special Administrator), for—

(i) payroll costs;

(ii) costs related to the continuation
of group health care benefits during peri-
ods of paid sick, medical, or family leave;

(iii) any insurance premiums;

(iv) employee salaries, commissions, or
similar compensations, except that recovery
compensation may not be used for the
compensation of an individual employee in
excess of an annual salary of $100,000, as
prorated for the relevant compensation pe-
period;

(v) payments of interest on any mort-
gage obligation (which shall not include
any prepayment of or payment of principal
on a mortgage obligation);

(vi) rent (including rent under a lease
agreement);

(vii) utilities;

(viii) loan repayment obligations in-
curred by the applicant pursuant to section
1102 of the Coronavirus Aid, Relief, and
Economic Security Act (Public Law 116–136);

(ix) loan repayment obligations in-
curred by the applicant pursuant to a dis-
aster loan authorized under section 7(b) of
the Small Business Act (15 U.S.C.
636(b));

(x) interest on any other debt obliga-
tions that were incurred before March 1,
2020; and

(xi) State and local tax obligations.

(2) INTERIM APPLICATIONS REVIEW.—The Spe-
cial Administrator shall review an interim applica-
tion submitted under subsection (a)(3) and deter-
mine—

(A) whether the applicant is an eligible ap-
plicant under subsection (c); and

(B) with respect to an applicant deter-
mined to be an eligible applicant, the amount of
interim compensation to which an eligible appli-
cant is entitled under subparagraph (C).

(C) INTERIM COMPENSATION AMOUNT.—
An eligible applicant under this paragraph shall
be entitled to interim compensation in such
amounts as determined by the Special Adminis-
trator not to exceed, as calculated under sub-
paragraph (C) of paragraph (1)—

(i) in the case of an applicant with av-
erage monthly payments in excess of
$1,000,000, 25 percent of such payments;

(ii) in the case of an applicant with
average monthly payments in excess of
$100,000 but less than $1,000,000, 50
percent of such payments; and

(iii) in the case of an applicant with
average monthly payments of $100,000 or
less, 75 percent of such payments.

(3) DETERMINATIONS.—A determination under
this subsection shall be final and not subject to judi-
cial review.

(A) As soon as practicable, and for appli-
cations given priority by the Special Adminis-
trator under this Act, not later than 30 cal-
endar days after that date on which an applica-
tion is filed under subsection (a)(1), the Special
Administrator shall either request more infor-
mentation from the applicant or complete a review
and make a determination pursuant to para-
graph (1) of this subsection, and provide writ-
ten notice to the applicant, with respect to the
matters that were the subject of the application
for recovery compensation under review. If the
Special Administrator requests additional infor-
mation pursuant to this subparagraph, the Spe-
cial Administrator shall absent exigent cir-
cumstances make its determination pursuant to
paragraph (1) of this subsection within 30 cal-
endar days of receiving a response to its request
for more information.

(B) Not later than 15 calendar days after
the date on which an interim application is filed
under subsection (a)(3), the Special Adminis-
trator shall complete a review and make a de-
termination on interim compensation pursuant
to paragraph (2) of this subsection, and provide
written notice to the applicant with respect to
that determination.

(4) COLLATERAL SOURCES.—In determining
the amount of recovery compensation to be paid to
an applicant under paragraph (1)(B) the Special Ad-
ministrator shall consider the amount of the collat-
eral source compensation the applicant received or
the value of collateral source compensation the appli-
cant is reasonably certain to receive as a result of
the COVID–19 pandemic.
(5) APPEALS.—The Special Administrator shall promulgate regulations establishing a procedure by which an applicant may appeal directly to the Special Administrator an eligibility or compensation determination with respect to such applicant made under this Act. The United States Court of Federal Claims shall have exclusive jurisdiction of an appeal from a final determination by the Special Administrator under this Act.

(6) RIGHTS OF AN APPLICANT.—In all matters related to its application, an applicant shall have the right to be represented by an attorney. Notwithstanding any contract, a representative of an applicant may not charge, for services rendered in connection with an application under this Act, more than 10 percent of the difference between—

(A) the initial amount of recovery compensation awarded to such applicant as determined by the Special Administrator under paragraph (3); and

(B) the final amount of recovery compensation awarded to such applicant after any appeal of such determination.

(c) ELIGIBILITY.—
(1) IN GENERAL.—An applicant shall be determined to be an eligible applicant for purposes of this subsection if the Special Administrator determines that such applicant—

(A) is a business or organization in an impaired sector as defined by the Special Administrator, including 501c(6) organizations;

(B) is a business or organization that is created or organized in the United States or under the laws of the United States and has significant operations in, and a majority of its employees based in, the United States;

(C) is not eligible for loans or loan guarantees under subsection (b)(1), (b)(2), or (b)(3) of section 4003 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136);

(D) in the case of an applicant that has received a loan under section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136), has complied with all applicable borrower repayment obligations under such loan;

(E) is not registered with the Securities and Exchange Commission as a Family Office.
pursuant to section 275.202(a)(11)(G)-1 of
title 17, Code of Federal Regulations;

(F) to the extent not otherwise eligible
under this paragraph, any business utilizing
business format franchising as a franchisor or
franchisee under part 436 of title 16, Code of
Federal Regulations or a business concern oper-
ating as a franchisor or franchisee that is as-
signed a franchise identifier code by the Small
Business Administration; and

(G) meets the requirements of paragraph
(2).

(2) REQUIREMENTS.—

(A) An applicant shall not be determined
to be an eligible applicant by the Special Ad-
ministrator unless the applicant—

(i) was in operation on March 1,
2020;

(ii) was not a debtor concerning which
an active case under title 11, United
States Code, had been commenced prior to
March 1, 2020; and

(iii) to the extent the applicant is
seeking recovery compensation for payroll
and payroll support as described in this
Act, had employees for whom the applicant paid salaries or wages, and payroll taxes.

(B) An applicant requesting recovery compensation for losses described under this Act shall not be eligible for such compensation unless the applicant continued to pay salaries or wages to such employees, or will otherwise provide relief received under subsection (a)(2)(D) to such employees, who—

(i) tested positive for COVID–19; or

(ii) were exposed to COVID–19 in the workplace.

(C) SINGLE APPLICATION.—Not more than one application may be submitted under this Act by an applicant, except that, for purposes of this subparagraph—

(i) an eligible applicant that submitted an interim application under subsection (a)(3) shall remain eligible to file an application for recovery compensation under subsection (a)(1);

(ii) in the event the Secretary notifies Congress of a renewed COVID–19 threat under this Act, an eligible applicant shall remain eligible to file a renewal or updated
version of a previously filed application;
and

(iii) pursuant to guidelines to be est-
ablished by the Special Administrator, re-
lated entities may submit a joint applica-
tion.

SEC. 6. PAYMENTS TO ELIGIBLE APPLICANTS.

(a) IN GENERAL.—As soon as practicable, but not
later than 5 calendar days after the date on which a deter-
mination is made by the Special Administrator regarding
the amount of recovery compensation or interim com-
pensation due to an applicant under this Act, the Special
Administrator shall authorize payment to such applicant
of the amount determined with respect to the applicant.

(b) ALLOWABLE USES OF RECOVERY COMPENSA-
TION.—

(1) IN GENERAL.—An eligible applicant may
use recovery compensation proceeds only for—

(A) payroll costs;

(B) costs related to the continuation of
group health care benefits during periods of
paid sick, medical, or family leave;

(C) any insurance premiums;

(D) employee salaries, commissions, or
similar compensations, except that recovery
compensation may not be used for the comp-
ensation of an individual employee in excess of
an annual salary of $100,000, as prorated for
the relevant compensation period;

(E) payments of interest on any mortgage
obligation (which shall not include any prepay-
ment of or payment of principal on a mortgage
obligation);

(F) rent (including rent under a lease
agreement);

(G) utilities;

(H) loan repayment obligations incurred by
the applicant pursuant to section 1102 of the
Coronavirus Aid, Relief, and Economic Security
Act (Public Law 116–136);

(I) loan repayment obligations incurred by
the applicant pursuant to a disaster loan au-
thorized under section 7(b) of the Small Busi-
ness Act (15 U.S.C. 636(b));

(J) interest on any other debt obligations
that were incurred before March 1, 2020; and

(K) Federal, State, and local tax obliga-
tions.

(2) Certification on use of funds.—As a
condition for receipt of recovery compensation under
this Act, an eligible applicant shall make a good-
faith certification that—

(A) the uncertainty of economic conditions
as of the date of the application makes nec-
essary the recovery compensation request to
support the ongoing operations of the applicant;

(B) the funds the applicant receives will be
used to retain at least 90 percent of the appli-
cant’s workforce as of the date of application,
at full compensation and benefits, for the period
that they receive compensation;

(C) the applicant intends to restore com-
pensation and benefits to not less than 75 per-
cent of the workforce of the applicant that ex-
isted as of March 1, 2020, no later than 4
months after the termination date of the public
health emergency declared by the Secretary of
Health and Human Services on January 31,
2020, under section 319 of the Public Health
Service Act (42 U.S.C. 247d) in response to
COVID–19;

(D) the applicant is an entity or business
that is created or organized in the United
States or under the laws of the United States
and has significant operations in, and a major-
(E) the funds the applicant receives will not be used for a restricted purpose under sub-section (c).

(c) Restrictions.—The Special Administrator shall make a payment of recovery compensation to an applicant only if such applicant agrees—

(1) until the date 12 months after the date on which the payment is made, not to repurchase an equity security that is listed on a national securities exchange of the applicant or any parent company of the applicant, except to the extent required under a contractual obligation that is in effect as of the date of enactment of this Act;

(2) until the date 12 months after the date on which the payment is made, not to pay dividends or make other capital distributions with respect to the common stock of the applicant, during the eligible period a recipient that is an S corporation or pass-through entity may provide a distribution to pay tax obligations; and

(3) no funds received by the applicant may be used for payment of an expense to a foreign person which is a related party of the applicant to which a
deduction is allowable under chapter 1 of the Internal Revenue Code of 1986.

(d) **Final Netting.**—

(1) **In General.**—Not later than 6 months after the end of an eligible applicant's covered period, an eligible applicant shall report, pursuant to rules prescribed by the Special Administrator, a final accounting of all eligible operating costs incurred during the covered period, and all eligible revenue received during the covered period.

(2) **Review.**—The Special Administrator shall determine, based on a report submitted under paragraph (1), whether an applicant received any excess recovery compensation under this title during the covered period.

(3) **Overpayments.**—To the extent an eligible applicant received excess recovery compensation as determined by the Special Administrator, an eligible applicant shall return such excess recovery compensation to the Treasury in a manner prescribed by the Special Administrator.

(e) **Payment Authority.**—This Act constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to
provide for the payment of amounts for compensation under this Act.

SEC. 7. REGULATIONS.

Not later than 30 calendar days after the date of enactment of this Act, the Secretary, in consultation with the Special Administrator, shall promulgate regulations to carry out this Act, including regulations with respect to—

(1) forms to be used in submitting applications under this Act;

(2) the information to be included in such forms;

(3) procedures to assist an applicant in filing and pursuing applications under this Act;

(4) the amount of the fee paid by the Special Administrator for services provided under this Act; and

(5) other matters determined appropriate by the Secretary.

SEC. 8. PROGRAM RENEWAL FOR RESURGENCE OF CORONAVIRUS THREAT.

In the event that the Secretary determines that a resurgence of the COVID–19 threat has resulted in economic conditions that warrant an extension or renewal of recovery compensation assistance to businesses under this Act, the Secretary shall—
(1) notify Congress of such determination no later than 2 calendar days after making such determination; and

(2) direct the Special Administrator to accept new and updated applications for recovery compensation under this Act.

SEC. 9. SPECIAL INSPECTOR GENERAL FOR COVID-19 RECOVERY FUNDS.

(a) Office of Inspector General.—There is hereby established within the Department of the Treasury the Office of the Special Inspector General for COVID–19 Recovery Funds.

(b) Appointment of Inspector General; Removal.—

(1) In General.—The head of the Office of the Special Inspector General for COVID–19 Recovery Funds shall be the Special Inspector General for COVID–19 Recovery Funds (referred to in this section as the “Special Inspector General”), who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Nomination.—The nomination of the Special Inspector General shall be made on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis,
public administration, or investigations. The nomination of an individual as Special Inspector General shall be made within 30 calendar days of enactment of this Act.

(3) REMOVAL.—The Special Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.), provided that such removal is made in concurrence with the Congressional Oversight Board established under this Act.

(4) POLITICAL ACTIVITY.—For purposes of section 7324 of Act 5, United States Code, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(5) BASIC PAY.—The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).

(c) DUTIES.—

(1) IN GENERAL.—It shall be the duty of the Special Inspector General to, in accordance with section 4(b)(1) of the Inspector General Act of 1978 (5
U.S.C. App.), conduct, supervise, and coordinate audits and investigations of the payment of recovery compensation by the Special Administrator under this Act, and the administration of the provisions of this Act by the Special Administrator, including by collecting and summarizing the following information:

(A) A listing of the eligible businesses receiving recovery compensation under this Act.

(B) An explanation of the reasons the Special Administrator determined it to be appropriate to make each recovery compensation determination.

(C) A listing of each contract the Special Administrator made with third-party service providers under this Act, including information with respect to the fees and the services being provided under such contracts.

(D) A current, as of the date on which the information is collected, estimate of the total amount of recovery compensation payments made under this Act.

(2) MAINTENANCE OF SYSTEMS.—The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as
the Special Inspector General considers appropriate
to discharge the duties of the Special Inspector Gen-
eral under paragraph (1).

(3) TESTIMONY.—The Special Inspector Gen-
eral shall make reasonable efforts to comply with
any request to appear before a Committee of Con-
gress for purposes of providing testimony relating to
the compensation program established under this
Act.

(4) ADDITIONAL DUTIES AND RESPONSIBIL-
ITIES.—In addition to the duties described, the Spe-
cial Inspector General shall also have the duties and
responsibilities of inspectors general under the In-

(d) POWERS AND AUTHORITIES.—

(1) IN GENERAL.—In carrying out the duties of
the Special Inspector General under subsection (c),
the Special Inspector General shall have the authori-
ties provided in section 6 of the Inspector General

(2) TREATMENT OF OFFICE.—The Office of the
Special Inspector General for COVID Recovery
Funds shall be considered to be an office described
in section 6(f)(3) of the Inspector General Act of
1978 (5 U.S.C. App.) and shall be exempt from an
initial determination by the Attorney General under
section 6(f)(2) of that Act.
(e) Personnel, Facilities, and Other Re-
sources.—

(1) Appointment of Officers and Employees.—The Special Inspector General may select, ap-
point, and employ such officers and employees as
may be necessary for carrying out the duties of the
Special Inspector General, subject to the provisions
of title 5, United States Code, governing appoint-
ments in the competitive service, and the provisions
of chapter 51 and subchapter III of chapter 53 of
that title, relating to classification and General
Schedule pay rates.

(2) Experts and Consultants.—The Special
Inspector General may obtain services as authorized
under section 3109 of title 5, United States Code,
at daily rates not to exceed the equivalent rate pre-
scribed for grade GS–15 of the General Schedule by
section 5332 of that title.

(3) Contracts.—The Special Inspector Gen-
eral may enter into contracts and other arrange-
ments for audits, studies, analyses, and other serv-
ices with public agencies and with private persons
and make such payments as may be necessary to carry out the duties of the Inspector General.

(4) Requests for information.—

(A) In general.—Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of that department, agency, or entity shall, to the extent practicable and not in contravention of any existing law, furnish that information or assistance to the Special Inspector General, or an authorized designee.

(B) Refusal to provide requested information.—Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.

(f) Reports.—

(1) Quarterly reports.—

(A) In general.—Not later than 60 calendar days after the date on which the Special Inspector General is confirmed, and once every
calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 3-month period ending on the date on which the Special Inspector General submits the report.

(B) CONTENTS.—Each report submitted under subparagraph (A) shall include, for the period covered by the report, a detailed statement of all recovery compensation payments made under this Act, as well as the information collected under subsection (c)(1).

(2) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.
(g) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to pay the administrative and support costs for the Special Inspector General to carry out this section.

(h) Termination.—The Office of the Special Inspector General shall terminate on the date that is 1 year after the closure of the Fund by the Special Administrator under this Act.


(j) Corrective Responses to Audit Problems.—The Secretary shall—

(1) take action to address deficiencies identified by a report or investigation of the Special Inspector General; or

(2) with respect to a deficiency identified under paragraph (1), certify to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Finance of the Senate, the Committee on Financial Services of the House of Representatives,
and the Committee on Ways and Means of the House of Representatives that no action is necessary or appropriate.

SEC. 10. CONGRESSIONAL OVERSIGHT BOARD.

(a) ESTABLISHMENT.—There is hereby established the Congressional Oversight Board (hereafter in this section referred to as the “Oversight Board”) as an establishment in the legislative branch.

(b) DUTIES.—

(1) IN GENERAL.—The Oversight Board shall—

(A) conduct oversight of the implementation of this Act by the Department of the Treasury, including efforts of the Special Administrator to provide economic support for businesses as a result of the coronavirus disease 2019 (COVID–19) pandemic of 2020;

(B) submit to Congress reports under paragraph (2); and

(C) review the implementation of this Act by the Federal Government.

(2) REGULAR REPORTS.—

(A) IN GENERAL.—Reports of the Oversight Board shall include the following:

(i) The use by the Special Administrator of authority under this Act, includ-
ing with respect to the use of contracting
authority and administration of the provi-
sions of this Act.

(ii) The impact of recovery compensa-
tion made under this Act on the financial
well-being of the people of the United
States and the United States economy.

(iii) The extent to which the Special
Administrator has prioritized compensation
under this Act.

(iv) The effectiveness of recovery com-
penstation made under this Act of mini-
mizing long-term costs to the taxpayers
and maximizing the benefits for taxpayers.

(B) TIMING.—The reports required under
this paragraph shall be submitted not later
than 30 calendar days after the appointment of
the Special Administrator and every 30 cal-
endar days thereafter.

(3) AUDITING.—The Oversight Board shall con-
tract with a public accounting firm registered by the
Public Company Accounting Oversight Board under
section 101(c) of the Sarbanes-Oxley Act (15 U.S.C.
7211(c)) to conduct independent audits of the recov-
ery compensation program established under this
Act.

(c) Membership.—

(1) In general.—The Oversight Board shall
consist of 5 members as follows:

(A) One member appointed by the Speaker
of the House of Representatives.

(B) One member appointed by the minor-
ity leader of the House of Representatives.

(C) One member appointed by the majority
leader of the Senate.

(D) One member appointed by the minor-
ity leader of the Senate.

(E) One member appointed as Chairperson
by the Speaker of the House of Representatives
and the majority leader of the Senate, after
consultation with the minority leader of the
Senate and the minority leader of the House of
Representatives.

(2) Pay.—Each member of the Oversight
Board shall be paid at a rate equal to the daily
equivalent of the annual rate of basic pay for level
I of the Executive Schedule for each day (including
travel time) during which such member is engaged
in the actual performance of duties vested in the
Oversight Board. Each member shall be subject to the prohibition on acts affecting personal financial interest under section 208 of title 18, United States Code, and shall be subject to limitations on outside employment and outside income pursuant to title V of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) Prohibition of Compensation of Federal Employees.—Members of the Oversight Board who are full-time officers or employees of the United States may not receive additional pay, allowances, or benefits by reason of their service on the Oversight Board.

(4) Travel Expenses.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(5) Quorum.—Four members of the Oversight Board shall constitute a quorum, but a lesser number may hold hearings.

(6) Vacancies.—A vacancy on the Oversight Board shall be filled in the manner in which the original appointment was made.
(7) **Meetings.**—The Oversight Board shall meet at the call of the Chairperson or a majority of its members.

(d) **Staff.**—

(1) **In General.**—The Oversight Board may appoint and fix the pay of any personnel as the Oversight Board considers appropriate.

(2) **Experts and Consultants.**—The Oversight Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(3) **Staff of Agencies.**—Upon request of the Oversight Board, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Oversight Board to assist it in carrying out its duties under this Act.

(e) **Powers.**—

(1) **Hearings and Evidence.**—The Oversight Board, or any subcommittee or member thereof, may, for the purpose of carrying out this section hold hearings, sit and act at times and places, take testimony, and receive evidence as the Oversight Board considers appropriate and may administer
oaths or affirmations to witnesses appearing before it.

(2) CONTRACTING.—The Oversight Board may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Oversight Board to discharge its duties under this section.

(3) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Oversight Board may, if authorized by the Oversight Board, take any action which the Oversight Board is authorized to take by this section.

(4) OBTAINING OFFICIAL DATA.—The Oversight Board may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairperson of the Oversight Board, the head of that department or agency shall furnish that information to the Oversight Board.

(5) REPORTS.—The Oversight Board shall receive and consider all reports required to be submitted to the Oversight Board under this Act.

(f) TERMINATION.—The Oversight Board shall terminate on the date that is 1 year after the closure of the
Fund by the Special Administrator under subsection (a)(4) of this Act.

(g) FUNDING FOR EXPENSES.—

(1) AUTHORIZATION OF APPROPRIATIONS.— There is authorized to be appropriated to the Oversight Board such sums as may be necessary for any fiscal year, half of which shall be derived from the applicable account of the House of Representatives, and half of which shall be derived from the contingent fund of the Senate.

(2) REIMBURSEMENT OF AMOUNTS.—An amount equal to the expenses of the Oversight Board shall be promptly transferred by the Secretary and the Board of Governors of the Federal Reserve System, from time to time upon the presentation of a statement of such expenses by the Chairperson of the Oversight Board, from funds made available to the Secretary under this Act to the applicable fund of the House of Representatives and the contingent fund of the Senate, as appropriate, as reimbursement for amounts expended from such account and fund under paragraph (1).
Item B-4
TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: September 8, 2020

SUBJECT: S. 4431 - The Emergency Wildfire and Public Safety Act of 2020

ATTACHMENTS: 1. Letter from Senator Feinstein  
2. Summary Memo – S. 4431  
3. Summary of S. 4431 by Feinstein  
4. Section by Section Overview  
5. Bill Text – S. 4431

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

S. 4431 - The Emergency Wildfire and Public Safety Act of 2020 (S. 4431) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

Senator Feinstein has requested the City support S. 4431 (Attachment 1). This is a bipartisan bill which would provide federal agencies with critical new tools to reduce hazardous fuels, protect communities, and support forestry jobs, biomass development, and smarter energy practices. Staff is requesting the City Council Liaison/Legislative/Lobby Committee review S. 4431 and provide direction.

The City's federal lobbyist, David Turch & Associates, provided a summary memo for S. 4431 to the City (Attachment 2) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of S. 4431, the Liaisons may recommend the following actions:

1) Support S. 4431;  
2) Support if amended S. 4431;  
3) Oppose S. 4431;  
4) Oppose unless amended S. 4431;  
5) Remain neutral; or  
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on S. 4431, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
September 1, 2020

Hon. Lester Friedman
Mayor
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210

Dear Mayor Friedman,

I am writing to ask the City of Beverly Hills to support S. 4431, the bipartisan Emergency Wildfire and Public Safety Act, a bill I introduced with my colleague, Senator Steve Daines of Montana, to help communities better prepare for and respond to wildfires. This bill could have a hearing in the next two or three weeks, so your support at this time is critical.

Like many western states, California continues to experience severe wildfires, which have only been exacerbated by rising temperatures and the challenge posed by the COVID-19 pandemic. Already this year, we have seen two of the largest wildfires in our state’s history, more than 1.4 million acres burned, over 1,500 homes destroyed and seven deaths.

The “Emergency Wildfire and Public Safety Act” (S. 4431) would provide federal agencies with critical new tools to reduce hazardous fuels, protect communities, and support forestry jobs, biomass development, and smarter energy practices. This bill is the result of extensive stakeholder engagement, outreach across party lines, and months of deliberations to ensure a truly bipartisan, pragmatic approach to reduce the risk of wildfire. Attached, please find further information about the bill.

If we don’t take strong action, I worry that what’s happening will soon become the new normal not just in California but in other states as well. I urge you to join me in supporting this bill to make wildfire protection a priority and make our communities safer.

Sincerely,

Dianne Feinstein
United States Senator

DF/pm
Attachment 2
Senator Dianne Feinstein and Senator Steve Daines (R-MT) introduced S.4431, the Emergency Wildfire and Public Safety Act on August 4, 2020. According to Feinstein and Daines, their bipartisan bill will help protect communities from catastrophic wildfires by implementing wildfire mitigation projects, sustaining healthier forests that are more resilient to climate change and provide important energy and retrofitting assistance to businesses and residences to mitigate future risks from wildfires. The legislation has been referred to the Senate Energy and Natural Resources Committee, which is expected to hold a hearing on the bill before the end of September. Representative Jimmy Panetta (D-CA) is sponsoring a companion bill in the House of Representatives.

The Emergency Wildfire and Public Safety Act is supported by the California Natural Resources Agency, the California Farm Bureau Federation and the Rural County Representatives of California.

Senator Feinstein, in a letter addressed to Mayor Lester Friedman, is seeking the City’s endorsement of her bill.

Specifically, S.4431 proposes to:

- Provide new authority for the Forest Service and Bureau of Land Management to work collaboratively with state partners in the West to implement wildfire mitigation projects. Projects are restricted to areas most in need of restorative forest management.

- Allow disaster mitigation and preparedness funding to be used to reduce the wildfire risk posed by utility lines and expedite permitting for the installation of wildfire detection equipment (such as sensors, cameras, and other relevant equipment) and expand the use of satellite data to assist wildfire response.

- Create a program to incentivize the collection of woody biomass and help expand processing facilities to make biomass more economically viable.
• Create a forest workforce development program to train a new generation of workers to help address wildfire and forest health.

• Require the establishment of a fire center in the Western United States to train new firefighters and forestry professionals on the beneficial uses of prescribed fires, a far more cost-effective method of stopping fires than mechanical thinning or firefighting.

• Lift the current export ban on unprocessed timber from federal lands in the west for trees that are dead or dying, or if there is no demand in the United States. California currently has nearly 150 million dead and dying trees on thousands of acres that are at risk of wildfire.

• Expand the Energy Department’s weatherization program to allow for the retrofit of homes to make them more resilient to wildfire through the use of fire-resistant building materials and other methods.

• Establish a new grant program to assist critical facilities like hospitals and police stations become more energy efficient and better adapted to function during power shutoffs. The new program would also provide funding for the expanded use of distributed energy infrastructure, including microgrids.
Attachment 3
The Emergency Wildfire and Public Safety Act of 2020

What the bill would do: Protect communities by reducing wildfire risk in federal forests, getting the private sector more involved in addressing dead and dying trees, improving best practices for addressing wildfire, and creating more resilient communities and energy grids.

1. Reducing wildfire risk in federal forests

- The bill would authorize the Forest Service to undertake three priority wildfire mitigation projects that would be limited to 75,000 acres in size, and the federal government would be authorized to carry out expedited activities to protect lives and property from wildfires, such as the installation of fuel breaks, clearing dead and dying trees, and controlled burning.

- The bill includes a technical fix to ensure that the Forest Service consults with the Fish and Wildlife Service when new public peer-reviewed research demonstrates potential harm to threatened or endangered species.

- The bill would allow for expedited environmental reviews regarding the installation of fuel breaks near existing roads, trails, transmission lines and pipelines.

- The bill would codify an existing administrative practice that allows the Forest Service to expedite hazardous fuel removal projects in emergency situations where it is immediately necessary to protect life, property, or natural and cultural resources.

2. Getting the private sector more involved in addressing dead and dying trees

- The bill would establish a new $100 million biomass infrastructure program. This would provide grant funding to build biomass facilities near forests that are at risk of wildfire and to offset the cost of transporting dead and dying trees out of high-hazard fire zones.

- The bill would lift the current export ban on unprocessed timber from federal lands in the west for trees that are dead, dying, or if there is no demand in the United States.
3. Improving best practices for addressing wildfire

- The bill would expedite permitting for the installation of wildfire detection equipment (such as sensors, cameras, and other relevant equipment) and expand the use of satellite data to assist wildfire response.

- The bill would allow FEMA hazard mitigation funding to be used for the installation of fire-resistant wires and infrastructure and for the undergrounding of wires.

- Given the generational shortage of workers in the forest management field, the bill would authorize a new workforce development program to assist in developing a career training pipeline for forestry workers.

- The bill would establish a new Prescribed Fire Center to coordinate research and training of foresters and forest managers in the latest methods and innovations in prescribed fire practices to reduce the likelihood of catastrophic fires and improve the health of forests.

4. Creating more resilient communities and energy grids

- The bill would expand the Energy Department’s weatherization program to allow for the retrofit of homes to make them more resilient to wildfire through the use of fire-resistant building materials and other methods.

- The bill would establish a new $100 million grant program to assist critical facilities like hospitals and police stations become more energy efficient and better adapted to function during power shutoffs. The new program would also provide funding for the expanded use of distributed energy systems, including microgrids.
Attachment 4
Section 101 – Three new landscape-level, collaborative wildfire risk reduction projects:

- Requires the Forest Service to conduct three landscape-level, collaborative wildfire risk reduction projects in the West proposed by a Governor. Projects would be subject to a streamlined environmental review process and certain litigation protections.

- Applies Section 106 of the *Healthy Forests Restoration Act*, which establishes injunction timelines and requires courts when considering a motion for an injunction to examine the “balance of harms” comparing the impacts of the project with the impacts of not doing the project.
  
  - Authorizes the Forest Service to only analyze the proposed action, no action, and one alternative action when conducting the environmental review.
  
  - Requires plaintiffs to show they are “likely to succeed on the merits” in order for courts to enjoin projects.

- **Background:** Montana and California experience the largest number of lawsuits against forest management projects, many of which are the product of a collaborative process. In both states, dozens of projects are encumbered by litigation or the mere threat of litigation. This section would establish three pilot projects that would be allowed to proceed through expedited environmental and judicial processes when they are developed collaboratively, have a clear objective of reducing wildfire risk, and are limited to specified acres and activities. Courts have sometimes used a lower threshold “serious question” test, which would be replaced under this provision for these three pilot projects with a “likely to succeed on the merits” standard. Other litigation provisions are based on current judicial review standards or the litigation provisions included in the *Healthy Forests Restoration Act*.

Section 102 – Encourages the Forest Service and the Department of the Interior to increase the use of wildfire detection equipment.

- Directs the Department of the Interior and the Department of Agriculture to expedite the placement of wildfire detection equipment such as sensors and cameras and expand the use of satellite data to assist wildfire response.

- **Background:** Early detection of a wildfire can allow land managers to respond more quickly to wildfires and prevent fires from growing out of control, destroying life and property. Leveraging early detection equipment is especially valuable in rural areas.
Section 103 – Wildfire risk reduction activities near existing roads, trails, and transmission lines

- Establishes a new 3,000-acre categorical exclusion to accelerate management near existing roads, trails, and transmission lines.

- **Background:** According to the Pacific Biodiversity Institute, nearly 90% of wildfires begin within a half-mile of a Forest Service road. This new tool would make it easier for the Forest Service to prioritize management of these areas as part of the effort to mitigate wildfire risks. The 2018 Camp Fire, which killed eighty-six people in Paradise, CA, was caused by electrical transmission lines, according to Cal Fire.

Section 104 - Accelerating Post-Fire restoration and reforestation

- Establishes a new statutory tool to accelerate post-fire restoration and reforestation work on Forest Service land. Based largely on the Forest Service’s existing Emergency Situation Determination authority, this provision specifies that the agency must do environmental analysis only on the proposed post-fire project and the scenario of not doing any project, so long as the treatment area is not larger than 10,000 acres.

- Further, while retaining scoping requirements, the provision establishes that the Forest Service is not required to go through the objections process for the Emergency Situation Determination projects. Lastly, the provision establishes that the Forest Service’s decision to make an Emergency Situation Determination is not subject to the administrative process.

- **Background:** Under 36 CFR § 218.21 the Chief and Associate Chief of Forest Service are authorized to make the determination that an emergency situation exists, which is defined as a “situation on National Forest System (NFS) lands for which immediate implementation of a decision is necessary to achieve one or more of the following: Relief from hazards threatening human health and safety; mitigation of threats to natural resources on NFS or adjacent lands; avoiding a loss of commodity value sufficient to jeopardize the agency's ability to accomplish project objectives directly related to resource protection or restoration.” Under the existing regulatory authority, the decision to make an Emergency Situation Determination is not subject to administrative review, and the proposed action (project) is not subject to the pre-decisional objection process.

Section 105 - Codifying “New Information”

- Specifies that the Forest Service is not required to reinitiate plan-level consultation with the U.S. Fish and Wildlife Service following the finding of “new information” related to a listed species unless the “new information” is publicly available, peer-reviewed, and consistent with longstanding federal guidelines for scientific information. Allows for the agency to conduct informal, formal, or no consultation as appropriate and allows projects to continue during plan-level consultation.

- **Background:** In 2015, the Ninth Circuit ruled in *Cottonwood Environmental Law Center v. United States Forest Service* that the Forest Service needed to reinitiate consultation with U.S. Fish and Wildlife Service at the programmatic (plan) level following the 2009 designation of critical habitat for the Canada lynx. The Obama Administration believed
the *Cottonwood* decision had the “potential to cripple” federal land management decision and would impose a “substantial burden” on federal agencies—all without conservation benefit. After the Supreme Court denied the Department of Justice’s writ of certiorari petition, Congress enacted legislation in 2018 establishing that plan-level re-consultation is not required following the listing of a species or designation of critical habitat so long as the relevant Forest Plan is not older than fifteen years. The provision allowed for the plan-level re-consultation to be completed within five years of enactment or the listing of a species, whichever occurred later, in instances where the relevant Forest Plan is older than fifteen years. The 2018 legislation left unaddressed a third trigger for consultation under the *Endangered Species Act*: the finding of “new information,” which this bill would address. According to the Forest Service, new information continues to be a significant litigation issue for Forest Service activities. Since January 2016, there have been eighteen lawsuits involving *Endangered Species Act* “new information” claims in six states. In the same time period, the Forest Service received at least thirty-two notices of intent to sue raising *Endangered Species Act* “new information” as an issue on land management decisions.

**Section 106 – Hazard Mitigation Using Disaster Assistance**

- Allows FEMA hazard mitigation grant funding to be used to install fire-resistant wires and infrastructure as well as for the undergrounding of wires.

- **Background:** Investing in mitigation can reduce long-term costs, allowing more work to be done on the front end will ultimately reduce risk. Wildfire is a major source of natural disasters in the West, and wildfire mitigation activities should be eligible for the existing FEMA program to address hazard mitigation.

**Section 201 – Biomass Energy Infrastructure Program**

- Establishes a new Department of Energy grant program to facilitate the removal of biomass from National Forest areas that are at high risk of wildfire and to transport that biomass to conversion facilities.

- Biomass conversion facilities located within areas of economic need and seek to remove dead or dying trees are prioritized. Grants are limited to $750,000.

- **Background:** The use of biomass can reduce wildfire risk by removing hazardous trees that have little commercial value, provide more distributed energy, and also provide support for rural communities through jobs in biomass energy.

**Section 301 – California Exemption to Prohibition on Export of Unprocessed Timber**

- Allows the export of unprocessed in timber of dead and dying trees in California. The exemption only applies after domestic mills have refused the unprocessed timber.

- **Background:** Much of the timber in California and other Western states have little commercial value in the United States yet poses significant wildfire risk. This section would increase the possible commercial markets for this timber in order to incentivize removal of this hazardous timber.
Section 401 – Innovative Forest Workforce Development Program

- Creates a competitive grant program to provide funds to non-profits, educational institutions, and state agencies to assist in the development of activities relating to workforce development in the forestry sector. Funds can be used for education, training, skills development, and education.

- *Background:* Forest management is facing a generational attrition issue. Jobs in the forestry sector can provide benefits to rural communities while simultaneously helping to reduce wildfire risk.

Section 403 – Western Prescribed Fire Center

- Establishes a Prescribed Fire Center in the West to train individuals in prescribed fire methods and other methods relevant to the mitigation of wildfire risk.

- *Background:* Restoring fire to the landscape is one of the tools that has been known to successfully reduce wildfire risk. Increasing the use of this practice has demonstrated success in various regions in the United States as well as in other countries. Training personnel in this practice could have an enormous impact on reducing wildfire risk in the Western United States.

Section 403 – Retrofits for Fire-Resilient Communities

- Amends the Weatherization Assistance program to make materials that are resistant to high heat and fire and dwellings that utilize fire-resistant materials and incorporate wildfire prevention and mitigation planning eligible for funds.

- Increases the level of available funding to $13,000 and allows for increases with inflation.

- *Background:* Retrofits of homes to make them more fire resistant can reduce the risk to homeowners and residential structures. Given the threat of wildfire, fire-resistance activities should be eligible for the existing Weatherization Assistance program.

Section 404 – Critical Infrastructure and Microgrid Program

- Establishes a new Department of Energy grant program to improve the energy resilience, energy efficiency, and power needs of critical facilities.

- Prioritizes rural communities with access to on-site back-up power and installation of electrical switching gear.

- *Background:* Utility infrastructure has proven to be a significant wildfire risk, and the impact of large scale power shutoffs to prevent wildfires during high risk periods is substantial for communities. This section would authorize new funding to help assist communities and businesses mitigate these disruptions and create a more distributed energy system in high-risk areas to allow for more targeted prevention efforts.
116TH CONGRESS
2D Session

S. 4431

To increase wildfire preparedness and response throughout the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2020

Mrs. FEINSTEIN (for herself and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To increase wildfire preparedness and response throughout the United States, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Emergency Wildfire
5 and Public Safety Act of 2020”.

6 SEC. 2. TABLE OF CONTENTS.

7 The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Findings.

TITLE I—WILDFIRE MITIGATION PROJECTS
Sec. 101. Forest landscape projects.
Sec. 102. Wildfire detection equipment.
Sec. 103. Establishment of fuel breaks in forests and other wildland vegetation.
Sec. 104. Emergency actions.
Sec. 105. New information in land management plans.
Sec. 106. Hazard mitigation using disaster assistance.

TITLE II—BIOMASS

Sec. 201. Biomass energy infrastructure program.

TITLE III—TIMBER EXPORTS

Sec. 301. Exemption to prohibition on export of unprocessed timber of dead and dying trees in the State of California.

TITLE IV—OTHER MATTERS

Sec. 401. Innovative forest workforce development program.
Sec. 402. Western prescribed fire center.
Sec. 403. Retrofits for fire-resilient communities.
Sec. 404. Critical infrastructure and microgrid program.

1 SEC. 3. FINDINGS.

2 Congress finds that—

3 (1) in 2017 and 2018, the State of California, the State of Montana, and other Western States experienced some of the deadliest and most destructive wildfires in the last 100 years, devastating Federal, State, and private land, destroying tens of thousands of homes, killing dozens of people, and burning large areas of land in the wildland-urban interface (as defined in section 101 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511));

4 (2) fire suppression practices over several decades, inadequate levels of forest management, and climate change have increased the risk of wildfires, and, according to the Fourth National Climate Assessment by the United States Global Change Re-
search Program, the cumulative number of acres
burned in the period from 1984 to 2015 was twice
the number of acres that would have burned in the
absence of climate change;

(3) increased development in the wildland-urban
interface near overgrown forest landscapes has in-
creased the number of people living in areas that are
at risk of wildfire;

(4) despite legislation enacted over the last 20
years to facilitate hazardous fuels reduction, certain
statutory, regulatory, and administrative require-
ments, including studies, publication periods, season-
specific surveys, and objection processes, and litigat-
ion can significantly impede rapid implementation
of hazardous fuels reduction projects necessary to
protect lives and property;

(5) increasing the pace and scale of science-
based, publicly developed forest management activi-
ties that reduce hazardous fuels, including through
mechanical thinning and controlled burning, can re-
duce the size and scope of wildfires, as well as pro-
tect watersheds, improve fish and wildlife habitat,
expand recreational opportunities, protect air qual-
ity, and increase the sequestration of carbon on Na-
tional Forest System and Bureau of Land Manage-
ment land;

(6) in 2019, 11,800,000 acres of National For-
est System land in the State of California and
6,300,000 acres of National Forest System land in
the State of Montana were at high or very high wild-
fire hazard potential, of which 3,100,000 acres and
1,600,000 acres, respectively, were within proximity
to populated areas; and

(7) the Governor of the State of California has
proclaimed a “State of Emergency” due to a vast
tree die-off throughout the State that has increased
the risk of wildfires and has created extremely dan-
gerous fire conditions.

SEC. 4. DEFINITIONS.

In this Act:

(1) Federal land.—The term “Federal land”
means—

(A) land of the National Forest System (as
defined in section 11(a) of the Forest and
Rangeland Renewable Resources Planning Act
of 1974 (16 U.S.C. 1609(a))); and

(B) public lands (as defined in section 103
of the Federal Land Policy and Management
Act of 1976 (43 U.S.C. 1702)).
(2) SECRETARY CONCERNED.—The term “Secretary concerned” means—

(A) the Secretary of Agriculture, with respect to Federal land described in paragraph (1)(A); and

(B) the Secretary of the Interior, with respect to Federal land described in paragraph (1)(B).

TITLE I—WILDFIRE MITIGATION PROJECTS

SEC. 101. FOREST LANDSCAPE PROJECTS.

(a) DEFINITIONS.—In this section:

(1) COLLABORATIVE PROCESS.—The term “collaborative process” means a collaborative process described in section 4003(b)(2) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)(2)).

(2) FOREST LANDSCAPE.—The term “forest landscape” means an area that—

(A) primarily or entirely contains land that has a high or very high wildfire hazard potential;

(B) due to a fuel management activity in the area, would have a reduced risk, as determined by the Secretary concerned—
(i) of wildfire endangering a nearby at-risk community (as defined in section 101 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511));

(ii) of wildfire damaging a municipal watershed or infrastructure that serves an at-risk community described in clause (i); or

(iii) of the transmission of a high intensity wildfire from the applicable wildland-urban interface or forest landscape to a nearby community; and

(C) to the extent practicable, is conducive to the development and implementation of projects relating to wildfire resilience and forest health that are carried out through a collaborative process.

(3) **Forest landscape project.**—The term “forest landscape project” means a project carried out in a forest landscape under subsection (b)(1)—

(A) in which 1 or more management activities are carried out; and

(B) that takes place on not more than 75,000 acres of Federal land or non-Federal
land adjacent to Federal land on which the
project is carried out.

(4) MANAGEMENT ACTIVITY.—The term “man-
agement activity” means—

(A) the installation of fuel breaks (includ-
ing shaded fuel breaks) not more than \(\frac{1}{2}\)-mile
wide across a forest landscape in a strategic
system that maximizes the reduction of wildfire
risk to communities or watersheds;

(B) mechanical thinning (including rest-
oration thinning) of a forest landscape to
clear—

(i) surface fuels, such as slash;

(ii) ladder fuels, such as small and
medium diameter trees and shrubs; or

(iii) both of the fuels described in
clauses (i) and (ii); and

(C) controlled burns.

(5) STATE.—The term “State” means a State
the entirety of which is located west of the 100th
meridian.

(6) WILDLIFE HABITAT.—The term “wildlife
habitat” means an ecological community on which a
species of wild animal, bird, plant, fish, amphibian,
or invertebrate depends for the conservation and
protection of the species.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 90 days after
the date of enactment of this Act, in accordance
with paragraph (2), the Secretary of Agriculture, in
consultation with the Secretary of the Interior, shall
select 3 forest landscapes on which to conduct forest
landscape projects—

(A) to reduce the risk of wildfire in the
forest landscape;

(B) to restore ecological health to the for-
est landscape; or

(C) to adapt the forest landscape to the in-
creased risk of wildfire due to climate change.

(2) PROCESS.—

(A) PROPOSALS.—The Governor of a State
may submit to the Secretary of Agriculture a
proposal for a forest landscape project to be
carried out in that State.

(B) SELECTION.—The Secretary of Agri-
culture, in consultation with the Secretary of
the Interior, shall select forest landscape
projects to be conducted from among proposals
submitted under subparagraph (A) based on—
(i) the strength of the proposal and the strategy for the conduct of the forest landscape project;

(ii) the strength of the ecological case of the proposal and the proposed ecological restoration strategies of the forest landscape project;

(iii) the strength of the collaborative process through which the proposal was developed and the forest landscape project will be carried out and the likelihood of successful collaboration throughout implementation of the forest landscape project;

(iv) whether the proposed forest landscape project is likely to achieve reductions in long-term wildfire management costs;

(v) whether the proposed forest landscape project would reduce the relative costs of carrying out ecological restoration treatments;

(vi) whether the proposed forest landscape project would provide energy as a result of the use of woody biomass and small-diameter trees; and
(vii) whether an appropriate level of non-Federal investment would be leveraged in carrying out the proposed forest landscape project.

(C) Consultation.—In selecting proposals under subparagraph (B), the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall consult with the Governors of the States that submitted proposals under subparagraph (A).

(3) Applicability.—The selection of a forest landscape under this subsection shall not be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other applicable law.

(c) Management Activities.—In carrying out a management activity under a forest landscape project, the Secretary concerned—

(1) shall maximize the retention of old-growth stands and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to wildfire and increased average temperature;

(2) shall consider the best available scientific information to maintain or restore the ecological integrity of the forest landscape; and
(3) shall not establish a permanent road.

(d) **ENVIRONMENTAL ANALYSIS.**—

(1) **APPLICATION TO CERTAIN ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS.**—This subsection shall apply in any case in which the Secretary concerned prepares an environmental assessment or an environmental impact statement pursuant to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) for a forest landscape project—

(A) that—

(i) is developed through a collaborative process; or

(ii) is covered by a community wildfire protection plan;

(B) the primary purpose of which is—

(i) reducing hazardous fuel loads;

(ii) installing fuel and fire breaks;

(iii) restoring forest health and resilience;

(iv) protecting a municipal water supply or a critical communication site;

(v) improving wildlife habitat to meet management and conservation goals, including State population goals; or
(vi) a combination of 2 or more of the
purposes described in clauses (i) through
(v); and
(C) that does not include any action that
is inconsistent with the applicable land and re-
source management plan.

(2) CONSIDERATION OF ALTERNATIVES.—In an
environmental assessment or environmental impact
statement described in paragraph (1), the Secretary
concerned shall study, develop, and describe only the
following alternatives:

(A) The forest landscape project, as pro-
posed under paragraph (1).

(B) A forest management activity or com-
bination of forest management activities pro-
posed by the relevant agency.

(C) The alternative of no action.

(3) ELEMENTS OF NO-ACTION ALTERNATIVE.—
In the case of the alternative of no action, the Sec-
retary concerned shall evaluate the effect of no ac-
tion only on—

(A) forest health;

(B) wildlife habitat;

(C) wildfire potential;

(D) insect and disease potential;
(E) economic and social factors; and

(F) water quality and quantity.

(4) Exclusions.—This subsection does not apply to—

(A) any component of the National Wilderness Preservation System;

(B) any congressionally designated wilderness study area;

(C) any component of the National Wild and Scenic Rivers System;

(D) any research natural area;

(E) any National Forest System land or public land on which the removal of vegetation is prohibited by an Act of Congress or the President;

(F) any land in an inventoried roadless area; or

(G) any designated critical habitat for a federally listed threatened or endangered species, unless, after a consultation under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536), the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, determines that the
forest management activity is not likely to de-
stroy or adversely modify the critical habitat.

(5) ROAD BUILDING.—

(A) PERMANENT ROADS.—A forest land-
scape project carried out under this section
shall not include the construction of any new,
permanent road.

(B) EXISTING ROADS.—The Secretary con-
cerned may carry out necessary maintenance of,
repairs to, or reconstruction of an existing per-
manent road under a forest landscape project
carried out under this section.

(C) TEMPORARY ROADS.—The Secretary
concerned shall decommission any temporary
road constructed under a forest landscape
project carried out under this section by not
later than 3 years after the date on which the
Secretary concerned determines the road is no
longer needed.

(6) JUDICIAL REVIEW IN UNITED STATES DIS-
TRICT COURTS.—

(A) VENUE.—Notwithstanding section
1391 of title 28, United States Code, or other
applicable law, a forest landscape project for
which an environmental assessment or an envi-
ronmental impact statement is prepared under paragraph (2)(A) shall be subject to judicial re-
view only in—

(i) the United States district court for a district in which the Federal land to be treated under the forest landscape project is located; or

(ii) the United States district court for the District of Columbia.

(B) EXPEDITIOUS COMPLETION OF JUDICIAL REVIEW.—In the judicial review of an ac-
tion challenging a forest landscape project de-
scribed in subparagraph (A), Congress encour-
egages a court of competent jurisdiction to expe-
dite, to the maximum extent practicable, the proceedings in the action with the goal of ren-
dering a final determination on jurisdiction, and, if jurisdiction exists, a final determination on the merits, as soon as practicable after the date on which a complaint or appeal is filed to initiate the action.

(C) INJUNCTIONS.—

(i) IN GENERAL.—Subject to clause (ii), the length of any preliminary injunc-
tive relief or stay pending appeal covering
a forest landscape project described in sub-
paragraph (A) shall not exceed 60 days.

(ii) **RENEWAL.—**

(I) **IN GENERAL.—** A court of
competent jurisdiction may issue 1 or
more renewals of any preliminary in-
junction, or stay pending appeal,
granted under clause (i).

(II) **UPDATES.—** In each renewal
of an injunction in an action, the par-
ties to the action shall present the
court with updated information on the
status of the forest landscape project.

(iii) **REQUIREMENT FOR INJUNC-
TION.—** A court shall not enjoin an agency
action under a forest landscape project de-
scribed in subparagraph (A) if the court
determines that the plaintiff is unable to
demonstrate that the claim of the plaintiff
is likely to succeed on the merits.

(iv) **BALANCING OF SHORT- AND
LONG-TERM EFFECTS.—** As part of weigh-
ing the equities while considering any re-
quest for an injunction that applies to an
agency action under a forest landscape
project described in subparagraph (A), the
court reviewing the project shall balance
the impact to the ecosystem likely affected
by the project of—

(I) the short- and long-term ef-
facts of undertaking the agency ac-
tion; against

(II) the short- and long-term ef-
facts of not undertaking the agency
action.

(e) USE OF OTHER AUTHORITIES.—Each Secretary
concerned shall seek to use existing statutory and adminis-
trative authorities, including a good neighbor agreement
entered into under section 8206 of the Agricultural Act
of 2014 (16 U.S.C. 2113a), to carry out each forest land-
scape project.

(f) REPORTS.—Not later than the last day of each
fiscal year, each Secretary concerned shall submit a report
describing the impacts on wildfire risk and the environ-
ment of forest landscape projects carried out under this
section to—

(1) the Committee on Energy and Natural Re-
resources of the Senate;

(2) the Committee on Natural Resources of the
House of Representatives;
(3) the Committee on Agriculture, Nutrition, and Forestry of the Senate; and

(4) the Committee on Agriculture of the House of Representatives.

(g) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each fiscal year.

(2) NON-FEDERAL FUNDING.—Each Secretary concerned shall seek additional funding to carry out this section from private and State sources.

SEC. 102. WILDFIRE DETECTION EQUIPMENT.

(a) IN GENERAL.—Title VI of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591 et seq.) is amended by adding at the end the following:

"SEC. 607. WILDFIRE DETECTION EQUIPMENT."

"To the extent practicable, the Secretary of Agriculture and the Secretary of the Interior shall—"

"(1) expedite the placement of wildfire detection equipment, such as sensors, cameras, and other relevant equipment, in areas at risk of wildfire;"

"(2) expand the use of satellite data to assist wildfire response; and"
“(3) expedite any permitting required by the Secretary of Agriculture or the Secretary of the Interior for the installation, maintenance, or removal of wildfire detection equipment.”.

(b) TECHNICAL AMENDMENT.—The table of contents for the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 note; Public Law 108–148) is amended by adding at the end of the items relating to title VI the following:

“Sec. 607. Wildfire detection equipment.”.

10 SEC. 103. ESTABLISHMENT OF FUEL BREAKS IN FORESTS AND OTHER WILDLAND VEGETATION.

(a) DEFINITIONS.—In this section:

(1) HABITAT OF SIGNIFICANT VALUE.—The term “habitat of significant value” means a wildlife habitat (as defined in section 101(a))—

(A) of national, statewide, or regional ecological importance;

(B) that is identified as a candidate for protection, fully protected, sensitive, or as a habitat for a species of special status by a State or Federal agency; or

(C) that is essential to the movement of resident or migratory wildlife.

(2) RIPARIAN AREA.—The term “riparian area” means an area—
(A) that is transitional between terrestrial
and aquatic ecosystems;

(B) that is distinguished by gradients in
biophysical conditions, ecological processes, and
biota;

(C) through which surface and subsurface
hydrology connect bodies of water with adjacent
uplands;

(D) that is adjacent to perennial, intermittent,
and ephemeral streams, lakes, or estuarine
or marine shorelines; and

(E) that includes the portions of terrestrial
ecosystems that significantly influence ex-
changes of energy and matter with aquatic eco-
systems.

(3) SECRETARY.—The term “Secretary” has
the meaning given the term in section 101 of the
6511).

(b) CATEGORICAL EXCLUSION ESTABLISHED.—For-
est management activities described in subsection (c) are
a category of actions designated as being categorically ex-
cluded from the preparation of an environmental assess-
ment or an environmental impact statement under section
102 of the National Environmental Policy Act of 1969 (42

(c) Forest Management Activities Designated For Categorical Exclusion.—

(1) In general.—The category of forest management activities designated under subsection (b) for a categorical exclusion are forest management activities described in paragraph (2) that are carried out by the Secretary on Federal land (as defined in section 3 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6502)) the primary purpose of which is to establish and maintain linear fuel breaks that are—

(A) up to 1,000 feet in width adjacent to, and incorporating, existing linear features, such as roads, trails, transmission lines, and pipelines of any length on Federal land; and

(B) intended to reduce the risk of wildfire on the Federal land or an adjacent at-risk community.

(2) Activities.—Subject to paragraph (3), the forest management activities that may be carried out pursuant to the categorical exclusion established under subsection (b) are—

(A) mowing or masticating;
(B) thinning by manual and mechanical
cutting;

(C) piling, yarding, and removal of slash;

(D) selling of vegetation products, includ-
ing timber, firewood, biomass, slash, and fence-
posts;

(E) targeted grazing;

(F) application of—

(i) pesticide;

(ii) biopesticide; or

(iii) herbicide;

(G) seeding of native species;

(H) controlled burns and broadcast burn-
ing; and

(I) burning of piles, including jackpot
piles.

(3) EXCLUDED ACTIVITIES.—A forest manage-
ment activity described in paragraph (2) may not be
carried out pursuant to the categorical exclusion es-
established under subsection (b) if the activity is con-
ducted—

(A) in a wilderness area or wilderness
study area;

(B) for the construction of a permanent
road or permanent trail;
(C) on National Forest System land or
land managed by the Bureau of Land Manage-
ment on which the removal of vegetation is pro-
hibited or restricted by Congress or the Presi-
dent; or

(D) in an area in which the activity
would—

(i) be inconsistent with the applicable
land and resource management plan;

(ii) have a substantial adverse impact
on—

(I) wetlands, as defined in the
United States Fish and Wildlife Serv-

ice Manual, part 660 FW 2 (June 21,
1993);

(II) a riparian area; or

(III) a habitat of significant
value; or

(iii) harm—

(I) any species protected by the
Endangered Species Act of 1973 (16
U.S.C. 1531 et seq.); or

(II) the habitat of a species de-
scribed in subclause (I).
(4) EXTRAORDINARY CIRCUMSTANCES.—The Secretary shall apply the extraordinary circumstances procedures under section 220.6 of title 36, Code of Federal Regulations (or a successor regulation), in determining whether to use a categorical exclusion under subsection (b).

(d) ACREAGE AND LOCATION LIMITATIONS.—Treatments of vegetation in linear fuel breaks covered by the categorical exclusion established under subsection (b)—

(1) may not contain treatment units in excess of 3,000 acres; and

(2) shall be located primarily in an area described in section 605(c)(2) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591d(c)(2)).

SEC. 104. EMERGENCY ACTIONS.

(a) DEFINITIONS.—In this section:

(1) EMERGENCY ACTION.—The term “emergency action” means an action carried out pursuant to an emergency situation determination to mitigate the harm to life, property, or important natural or cultural resources on National Forest System land or adjacent land.

(2) EMERGENCY SITUATION.—The term “emergency situation” means a situation on National Forest System land for which immediate implementation
of a decision is necessary to achieve 1 or more of the
following results:

(A) Relief from hazards threatening
human health and safety.

(B) Mitigation of threats to natural re-
sources on National Forest System land or ad-
jacent land.

(3) EMERGENCY SITUATION DETERMINATION.—
The term "emergency situation determination"
means a determination made by the Secretary under
subsection (b)(1)(A).

(4) LAND AND RESOURCE MANAGEMENT
PLAN.—The term "land and resource management
plan" means a plan developed under section 6 of the
Forest and Rangeland Renewable Resources Plan-

(5) NATIONAL FOREST SYSTEM LAND.—The
term "National Forest System land" means land of
the National Forest System (as defined in section
11(a) of the Forest and Rangeland Renewable Re-
sources Planning Act of 1974 (16 U.S.C. 1609(a))).

(6) SECRETARY.—The term "Secretary" means
the Secretary of Agriculture.

(b) AUTHORIZED EMERGENCY ACTIONS TO RE-
SPOND TO EMERGENCY SITUATIONS.—
(1) Determination.—

(A) In General.—The Secretary may make a determination that an emergency situation exists with respect to National Forest System land.

(B) Review.—An emergency situation determination shall not be subject to objection under the predecisional administrative review processes under part 218 of title 36, Code of Federal Regulations (or successor regulations).

(C) Applicability.—An emergency situation determination shall not be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other applicable law.

(2) Authorized Emergency Actions.—After making an emergency situation determination with respect to National Forest System land, the Secretary may carry out emergency actions on that National Forest System land, including through—

(A) the salvage of dead or dying trees;

(B) the harvest of trees damaged by wind or ice;

(C) the commercial and noncommercial sanitation harvest of trees to control insects or
disease, including trees already infested with insects or disease;

(D) the reforestation or replanting of fire-impacted areas through planting, control of competing vegetation, or other activities that enhance natural regeneration and restore forest species;

(E) the removal of hazardous trees in close proximity to roads and trails;

(F) the reconstruction of existing utility lines; and

(G) the replacement of underground cables.

(3) Relation to land and resource management plans.—To the maximum extent practicable, an emergency action carried out under paragraph (2) shall be conducted consistent with the land and resource management plan.

(4) Acreage limitations.—A treatment area covered by an emergency situation determination on which an emergency action is carried out pursuant to paragraph (2) shall consist of not more than 10,000 acres of National Forest System land.

(c) Environmental analysis.—
(1) **Environmental Assessment or Environmental Impact Statement.**—If the Secretary determines that an emergency action requires an environmental assessment or an environmental impact statement pursuant to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)), the Secretary shall study, develop, and describe—

(A) the proposed agency action; and

(B) the alternative of no action.

(2) **Public Notice.**—The Secretary shall provide notice of each emergency action that the Secretary determines requires an environmental assessment or environmental impact statement under paragraph (1), in accordance with applicable regulations and administrative guidelines.

(3) **Public Comment.**—The Secretary shall provide an opportunity for public comment during the preparation of any environmental assessment or environmental impact statement under paragraph (1).

(4) **Savings Clause.**—Nothing in this subsection prohibits the Secretary from making an emergency situation determination, including a determination that an emergency exists pursuant to
section 220.4(b) of title 36, Code of Federal Regulations (or successor regulations), that makes it necessary to take an emergency action before preparing an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) **Administrative Review of Emergency Actions.**—An emergency action carried out under this section shall not be subject to objection under the predecisional administrative review processes established under section 105 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6515) and section 428 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012 (16 U.S.C. 6515 note; Public Law 112–74).

(e) **Judicial Review of Emergency Actions.**—Section 106 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6516) shall apply to an emergency action carried out under this section.

**SEC. 105. NEW INFORMATION IN LAND MANAGEMENT PLANS.**

(a) **Reinitiation of Consultation; Actions on Federal Land.**—

(1) **In General.**—The Secretary concerned shall not be required to reinitiate consultation under
section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)) on a Federal action described in subsection (b) for new information affecting the listing of a species as threatened or endangered or the designation of critical habitat under that Act (16 U.S.C. 1531 et seq.) unless the new information was—

(A) influential scientific information (as defined in the guidance document prepared by the Office of Management and Budget entitled “Final Information Quality Bulletin for Peer Review” and dated December 16, 2004);

(B) peer reviewed; and

(C) printed in a publication that is publicly accessible.

(2) ACTIONS ON FEDERAL LAND.—While any consultation initiated under paragraph (1) is pending, the Secretary concerned may take an action on Federal land to implement a land management plan, a resource management plan, or a regulation relating to Federal land that is the subject of the new information, if the Secretary concerned complies with section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) regarding that action.
(b) **Federal Actions Described.**—A Federal action referred to in subsection (a) is any of the following:

(1) An action on Federal land.

(2) A land management plan or resource management plan.

(c) **Irreversible or Irretrievable Commitments.**—An action described in subsection (a)(2) shall not be considered an irreversible or irretrievable commitment of resources to implement a land management plan, a resource management plan, or a regulation relating to Federal land.

(d) **Effect of Section.**—Nothing in this section affects any applicable requirement of the Secretary concerned to consult with the head of any other Federal department or agency—

(1) regarding any project carried out, or proposed to be carried out, to implement a land management plan or resource management plan pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), including any requirement to consult regarding the consideration of cumulative impacts of completed, ongoing, and planned projects; or

(2) with respect to—
(A) an amendment or revision to a land
management plan; or

(B) a regulation relating to Federal land.

SEC. 106. HAZARD MITIGATION USING DISASTER ASSISTANCE.

Section 404(f)(12) of the Robert T. Stafford Disaster
Relief and Emergency Assistance Act (42 U.S.C.
5170c(f)(12)) is amended—

(1) by inserting “and wildfire” after “wind-
storm”;

(2) by striking “including replacing” and in-
serting the following: “including—

“(A) replacing”;

(3) in subparagraph (A) (as so designated)—

(A) by inserting “, wildfire,” after “ext-
treme wind”; and

(B) by adding “and” after the semicolon
at the end; and

(4) by adding at the end the following:

“(B) the installation of fire-resistant wires
and infrastructure and the undergrounding of
wires;”.

TITLE II—BIOMASS

SEC. 201. BIOMASS ENERGY INFRASTRUCTURE PROGRAM.

(a) DEFINITIONS.—In this section:
(1) **Area of Economic Need.**—The term “area of economic need” has the meaning given the term “qualified opportunity zone” in section 1400Z-1(a) of the Internal Revenue Code of 1986.

(2) **Biomass.**—The term “biomass” means slash, thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that—

(A) are byproducts of preventive treatments that are removed—

(i) to reduce hazardous fuels;

(ii) to reduce or contain disease or insect infestation; or

(iii) to restore ecosystem health;

(B) are byproducts of wildfire fuel treatments;

(C) would not otherwise be used for higher-value products; and

(D) are harvested—

(i) in accordance with applicable law and land management plans;

(ii) in accordance with the requirements for—
(I) old-growth maintenance, restoration, and management direction under paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); and

(II) large tree retention under subsection (f) of that section; and

(iii) in a manner that retains a minimum quantity of coarse woody debris for habitat, nutrient recycling, and soil conservation.

(3) **BIOMASS CONVERSION FACILITY.**—The term “biomass conversion facility” means a facility that converts or proposes to convert biomass, including through gasification, into—

(A) heat;

(B) power;

(C) biobased products;

(D) advanced biofuels; or

(E) any combination of the outputs described in subparagraphs (A) through (D).

(4) **ELIGIBLE ENTITY.**—The term “eligible entity” means—

(A) a business;
(B) a limited liability company;

(C) a cooperative or an entity with a business arrangement similar to a cooperative, as determined by the Secretary;

(D) a nonprofit organization; and

(E) a public entity.

(5) HIGH HAZARD ZONE.—The term "high hazard zone" means an area identified as being at high risk of wildfire—

(A) through the use of a fire hazard mapping tool; and

(B) by—

(i) the Secretary; and

(ii) the Governor of the State in which the area is located.

(6) PROGRAM.—The term "program" means the program established under subsection (b).

(7) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(b) PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish a program to provide grants, direct loans, and loan guarantees to eligible entities—

(1) to establish a biomass conversion facility;
(2) to expand the infrastructure of a biomass conversion facility;
(3) to make infrastructure or technological changes to a biomass conversion facility; or
(4) to remove, harvest, and transport dead or dying trees and small diameter low-value trees.

(c) Grant Amount.—

(1) In general.—The amount of a grant awarded under the program shall be based on—
(A) in the case of a grant for an activity described in paragraphs (1) through (3) of subsection (b), the number of kilowatt hours of energy generated by the biomass conversion facility; and
(B) in the case of a grant for an activity described in paragraph (4) of that subsection, the contribution of the activity to reducing the risk of wildfire in high hazard zones.

(2) Maximum Payment.—An eligible entity shall not receive more than $750,000 in grant funds under the program in a single calendar year.

(d) Priorities.—In awarding a grant, direct loan, or loan guarantee under the program, the Secretary shall give priority to an eligible entity that—
(1) seeks to remove dead or dying trees and small diameter low-value trees;

(2) seeks to locate a biomass conversion facility in—

(A) an area of economic need; or

(B) an area in which there has been a decline in forest occupation, as determined by the Secretary; or

(3) is a small business, as determined by the Administrator of the Small Business Administration.

(e) Grant Matching Requirement.—Each eligible entity that receives a grant under the program shall provide an amount equal to 50 percent of the amount of the grant to carry out the activities supported by the grant.

(f) Funding.—There is authorized to be appropriated to the Secretary $100,000,000 to award grants under the program, to remain available until expended.

**TITLE III—TIMBER EXPORTS**

SEC. 301. EXEMPTION TO PROHIBITION ON EXPORT OF PROCESSED TIMBER OF DEAD AND DYING TREES IN THE STATE OF CALIFORNIA.

Section 489 of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620a) is amended—
(1) in subsection (a), by inserting before the pe-
period at the end the following: “or such timber is ex-
empted under subsection (c).”;
(2) in subsection (b)(1)—
   (A) by striking “to specific” and inserting
   the following: “to—
   “(A) specific”;
   (B) in subparagraph (A) (as so des-
   ignated), by striking the period at the end and
   inserting “; and”; and
   (C) by adding at the end the following:
   “(B) unprocessed timber originating from
   National Forest System land in the State of
   California that—
   ““(i) is included in a hazardous fuels
   reduction treatment; and
   ““(ii) for which there is no current do-
   mestic market.”; and
(3) by adding at the end the following:
   ““(c) EXEMPTION FOR UNPROCESSED SURPLUS TIM-
   BER OF DEAD AND DYING TREES IN THE STATE OF CALI-
   FORNIA.—
   ““(1) DEFINITIONS.—In this subsection:
   ““(A) DEAD.—The term ‘dead’, with re-
   spect to a tree, means that the tree is des-
ignated by a registered professional forester or
a designee of the Secretary concerned as dead.

"(B) DYING.—The term ‘dying’, with re-
spect to a tree, means that—

"(i)(I) 50 percent or greater of the fo-
liage-bearing crown of the tree is dead or
fading in color (other than through normal
autumn coloration changes) from a normal
green to a yellow, sorrel, or brown;

"(II) successful bark beetle attacks
are exhibited on the tree, with indications
of dead cambium and brood development
distributed around the circumference of
the bole of the tree; or

"(III) 50 percent or greater of the cir-
cumference of the lower bole of the tree is
girdled by wildlife; or

"(ii) the tree is designated by a reg-
istered professional forester or a designee
of the Secretary concerned as likely to die
within 1 year.

"(C) STATE.—The term ‘State’ means the
State of California.

"(2) APPLICATION OF PROHIBITION.—Subject
to paragraph (3), the prohibition under subsection
(a) shall not apply to unprocessed surplus timber originating from a dead or dying tree on Federal land in the State.

“(3) Determination of surplus species.—

“(A) In general.—Not later than 60 days after the date of enactment of the Emergency Wildfire and Public Safety Act of 2020, and each year thereafter, the Secretary concerned shall issue a list establishing which species and sizes of trees are considered to be ‘surplus’ for purposes of paragraph (2).

“(B) Implementation.—Except with respect to the first list issued under subparagraph (A), the Secretary concerned shall implement and administer this paragraph in accordance with—

“(i) the rulemaking and notice and comment provisions of section 553 of title 5, United States Code; and

“(ii) chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’).

“(4) Preference for domestic timber processing.—Notwithstanding the exemption described in paragraph (2), the Secretary concerned,
to the maximum extent practicable, shall give preference for domestic processing of timber covered by the exemption.

“(5) Inapplicability of substitution limitations.—Section 490 shall not apply to unprocessed surplus timber exempted under paragraph (2).

“(6) Reporting requirement.—Not later than March 1, 2023, the Secretaries concerned shall submit to Congress a report evaluating the impacts of the exemption described in paragraph (2) on forest health, domestic timber supply, local processing capacity, reduction in risk from wildfire, public safety, and the total quantity of timber exported.

“(7) Termination of effectiveness.—This subsection shall cease to be effective on the date that is 5 years after the date of enactment of the Emergency Wildfire and Public Safety Act of 2020.”.

**TITLE IV—OTHER MATTERS**

**SEC. 401. INNOVATIVE FOREST WORKFORCE DEVELOPMENT PROGRAM.**

(a) Definitions.—In this section:

(1) Career in the forest sector.—The term “career in the forest sector” means a career in forestry, including—

(Δ) in timber operations;
(B) as a registered professional forester;

(C) in vegetation treatment, including as a
member of a hand crew, a machine operator,
and in conducting prescribed fires;

(D) in ecological restoration, including restor-
tation of watersheds;

(E) in wildland fire fighting; and

(F) in community fire resilience, including
workforce development projects.

(2) FOREST SECTOR.—The term “forest sector”
includes the areas of forestry described in subpara-
graphs (A) through (F) of paragraph (1).

(3) SECRETARY.—The term “Secretary” means
the Secretary of Agriculture.

(b) GRANTS AUTHORIZED.—The Secretary shall es-
tablish a competitive grant program—

(1) to assist in the development and utilization
of innovative activities relating to workforce develop-
ment in the forest sector and opportunities for ca-
reers in the forest sector; and

(2) to expand public awareness about the forest
sector and connect individuals to careers in the for-
est sector.

(c) SELECTION OF GRANT RECIPIENTS.—In award-
ing grants under subsection (b), the Secretary shall, to
the extent practicable, select nonprofit professional or
service organizations, labor organizations, State agencies,
community colleges, institutions of higher education, or
other training and educational institutions—

(1) that have qualifications and experience—

(A) in the development of training pro-
grams and curricula relevant to the workforce
needs of the forest sector;

(B) working in cooperation with the forest
sector; or

(C) developing public education materials
appropriate for communicating with groups of
various ages and educational backgrounds; and

(2) that will address the human resources and
workforce needs of the forest sector.

(d) USE OF FUNDS.—Grants awarded under sub-
section (b) may be used for activities such as—

(1) targeted internship, apprenticeship, pre-app-
renticeship, and post-secondary bridge programs
for skilled forest sector trades that provide—

(A) on-the-job training;

(B) skills development;

(C) test preparation for skilled trade ap-
prenticeships;
(D) advance training in the forest sector relating to jobs as forest restorationists, members of hand crews, wildland fire fighters, machine operators, licensed timber operators, registered professional foresters, ecologists, biologists, or workers in construction in support of resilient infrastructure, including residential buildings; or

(E) other support services to facilitate post-secondary success;

(2) education programs designed for elementary, secondary, and higher education students that—

(A) inform people about the role of forestry, vegetation management, and ecological restoration in the communities of those people;

(B) increase the awareness of opportunities for careers in the forest sector and exposure of students to those careers through various work-based learning opportunities inside and outside the classroom; and

(C) connect students to pathways to careers in the forest sector;

(3) the development of a model curriculum and related vocational programs to be adopted by com-
munity colleges, which, to the extent practicable and
feasible, shall—

(A) provide professional training in imple-
menting prescribed fire projects, including the
knowledge and skills necessary to plan and im-
plement broad-scale surface and ladder fuel
treatments within the wildland-urban interface,
wildlands, and urbanized areas, as appropriate;

(B) include a focus on the ecological con-
cerns, economics, and practices necessary to im-
prove community safety and forest resilience;

and

(C) train students in—

(i) the retrofitting of houses, including
the use of fire-resistant materials and the
maintenance of defensible space;

(ii) urban forestry; and

(iii) policies or guidance relating to
the management of vegetation near utility
infrastructure and relevant portions of
electric utility wildfire mitigation plans;

(4) regional industry and workforce develop-
ment collaborations, including the coordination of
candidate development, particularly in areas of high
unemployment;
(5) integrated learning laboratories in secondary educational institutions that provide students with—

(A) hands-on, contextualized learning opportunities;

(B) dual enrollment credit for post-secondary education and training programs; and

(C) direct connection to industry or government employers; and

(6) leadership development, occupational training, mentoring, or cross-training programs that ensure that workers are prepared for high-level supervisory or management-level positions.

(e) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary to carry out this section such sums as are necessary.

SEC. 402. WESTERN PRESCRIBED FIRE CENTER.

(a) In General.—The Secretary of Agriculture and the Secretary of the Interior (referred to in this section as the “Secretaries”) shall establish a center to train individuals in prescribed fire methods and other methods relevant to the mitigation of wildfire risk (referred to in this section as the “center”).

(b) Location.—
(1) IN GENERAL.—The center shall be located in any State the entirety of which is located west of the 100th meridian.

(2) CONSULTATION.—The Secretaries shall consult with the Joint Fire Science Program to solicit and evaluate proposals for the location of the center.

(3) SELECTION.—Not later than 1 year after the date of enactment of this Act, based on the consultation under paragraph (2), the Secretaries shall select a location for the center.

SEC. 403. RETROFITS FOR FIRE-RESILIENT COMMUNITIES.

(a) DEFINITION OF WEATHERIZATION MATERIALS.—Section 412(9) of the Energy Conservation and Production Act (42 U.S.C. 6862(9)) is amended—

(1) in subparagraph (I), by striking “and” at the end;

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following:

“(J) materials that are resistant to high heat and fire; and”.

(b) WEATHERIZATION PROGRAM.—
(1) IN GENERAL.—Section 413(b)(5) of the Energy Conservation and Production Act (42 U.S.C. 6863(b)(5)) is amended—

(A) in subparagraph (C), by striking “and” at the end;

(B) in subparagraph (D), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(E) owners of such dwelling units shall use fire- and drought-resistant building materials and incorporate wildfire and drought prevention and mitigation planning, as directed by the State.”.

(2) LIMITATIONS.—Section 415(c) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)) is amended—

(A) in paragraph (1)—

(i) by redesignating subparagraphs (A) through (E) as clauses (i) through (v), respectively, and indenting appropriately;

(ii) in the matter preceding clause (i) (as so redesignated), in the second sentence, by striking “Labor” and all that follows through “to—” and inserting the following:

•S 4431 IS
“(B) Labor and weatherization materials.—Labor, weatherization materials, and related matter described in subparagraph (A) includes—”;

(iii) by striking “(c)(1) Except” and inserting the following:

“(c) Financial Assistance.—

“(1) Average cost.—

“(A) In general.—Except”;

(iv) in subparagraph (A) (as so designated)—

(I) by striking “exceed an average of $6,500” and inserting the following: “exceed—

“(i) an average of $13,000 (adjusted annually for inflation)”;

(II) in clause (i) (as so designated), by striking the period at the end and inserting “; or”; and

(III) by adding at the end the following:

“(ii) another average amount that is greater than the amount described in clause (i), if the Secretary determines it necessary to waive or adjust the average
amount established under that clause;"

and

(v) in subparagraph (B) (as so designated)—

(I) in clause (iv) (as so redesignated), by striking "", and" and inserting ""; and"; and

(II) in clause (v) (as so redesignated), by adding a period at the end;

and

(B) in paragraph (4), by striking "$3,000"

and inserting "$6,000 (adjusted annually for inflation)".

SEC. 404. CRITICAL INFRASTRUCTURE AND MICROGRID PROGRAM.

(a) Definitions.—In this section:

(1) Critical facility.—

(A) In general.—The term "critical facility" means a facility that provides services or may be used—

(i) to save lives;

(ii) to protect property, public health, and public safety; or

(iii) to lessen or avert the threat of a catastrophe.
(B) INCLUSIONS.—The term “critical facility” includes—

(i) a hospital;

(ii) an outpatient clinic;

(iii) a nursing home;

(iv) a police station;

(v) an emergency operation center;

(vi) a jail or prison;

(vii) a fire station;

(viii) a facility in the communications sector, as determined by the Secretary;

(ix) a facility in the chemical sector, as determined by the Secretary;

(x) a school or other large building that may serve as a temporary gathering space;

(xi) a utility station, such as a water and wastewater station; and

(xii) any facility described in subparagraph (A) that is owned or operated by, or provides services to, an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)).
(2) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(b) CRITICAL INFRASTRUCTURE AND MICROGRID PROGRAM.—The Secretary shall use the funds made available under subsection (d)—

(1) to improve the energy resilience and power needs of critical facilities through the use of microgrids, renewable energy, energy efficiency, and on-site storage; and

(2) to improve the energy efficiency of critical facilities by decreasing the size and cost of generators.

(c) USE OF FUNDS.—In carrying out subsection (b), the Secretary shall ensure that the funds made available under subsection (d) shall be used for, with respect to critical facilities—

(1) provision of on-site back-up power with renewable and low-carbon liquid fuels; and

(2) installation, at the transmission and distribution level, of interoperable technologies, advanced power flow control, dynamic line rating, topology optimization, and communications systems.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary
1 $100,000,000 to carry out this section, to remain available
2 until expended.
Item B-5
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: September 5, 2020

SUBJECT: Assembly Bill 831 (Grayson) - Planning and zoning: housing: development application modifications

ATTACHMENTS: 1. Summary Memo – AB 831  
2. Bill Text – AB 831

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 831 - Planning and zoning: housing: development application modifications (AB 831) involves a policy matter that may have a nexus to the City’s adopted Legislative Platform language. One of the key focus areas for the 2020 Legislative Platform was to support legislation in regards to local control with community self-determination, which may be related to this bill. The City Council Liaison/Legislative/Lobby Committee may or may not find AB 831 is consistent with the following statements from the City’s Legislative Platform:

- Support legislation that preserves local control.
- Support legislation that protects local control over urban planning.
- Oppose state legislation that supersedes a jurisdiction’s adopted zoning ordinances

AB 831 would make changes to the process for development projects approved by the streamlined, ministerial process created by SB 35 (Wiener, 2017). The change provides a path to modify approved development projects prior to the issuance of the final building permit required for construction, including provisions on how local governments must treat such an application for a modification. This bill also specifies how local governments must approve and construct public improvements provided in conjunction with the streamlined, ministerial development project in a manner that would not inhibit, chill, or preclude the development.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 831 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 831, the Liaisons may recommend the following actions:

1) Request the Governor to sign AB 831;  
2) Request the Governor to veto AB 831;  
3) Remain neutral; or  
4) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 831, then staff will place the item on a future City Council Agenda for concurrence should it be determined to not align with the City’s adopted Legislative Platform.
Attachment 1
September 1, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 831 (Grayson) Planning and zoning: housing: development application modifications

Bill History
This bill was gutted and amended on April 17, 2020. The previous version of the bill would have required the Department of Housing and Community Development (HCD) to post their recent study on local impact fees on housing development to its internet website on or before March 1, 2020 and issue a report to the Legislature by January 1, 2024 on the progress of cities and counties in adopting the recommendations made in the study.

HCD was directed under the provisions of AB 879 (Grayson, 2017) to complete a study to evaluate the reasonableness of local fees charged to new developments. The study is required to include findings and recommendations regarding potential amendments to the Mitigation Fee Act to substantially reduce fees for residential development. This report, titled “Residential Impact Fees in California: Current Practices and Policy Considerations to Improve Implementation of Fees Governed by the Mitigation Fee Act,” was completed by the Terner Center on August 5, 2019 and was published online. The report suggested several policy considerations regarding increasing fee transparency, restructuring impact fee rates, improving the fee design process, exploring alternative funding options.

Subsequent Amendments Changed the Subject & Provisions of the Bill
The final version of AB 891 makes changes to the process for development projects approved by the streamlined, ministerial process created by SB 35 (Wiener, 2017). The changes provide a path to modify approved development projects prior to the issuance of the final building permit required for construction, including provisions on how local governments must treat an application for a modification. The bill also specifies how local governments must approve and construct public improvements provided in conjunction with the streamlined, ministerial development project in a manner that would not inhibit, stall, or preclude the development.

Specifically, this bill would:

- Clarify that a development subject to the streamlined, ministerial approval process created by SB 35, and the site on which it is located, must be zoned for residential use or mixed-use development and at least two-thirds of the square footage of the development must be designated for residential use.

- Provide a process for modification to a development that has been approved under the streamlined, ministerial approval created by SB 35, as follows:
• Allows a development proponent to request a modification if that request is submitted prior to the issuance of the final building permit required for construction.

• Requires a local government to approve the modification if it determines that the modification is consistent with the objective planning standards outlined in SB 35, as follows:
  
  ▪ If the modified project does not substantially differ from the approved development, the local government must use the same assumptions and methodology that was originally used to assess consistency for the development; or

  ▪ If the modified project does substantially differ from the approved development, the local government may apply objective planning standards contained in the California Building Standards Code, including, but not limited to building plumbing, electrical, fire, and grading codes adopted after the development application was first submitted.

  ▪ The local government’s review of a modification request must be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development’s consistency with the objective planning standards and must not consider prior determinations that are not affected by the modification.

  ▪ A guideline adopted or amended by HCD after a development was approved cannot be used as a basis to deny proposed modifications.

• Provides that, upon receipt of an application requesting a modification, the local government must determine if the modification is consistent with the objective planning standards and approve or deny the modification request within 60 days after submission of the request, or within 90 days if design review is required.

• Modify processes regarding public improvements necessary to implement developments approved by the streamlined, ministerial approval process created by SB 35, as follows:

  • If the public improvement is located on land owned by the local government, then to the extent that the public improvement requires approval from the local government, the local government must not exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, stall, or preclude the development;

  • If the local government receives an application for a public improvement, it must:

    ▪ Consider an application for a public improvement based upon any objective planning standards in any other state or local laws that were in effect when the original development application was submitted; and

    ▪ Conduct its review and approval in the same manner as it would evaluate the public improvement if required by a project that is not eligible to receive ministerial or streamlined approval.
If the local government receives an application for a public improvement, it must not:

- Adopt or impose any requirement that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval; or
- Unreasonably delay in its consideration, review, or approval of the application.

- Provides that no reimbursement is required by this act 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 bill.

**Status of Legislation**
This bill has been ordered to Assembly Engrossing and Enrolling and is on its way to the Governor.

**Support**
California Apartment Association
Bay Area Council
American Planning Association, California Chapter
Council of Infill Builders
The Two Hundred
Silicon Valley at Home
California Community Builders
San Francisco Bay Area Planning and Urban Research Association
California YIMBY
Sand Hill Property Company
Up for Growth
All Home
Bay Area Housing Action Coalition

**Opposition**
None
An act to amend Section 65913.4 of the Government Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

AB 831, as amended, Grayson. Planning and zoning: housing: development application modifications.

The Planning and Zoning Law, until January 1, 2026, authorizes a development proponent to submit an application for a multifamily housing development that is subject to a streamlined, ministerial approval process, as provided, and not subject to a conditional use permit, if the development satisfies specified objective planning standards, including, among other things, that the development is located on a site that satisfies specified location, urbanization, and zoning requirements. Existing law requires a local government that determines that a development submitted pursuant to these provisions is in conflict with any of the objective planning standards to provide the development proponent written documentation of which standard or standards the
development conflicts with and an explanation of the reasons, as specified.

This bill would require the development and the site on which it is located to satisfy the specified location, urbanization, and zoning requirements. The bill would authorize a development proponent to request a modification to a development that has been approved under the streamlined, ministerial approval process if the request is submitted before the issuance of the final building permit required for construction of the development. The bill would require the local government to determine if the requested modification is consistent with the objective planning standard and either approve or deny the modification request within 60 or 90 days after submission of the modification, as specified. By adding to the duties of a local government with respect to review of a development application, this bill would impose a state-mandated local program. The bill would permit the local government to apply objective planning standards adopted after the development application was first submitted to the requested modification in specified instances.

This bill would specify that if a public improvement is necessary to implement a development that is subject to the streamlined, ministerial approval process and that public improvement is located on land owned by the local government, to the extent that the public improvement requires approval from the local government, the local government shall not exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, chill, or preclude the development. If an application for such a public improvement is submitted to a local government, the bill would require the local government to consider the application based upon any objective standards specified in any state or local laws that were in effect when the original development application was submitted, and to conduct its review and approval in the same manner as it would evaluate the public improvement if required by a project that is not eligible to receive the ministerial or streamlined approval described above. The bill would also prohibit the local government from unreasonably delaying in its consideration, review, or approval of the application for the public improvement, and from adopting or imposing any requirement that applies to a project solely or partially on the basis that the project is eligible to receive that ministerial or streamlined approval.

Existing law also requires a local government to issue a subsequent permit, as defined, if the application substantially complies with the development as it was approved. Existing law provides that these permits
include, but are not limited to, demolition, grading, and building permits and final maps.

This bill would specify that a subsequent permit also includes an encroachment permit.

This bill would incorporate additional changes to Section 65913.4 of the Government Code proposed by AB 168 to be operative only if this bill and AB 168 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: \( \frac{2}{3} \). Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 65913.4 of the Government Code, as amended by Section 5.3 of Chapter 844 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 and the site on which it is located satisfy all of the following:

(A) It 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) 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) It 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, and at least two-thirds of the square footage of the development is 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:

(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 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, 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 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. 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, 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.
(D) 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
(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
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 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:
1 (A) The development is located within one-half mile of public transit.
2 (B) The development is located within an architecturally and historically significant historic district.
3 (C) When on-street parking permits are required but not offered to the occupants of the development.
4 (D) When there is a car share vehicle located within one block of the development.
5 (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.
6 (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.
7 (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 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:
8 (i) The construction has begun and has not ceased for more than 180 days.
9 (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.
10 (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 processes set forth in this section.

(f) (1) (A) A development proponent may request a modification to a development that has been approved under the streamlined, ministerial approval process provided in subdivision (b) if that request is submitted to the local government before the issuance of the final building permit required for construction of the development.

(B) Except as 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.

(C) The local government shall evaluate any modifications requested pursuant to this subdivision for consistency with the 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).

(D) A guideline that was adopted or amended by the department pursuant to subdivision (j) after a development was approved through the streamlined ministerial approval process described in subdivision (b) shall not be used as a basis to deny proposed modifications.

(2) Upon receipt of the developmental proponent’s application requesting a modification, the local government shall determine if the requested modification is consistent with the objective planning standard and either approve or deny the modification
request within 60 days after submission of the modification, or
within 90 days if design review is required.
(3) Notwithstanding paragraph (1), the local government may
apply objective planning standards adopted after the development
application was first submitted to the requested modification in
any of 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 it is necessary to subject the development
to an objective standard beyond those in effect when the
development application was submitted in order 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.
(4) The local government’s review of a modification request
pursuant to this subdivision shall be strictly limited to determining
whether the modification, including any modification to previously
approved density bonus concessions or waivers, modify the
development’s consistency with the objective planning standards
and shall not reconsider prior determinations that are not affected
by the modification.
(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, encroachment, and building permits and final maps, if necessary.

(3) (A) If a public improvement is necessary to implement a development that is subject to the streamlined, ministerial approval pursuant to this section, including, but not limited to, a bicycle lane, sidewalk or walkway, public transit stop, driveway, street paving or overlay, a curb or gutter, a modified intersection, a street sign or street light, landscape or hardscape, an above-ground or underground utility connection, a water line, fire hydrant, storm or sanitary sewer connection, retaining wall, and any related work, and that public improvement is located on land owned by the local government, to the extent that the public improvement requires approval from the local government, the local government shall not exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, chill, or preclude the development.

(B) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall do all of the following:

(i) Consider the application based upon any objective standards specified in any state or local laws that were in effect when the original development application was submitted.

(ii) Conduct its review and approval in the same manner as it would evaluate the public improvement if required by a project that is not eligible to receive ministerial or streamlined approval pursuant to this section.

(C) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall not do either of the following:

(i) Adopt or impose any requirement 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.
(ii) Unreasonably delay in its consideration, review, or approval of the application.

(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:

(1) 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.

(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 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.

(8) “Production report” means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

(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.

(10) “Subsidized” means units that are price or rent restricted such that the units are 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.

(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.

(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.

(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.

(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.

(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.

(n) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 1.5. Section 65913.4 of the Government Code 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) (c) and is not subject to a conditional use permit if the development complies with subdivision (b) and 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 and the site on which it is located satisfy all of the following:

(A) A site that It 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 It 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 and at least two-thirds of the square footage of the development is 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 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, 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 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. 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, 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, or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier. 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) It is the intent of the Legislature that the objective zoning standards, objective subdivision standards, and objective design review standards described in this paragraph be adopted or amended in compliance with the requirements of Chapter 905 of the Statutes of 2004.

(D) 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
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 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)
(b) (1) (A) (i) Before submitting an application for a
development subject to the streamlined, ministerial approval
process described in subdivision (c), the development proponent
shall submit to the local government a notice of its intent to submit
an application. The notice of intent shall be in the form of a
preliminary application that includes all of the information
described in Section 65941.1, as that section read on January 1,
2020.
(ii) Upon receipt of a notice of intent to submit an application
described in clause (i), the local government shall engage in a
scoping consultation regarding the proposed development with
any California Native American tribe that is traditionally and
culturally affiliated with the geographic area, as described in
Section 21080.3.1 of the Public Resources Code, of the proposed
development. In order to expedite compliance with this subdivision,
the local government shall contact the Native American Heritage
Commission for assistance in identifying any California Native
American tribe that is traditionally and culturally affiliated with
the geographic area of the proposed development.
(iii) The timeline for noticing and commencing a scoping consultation in accordance with this subdivision shall be as follows:

(I) The local government shall provide a formal notice of a development proponent’s notice of intent to submit an application described in clause (i) to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development within 30 days of receiving that notice of intent. The formal notice provided pursuant to this subclause shall include all of the following:

(ia) A description of the proposed development.

(ib) The location of the proposed development.

(ic) An invitation to engage in a scoping consultation in accordance with this subdivision.

(II) Each California Native American tribe that receives a formal notice pursuant to this clause shall have 30 days from the receipt of that notice to accept the invitation to engage in a scoping consultation.

(III) If the local government receives a response accepting an invitation to engage in a scoping consultation pursuant to this subdivision, the local government shall commence the scoping consultation within 30 days of receiving that response.

(B) The scoping consultation shall recognize that California Native American tribes traditionally and culturally affiliated with a geographic area have knowledge and expertise concerning the resources at issue and shall take into account the cultural significance of the resource to the culturally affiliated California Native American tribe.

(C) The parties to a scoping consultation conducted pursuant to this subdivision shall be the local government and any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development. More than one California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development may participate in the scoping consultation. However, the local government, upon the request of any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development, shall engage in a separate scoping consultation with that California Native American tribe. The development proponent and its consultants may participate
in a scoping consultation process conducted pursuant to this subdivision if all of the following conditions are met:

(i) The development proponent and its consultants agree to respect the principles set forth in this subdivision.

(ii) The development proponent and its consultants engage in the scoping consultation in good faith.

(iii) The California Native American tribe participating in the scoping consultation approves the participation of the development proponent and its consultants. The California Native American tribe may rescind its approval at any time during the scoping consultation, either for the duration of the scoping consultation or with respect to any particular meeting or discussion held as part of the scoping consultation.

(D) The participants to a scoping consultation pursuant to this subdivision shall comply with all of the following confidentiality requirements:

(i) Subdivision (r) of Section 6254.

(ii) Section 6254.10.

(iii) Subdivision (c) of Section 21082.3 of the Public Resources Code.

(iv) Subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations.

(v) Any additional confidentiality standards adopted by the California Native American tribe participating in the scoping consultation.

(E) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a scoping consultation conducted pursuant to this subdivision.

(2) (A) If, after concluding the scoping consultation, the parties find that no potential tribal cultural resource would be affected by the proposed development, the development proponent may submit an application for the proposed development that is subject to the streamlined, ministerial approval process described in subdivision (c).

(B) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is documented between the California Native American tribe and the local government on methods, measures, and conditions for tribal
cultural resource treatment, the development proponent may submit the application for a development subject to the streamlined, ministerial approval process described in subdivision (c). The local government shall ensure that the enforceable agreement is included in the requirements and conditions for the proposed development.

(C) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is not documented between the California Native American tribe and the local government regarding methods, measures, and conditions for tribal cultural resource treatment, the development shall not be eligible for the streamlined, ministerial approval process described in subdivision (c).

(D) For purposes of this paragraph, a scoping consultation shall be deemed to be concluded if either of the following occur:

(i) The parties to the scoping consultation document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present.

(ii) One or more parties to the scoping consultation, acting in good faith and after reasonable effort, conclude that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present cannot be reached.

(E) If the development or environmental setting substantially changes after the completion of the scoping consultation, the local government shall notify the California Native American tribe of the changes and engage in a subsequent scoping consultation if requested by the California Native American tribe.

(3) A local government may only accept an application for streamlined, ministerial approval pursuant to this section if one of the following applies:

(A) A California Native American tribe that received a formal notice of the development proponent’s notice of intent to submit an application pursuant to subclause (I) of clause (iii) of subparagraph (A) of paragraph (1) did not accept the invitation to engage in a scoping consultation.

(B) The California Native American tribe accepted an invitation to engage in a scoping consultation pursuant to subclause (II) of
clause (iii) of subparagraph (A) of paragraph (1) but substantially
failed to engage in the scoping consultation after repeated
documented attempts by the local government to engage the
California Native American tribe.
(C) The parties to a scoping consultation pursuant to this
subdivision find that no potential tribal cultural resource will be
affected by the proposed development pursuant to subparagraph
(A) of paragraph (2).
(D) A scoping consultation between a California Native
American tribe and the local government has occurred in
accordance with this subdivision and resulted in agreement
pursuant to subparagraph (B) of paragraph (2).
(4) A project shall not be eligible for the streamlined, ministerial
process described in subdivision (c) if any of the following apply:
(A) There is a tribal cultural resource that is on a national,
state, tribal, or local historic register list located on the site of the
project.
(B) There is a potential tribal cultural resource that could be
affected by the proposed development and the parties to a scoping
consultation conducted pursuant to this subdivision do not
document an enforceable agreement on methods, measures, and
conditions for tribal cultural resource treatment, as described in
 subparagraph (C) of paragraph (2).
(C) The parties to a scoping consultation conducted pursuant
to this subdivision do not agree as to whether a potential tribal
cultural resource will be affected by the proposed development.
(5) (A) If, after a scoping consultation conducted pursuant to
this subdivision, a project is not eligible for the streamlined,
ministerial process described in subdivision (c) for any or all of
the following reasons, the local government shall provide written
documentation of that fact, and an explanation of the reason for
which the project is not eligible, to the development proponent
and to any California Native American tribe that is a party to that
scoping consultation:
(i) There is a tribal cultural resource that is on a national, state,
tribal, or local historic register list located on the site of the
project, as described in subparagraph (A) of paragraph (4).
(ii) The parties to the scoping consultation have not documented
an enforceable agreement on methods, measures, and conditions
for tribal cultural resource treatment, as described in
subparagraph (C) of paragraph (2) and subparagraph (B) of paragraph (4).

(iii) The parties to the scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the proposed development, as described in subparagraph (C) of paragraph (4).

(B) The written documentation provided to a development proponent pursuant to this paragraph shall include information on how the development proponent may seek a conditional use permit or other discretionary approval of the development from the local government.

(6) This section is not intended, and shall not be construed, to limit consultation and discussion between a local government and a California Native American tribe pursuant to other applicable law, confidentiality provisions under other applicable law, the protection of religious exercise to the fullest extent permitted under state and federal law, or the ability of a California Native American tribe to submit information to the local government or participate in any process of the local government.

(7) For purposes of this subdivision:

(A) “Consultation” means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the “State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines” prepared by the Office of Planning and Research.

(B) “Scoping” means the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if authorized by the California Native American tribe, regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code, or California Native American tribe, as defined in Section 21073 of the Public Resources Code.
(8) This subdivision shall not apply to any project that has been approved under the streamlined, ministerial approval process provided under this section before the effective date of the act adding this subdivision.

(b) (c) (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.

(d) (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).

(e) (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.

(f) (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 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 processes set forth in this
section.
(g) (1) (A) A development proponent may request a
modification to a development that has been approved under the
streamlined, ministerial approval process provided in subdivision
(b) if that request is submitted to the local government before the issuance of the final building permit required for construction of the development.

(B) Except as 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.

(C) The local government shall evaluate any modifications requested pursuant to this subdivision for consistency with the 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).

(D) A guideline that was adopted or amended by the department pursuant to subdivision (j) after a development was approved through the streamlined ministerial approval process described in subdivision (b) shall not be used as a basis to deny proposed modifications.

(2) Upon receipt of the developmental proponent’s application requesting a modification, the local government shall determine if the requested modification is consistent with the objective planning standard and either approve or deny the modification request within 60 days after submission of the modification, or within 90 days if design review is required.

(3) Notwithstanding paragraph (1), the local government may apply objective planning standards adopted after the development application was first submitted to the requested modification in any of 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 it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order 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.

(4) The local government’s review of a modification request pursuant to this subdivision shall be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development’s consistency with the objective planning standards and shall not reconsider prior determinations that are not affected by the modification.

(h) (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), (c). 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), (c), and includes, but is not limited to, demolition, grading, encroachment, and building permits and final maps, if necessary.

(3) (A) If a public improvement is necessary to implement a development that is subject to the streamlined, ministerial approval pursuant to this section, including, but not limited to, a bicycle lane, sidewalk or walkway, public transit stop, driveway, street paving or overlay, a curb or gutter, a modified intersection, a street sign or street light, landscape or hardscape, an
above-ground or underground utility connection, a water line, fire hydrant, storm or sanitary sewer connection, retaining wall, and any related work, and that public improvement is located on land owned by the local government, to the extent that the public improvement requires approval from the local government, the local government shall not exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, chill, or preclude the development.

(B) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall do all of the following:

(i) Consider the application based upon any objective standards specified in any state or local laws that were in effect when the original development application was submitted.

(ii) Conduct its review and approval in the same manner as it would evaluate the public improvement if required by a project that is not eligible to receive ministerial or streamlined approval pursuant to this section.

(C) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall not do either of the following:

(i) Adopt or impose any requirement 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.

(ii) Unreasonably delay in its consideration, review, or approval of the application.

(g) (i) 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.

(j) 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:
(1) 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.

(k) 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 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.
(8) “Production report” means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

(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.

(10) “Subsidized” means units that are price or rent restricted such that the units are 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.

(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.

(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.

(l) 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.

(m) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (b) of (c) is not a “project” as defined in Section 21065 of the Public Resources Code.

(n) 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.

(o) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.
SEC. 2. Section 1.5 of this bill incorporates amendments to Section 65913.4 of the Government Code proposed by this bill and Assembly Bill 168. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2021, (2) each bill amends Section 65913.4 of the Government Code, and (3) this bill is enacted after Assembly Bill 168, in which case Section 65913.4 of the Government Code, as amended by Assembly Bill 168, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to reduce delays, litigation, and inefficient permit processing of housing projects subject to streamlined ministerial approval, including delays caused by necessary public improvements and other reasonable modifications to the plan as soon as possible, it is necessary that this bill go into immediate effect.
Item B-6
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

The City Council Liaison/Legislative/Lobby Committee recommended the City Council support Assembly Bill 1506 - Police use of force (AB 1506) on July 10, 2020. The City Council approved this position on July 21, 2020. Since then, the bill has been amended. The amendments have caused several supporters of AB 1506 to remove their position of support and they are now advocating for the Governor to veto this bill. Several of the concerns listed by the organizations requesting the veto include:

- The role of the California Department of Justice (DOJ) is now limited to reviewing an agency's use of force policy and make recommendations.
- The state prosecutor, who is the Attorney General unless otherwise specified, must publish any reports made as a result of the investigation; however, this could conflict with AB 301 which grants sworn peace officers a certain level of protection for their statements.
- The state prosecutor is able to seek reimbursement from a local jurisdiction for costs incurred in the course of conducting the investigation.
- The language specifies that an investigation would be triggered by a peace officers using force that causes the death of an "unarmed civilian"; however, the definition of "unarmed" is unclear.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1506 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1506, the Liaisons may recommend the following actions:

1) Request the Governor to sign AB 1506;
2) Request the Governor to veto AB 1506;
3) Remain neutral; or
4) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1506, then staff will place the item on a future City Council Agenda for concurrence.
September 1, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange  
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange  
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 1506 (McCarty) Police use of force

Introduced Version
As introduced on February 22, 2020, this bill was jointly authored by Assemblymember McCarty and Assemblymember O’Donnell and included nonsubstantive provisions regarding statewide limits on the number of charter schools.

The bill was amended on June 17, 2020, to delete Assemblymember O’Donnell from the bill, leaving Assemblymember McCarty as the lead author, and delete the entire original policy content from the bill. The June 17 amendments also add 32 new joint authors from the Assembly and 11 principal co-authors from the Senate.

August 25, 2020 Amendments
AB 1506 (McCarty) was amended on August 25 to require a state prosecutor to investigate peace officer involved use of force incidents that result in the death of an unarmed civilian.

Specifically, this bill:
- Specifies that the state prosecutor is the Attorney General unless otherwise named or specified.
- Allows the state prosecutor to do all of the following:
  - Investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of an unarmed civilian.
  - Prepare and submit a written report, which must include specified information, for all investigations conducted.
  - Initiate and prosecute a criminal action against the officer if criminal charges against the involved officer are found to be warranted.
- Requires the state prosecutor to post and maintain on a public website each written report prepared by the state prosecutor pursuant to this measure, appropriately redacting any information in the report that is required by law to be kept confidential.
- Requires the Attorney General, beginning on July 1, 2023 to operate a Police Practices Division within the Department of Justice (DOJ) to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.
- Specifies that AB 1506 does not limit the Attorney General’s authority under the California Constitution or any applicable state law.
**Status of Legislation**
This bill has been ordered to Assembly Engrossing and Enrolling and is on its way to the Governor.

**Support and Opposition**
Supporters of AB 1506 argue that this bill would allow local law enforcement agencies and district attorneys to more regularly request the Attorney General to launch a formal review of situations where an officer used force that resulted in death or harm. The DOJ would have to review the incident and, upon its conclusion, could pursue prosecution should that force be found unwarranted. AB 1506 would also create a new Police Practices Division by 2023 in the department that would specifically handle requests by local agencies to review policies and practices related to use-of-force.

Opponents argue that this bill bypasses local investigatory processes, including established agreements to have outside agencies investigate officer-involved use of force incidents. Additionally, they argue it is unclear whether a state prosecutor investigation required or permitted by this bill would take the place of, or be in addition to, a local investigation. They also state that by allowing city councils and boards of supervisors to request investigations, AB 1506 unnecessarily politicizes very difficult situations that are already subject to a very high level of review at multiple levels. They also assert AB 1506 includes no direction or requirement that an entity that requests an investigation be geographically proximate or share some level of jurisdiction. For example, as proposed to be amended, a city council of a tiny city in Southern California could ask the Attorney General to investigate an incident involving a deputy sheriff from a Bay Area county.

**Support**
AT&T  
California Public Defenders Association  
California Teachers Association  
City of Alameda  
City of Glendora  
City of Long Beach  
City of Sacramento  
Consumer Attorneys of California  
League of California Cities  
Los Angeles County District Attorney’s Office  
National Association of Social Workers – California  
Planned Parenthood Affiliates of California  
Sacramento County District Attorney’s Office  
Salesforce  
San Diego County District Attorney’s Office  
Yolo County District Attorney

**Opposition**
California Attorneys for Criminal Justice  
California Police Chiefs Association  
California State Sheriffs Association  
Communities United for Restorative Youth Justice  
PORAC
Attachment 2
An act to add Section 12525.3 to the Government Code, relating to the Department of Justice.
AB 1506

LEGISLATIVE COUNSEL’S DIGEST

AB 1506, as amended, McCarty. Police use of force.

Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

Existing law requires law enforcement agencies to report to the Department of Justice, as specified, any incident in which a peace officer is involved in a shooting or use of force that results in death or serious bodily injury.

This bill would create a division within the Department of Justice to, upon the request of a law enforcement agency, review the use-of-force policy of the agency and make recommendations, as specified.

The bill would also require a state prosecutor to investigate incidents of officer-involved use of force resulting in the death of an unarmed civilian, and would require the state prosecutor to conduct an investigation upon request from a local law enforcement agency, district attorney, city council, or county or city and county board of supervisors, on an incident involving the use of force by a peace officer that resulted in the death of a civilian. An officer-involved shooting resulting in the death of an unarmed civilian, as defined. The bill would make the Attorney General the state prosecutor unless otherwise specified or named. The bill would authorize the state prosecutor to prepare a written report, and would require the state prosecutor to post any reports made on a public internet website. The bill would authorize the state prosecutor to seek reimbursement, in full or in part, from the local entity for appropriate costs associated with the investigation, thereby imposing a state-mandated local program.

The bill would provide that, if no appropriation is made by the Legislature to fund these programs, the programs shall operate using existing Department of Justice funds.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,
reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The bill would require, commencing July 1, 2023, the Attorney General to operate a Police Practices Division within the department to review, upon the request of a local law enforcement agency, the use of deadly force policies of that law enforcement agency and make recommendations, as specified.

The bill would require the department to implement these provisions subject to an appropriation for this purpose.


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

SECTION 1. Section 12525.3 is added to the Government Code, to read:

12525.3. (a) (1) For purposes of this subdivision, the following definitions apply:

(1) “Deadly weapon” includes, but it not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles.

(2) “Unarmed civilian” includes anyone who is not in possession of a deadly weapon.

(b) (1) A state prosecutor shall investigate incidents of officer-involved use of force an officer-involved shooting resulting in the death of an unarmed civilian. The Attorney General is the state prosecutor unless otherwise specified or named.

(2) The state prosecutor shall also conduct an investigation upon request from a local law enforcement agency, district attorney, city council, or county or city and county board of supervisors, on an incident involving the use of force by a peace officer that resulted in the death of a civilian.

(3) The state prosecutor is authorized to do all of the following:

(A) Investigate and gather facts in incidents an incident involving the use of force a shooting by a peace officer that result results in the death of an unarmed civilian.
(B) Investigate and gather facts in an incident involving the use of force by a peace officer that results in the death of a civilian upon request from a local law enforcement agency, district attorney, a city council, or county or city and county board of supervisors.

(C) For all investigations conducted, prepare and submit a written report. The written report shall include, at a minimum, the following information:

(i) A statement of the facts.

(ii) A detailed analysis and conclusion for each investigatory issue.

(iii) Recommendations to modify the policies and practices of the law enforcement agency, as applicable.

(D) If criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer.

(4) Reimbursement may be sought, in full or in part, from the local entity for appropriate costs associated with the investigation.

(5) The state prosecutor shall post and maintain on a public internet website each written report prepared by the state prosecutor pursuant to this subdivision, appropriately redacting any information in the report that is required by law to be kept confidential.

(b) Commencing on July 1, 2023, the Attorney General shall operate a Police Practices Division within the Department of Justice to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.

(2) The program described in this subdivision paragraph (1) shall make specific and customized recommendations to any law enforcement agency that requests a review pursuant to this section, paragraph (1), based on those policies identified as recommended best practices.

(c) This section does not limit the Attorney General’s authority under the California Constitution or any applicable state law.
(d) If an appropriation is not made by the Legislature to fund this section, the Department of Justice shall implement the requirements of this section using existing department funding.

(e) Subject to an appropriation for this purpose by the Legislature, the department shall implement this section.

SEC. 2. If the Commission on State Mandates determines that this act contains 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.
Item B-7
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: September 5, 2020

SUBJECT: Assembly Bill 2405 (Burke) - Right to safe, decent, and affordable housing

ATTACHMENTS: 1. Summary Memo – AB 2405
               2. Bill Text – AB 2405

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 2405 - Right to safe, decent, and affordable housing (AB 2405) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language; however, given the City’s interest in affordable housing, this item is being presented to the City Council Liaison/Legislative/Lobby Committee for direction.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 2405 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 2405, the Liaisons may recommend the following actions:

1) Request the Governor to sign AB 2405;
2) Request the Governor to veto AB 2405;
3) Remain neutral; or
4) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 2405, then staff will place the item on a future City Council Agenda for concurrence.
September 1, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 2405 (Burke) Right to safe, decent, and affordable housing

Introduction and Background
Assemblymember Burke introduced AB 2405 in February 2020. This measure states that it is the policy that every individual in California has the right to safe and decent, and affordable housing.

Specifically, this measure would:
- Declare as state policy that every individual in California has the right to safe, decent, and affordable housing.
- Require the implementation of the policy to consider all of the following components:
  - Preventing individuals from entering homelessness by providing assistance and services, as specified.
  - Providing a clean and safe environment where homeless individuals may reside until they can be placed in permanent housing, as specified.
  - Placing individuals in permanent housing, in accordance with the core components of Housing First and in compliance with the federal Americans with Disabilities Act (ADA).
- Requires all relevant state agencies, as specified, to do all of the following:
  - Consider the state policy established by this bill when revising, adopting, or establishing policies, regulations, and grant criteria.
  - Commit to preventing homelessness and getting individuals into housing by coordinating resources and practicing evidence-based housing interventions.
  - Revise existing programs and services to identify individuals experiencing homelessness or housing instability and connect them with housing resources at the state and local level.
  - Ensure state-funded institutions do not discharge individuals without a temporary or permanent housing option, and support whatever it takes to make homelessness rare, brief, and nonrecurring.
- Requires all relevant state agencies to ensure, when implementing policies, regulations, and grants, that individuals are treated with dignity and respect in order to minimize trauma for those on the verge of, or experiencing homelessness, and recognize and address the fear and anxiety of individuals facing homelessness.
- Requires all relevant state agencies to establish a set of universal reporting requirements among relevant state programs to track homeless outcomes, including but not limited to the information required by HHAPP. Requires, where feasible, that the reported information be provided to, and maintained within, the statewide Homeless Management Information System (HMIS).
• Provides that this bill shall become operative on January 1, 2026, and implementation shall be subject to a budget appropriation.

**Status of Legislation**
This bill has been ordered to Assembly Engrossing and Enrolling and is on its way to the Governor.

**Support and Opposition**
According to supporters, "Access to permanent housing is a basic human necessity, and it is a moral responsibility of society to assist those whom the private market cannot serve. AB 2405 will appropriately establish a state policy to provide safe, decent, and affordable housing for all California residents in need, girding the state and local governments to further action to address the needs of the more than 150,000 individuals living without shelter and the 1.4 million lower income households without access to affordable homes.

Opponents of the bill wrote in opposition to the prior version of this bill, and stated concerns that it that it could be used as a basis for imposing residential developments on cities without local review. The requirements on local governments were removed in the August 20th amendments.

**Support**
Agency on Aging/Area 4
Association of California Caregiver Resource Centers
California Academy of Child and Adolescent Psychiatry
California Apartment Association
California Association for Adult Day Care Centers
California Association of Public Authorities for IHSS
California Housing Partnership Corporation
California In-home Supportive Services Consumer Alliance
California Teachers Association
CalPACE
City of Santa Monica
Consumer Attorneys of California
Disability Rights California
Fund Her
Hims, Inc.
Justice in Aging
LeadingAge California
Lifesteps
Los Angeles Aging Advocacy Coalition
National Association of Social Workers, California Chapter
Senior Services Coalition of Alameda County
Seniors Council/Area Agency on Aging of Santa Cruz and San Benito Counties
Silicon Valley Independent Living Center
St. Barnabas Senior Services
The Children's Partnership
Upward Bound House
Village Movement California

**Opposition**
City of Rancho Palos Verdes
Attachment 2
Assembly Bill No. 2405

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Passed the Assembly  August 30, 2020

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Chief Clerk of the Assembly

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Passed the Senate  August 29, 2020

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Secretary of the Senate

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This bill was received by the Governor this _____ day of ____________, 2020, at _____ o’clock ____м.

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Private Secretary of the Governor
AB 2405

CHAPTER _______

An act to add Section 8258.1 to the Welfare and Institutions Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

AB 2405, Burke. Right to safe, decent, and affordable housing.

Existing law establishes the Department of Housing and Community Development in the Business, Consumer Services, and Housing Agency, and requires the department to administer various housing programs throughout the state, including programs that address the needs of homeless individuals and families, and to review local ordinances for the design, development, and operation of homeless shelters in cities and counties that have declared a shelter crisis.

Existing law also requires a state agency or department that funds, implements, or administers a state program that provides housing or housing-related services to people experiencing homelessness or at risk of homelessness to revise or adopt guidelines and regulations to incorporate the core components of Housing First, an evidence-based model that uses housing as a tool, rather than a reward, for recovery.

This bill would declare that it is the policy of the state that every individual has the right to safe, decent, and affordable housing, and would require the policy to consider homelessness prevention, emergency accommodations, and permanent housing, as specified. The bill would, among other things, require all relevant state agencies and departments, including, but not limited to, the Department of Housing and Community Development, the State Department of Social Services, and the Office of Emergency Services to consider that state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to advancing the guidelines listed as core components of Housing First. The bill would make these provisions operative on January 1, 2026, and would make implementation of these provisions subject to an appropriation of funds in the annual Budget Act for these purposes.
The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature in enacting this act to reaffirm the “Housing First” model as California’s approach to ending homelessness.

(b) It is further the intent of the Legislature to minimize trauma and treat all individuals experiencing homelessness with dignity during the process of implementing the “Housing First” model for those experiencing homelessness.

(c) It is further the intent of the Legislature that processes should minimize trauma and facilitate cultures of dignity and respect for all individuals because the prospect or state of homelessness is a traumatic experience that can further compound the very factors leading to homelessness.

SEC. 2. Section 8258.1 is added to the Welfare and Institutions Code, to read:

8258.1. (a) It is hereby declared to be an established policy of the state that every individual in California has the right to safe, decent, and affordable housing.

(b) This state policy shall consider all of the following components:

(1) Prevention of individuals from entering homelessness by providing assistance and services that include, but are not limited to, all of the following:
   (A) Payment of rent and utility arrearages.
   (B) Legal support for individuals facing eviction.
   (C) Connection to services that would address factors that could lead to homelessness.

(2) If prevention assistance and services do not keep individuals from entering homelessness, emergency accommodation policies shall consider how to provide a clean and safe environment where individuals may reside until they can be placed in permanent housing, in accordance with, but not be limited to, all the following:
   (A) To the extent feasible, emergency accommodations shall be in close proximity to the community where the individuals reside.
   (B) Individuals shall be provided with access to supportive services.
(C) There shall be no preconditions for access to accommodations.

(D) Emergency accommodations shall be in compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(3) Individuals shall be placed in permanent housing, in accordance with the core components of Housing First, and that is in compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(c) All relevant state agencies and departments, including, but not limited to, the Department of Housing and Community Development, the Business, Consumer Services, and Housing Agency, the State Department of Social Services, the State Department of Health Care Services, and the Office of Emergency Services shall do all of the following:

(1) (A) Consider the state policy established by this section when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to advancing the guidelines listed as core components of Housing First.

(B) Commit to preventing homelessness and getting individuals into housing by coordinating resources and practicing evidence-based housing interventions.

(C) Revise existing programs and services to identify individuals who are experiencing homelessness or housing instability, and utilize this information to connect individuals with housing resources at the state level.

(D) Ensure state-funded institutions do not discharge people without a temporary or permanent housing option, and support whatever it takes to make homelessness rare, brief, and nonrecurring.

(2) When implementing the policies, regulations, and grant criteria that are revised, adopted, or established in accordance with subparagraph (A) of, and the other requirements specified in, paragraph (1), ensure that individuals are treated with dignity and respect so that trauma is minimized throughout the process for those who are on the verge of experiencing homelessness or are in fact experiencing homelessness, and recognize and address the fear and anxiety that individuals have when facing the prospect, or state, of homelessness.
(3) (A) Establish a set of universal reporting requirements amongst relevant state programs to track homeless outcomes, including, but not limited to, the information required pursuant to Sections 50221 and 50222 of the Health and Safety Code.

(B) Where feasible, the reported information shall be provided to, and maintained within, the statewide Homeless Management Information System.

(d) Implementation of this section shall be subject to an appropriation of funds in the annual Budget Act for purposes of this section.

(e) This section shall become operative on January 1, 2026.
Approved ________________, 2020

Governor
Item B-8
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 2617 - Firearms: gun violence restraining orders (AB 2617) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language; however, the City has shown significant interest in deterring gun violence by adopting various resolutions regarding pursuing assault weapons ban legislation at the federal level and more recently hosting a discussion on requiring firearm insurance. Therefore, this item is being presented to the City Council Liaison/Legislative/Lobby Committee for direction.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 2617 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 2617, the Liaisons may recommend the following actions:

1) Request the Governor to sign AB 2617;
2) Request the Governor to veto AB 2617;
3) Remain neutral; or
4) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 2617, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
September 2, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 2617 (Gabriel) Firearms: Gun Violence Restraining Orders

Summary
This bill requires a law enforcement officer who files a temporary emergency gun violence restraining order (GVRO) to file a copy of the order with the court no later than three court days after issuance and makes it a misdemeanor for any person to violate a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO.

Specifically, this bill:
1) Requires a law enforcement officer who requests a temporary emergency GVRO to file a copy of the order with the court within three court days of issuance.
2) Makes it a misdemeanor for a person to violate a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO issued under California's laws.
3) Provides that a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO means an out-of-state order issued upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.
4) Contains a severability clause so that if any of this bill's provisions 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.

Background
California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. (AB 1014, Ch. 872, Stats. 2014.) A GVRO will prohibit the restrained person from purchasing or possessing firearms, ammunition or magazines and authorizes law enforcement to remove prohibited items already in the individual's possession. The statutory scheme establishes three types of GVROs: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing.

A temporary emergency GVRO may only be sought by a law enforcement officer. To obtain this order, the law enforcement officer requesting the order must show (1) that the subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) the order is necessary to prevent personal injury to the subject of the petition.
or another because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition. The court may issue this type of order orally, or if time and circumstances permit, the order may be obtained in writing. This order is valid for 21 days from the date of issuance.

An ex parte GVRO, which may be sought by a law enforcement officer, an immediate family member, or starting September 1, 2020, an employer, a coworker, or an employee of a secondary or postsecondary school with a specified relationship to the restrained person. The order is issued if the court finds that (1) the subject of the petition poses a significant danger, in the near future, of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering specified factors; and (2) the order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition. This order is valid for up to 21 days from the issuance of the order.

Within 21 days of the issuance of the initial GVRO, the court is required to hold a hearing on whether a person subject to a temporary or ex parte GVRO should continue to be subject to a GVRO issued after notice and a hearing. If the court finds that there is clear and convincing evidence to issue a GVRO, the court shall issue a GVRO that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition. A GVRO issued after notice and a hearing is valid for one year, and starting September 1, 2020, the court may issue a GVRO for up to five years. If the court finds that there is not clear and convincing evidence to support the issuance of a GVRO, the court shall dissolve any temporary emergency or ex parte GVRO then in effect.

Out-of-State Protection Orders
Giffords Law Center to Prevent Gun Violence has compiled information on states that have enacted laws to temporarily restrict a person’s access to guns based on a court order, which has been referred to as “Extreme Risk Protection Orders (ERPO).” California’s version of an “Extreme Risk Protection Order” is the GVRO, which was enacted in 2014. Giffords Law Center to Prevent Gun Violence describes “Extreme Risk Protection Orders” as a process which allows families, household members, or law enforcement officers to petition a court directly for an extreme risk protection order which temporarily restricts a person’s access to guns.

Currently, 19 states and the District of Columbia have ERPO laws. These laws vary on who can petition the court for an ERPO, the standard of proof required to issue an order, and the duration of the orders. California has a higher standard of proof (clear and convincing evidence) than some states (preponderance of the evidence) that have similar ERPOs. According to Giffords Law Center, 12 other states also require clear and convincing evidence of the subject’s dangerousness in order to issue a final order.

California’s law requires a showing that the subject of the order poses a significant danger of causing personal injury to themselves or another by being in possession of a firearm and a GVRO is necessary to prevent personal injury or injury to another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances. An out-of-state ERPO may not require a showing of the same level of dangerousness as is required in California.
AB 2617 would require that an out of state order be “similar or equivalent to a GVRO” to trigger criminal liability for possession in California in violation of the out of state order. This bill would state that a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a gun violence restraining order described in this section” means an out-of-state order issued upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.

**According to the Author**

While California has recognized Domestic Violence Restraining Orders and other forms of protective and firearm restriction orders from other states, it has not specifically provided that authority to GVROs issued by other states. This means that individuals who have been found by an out-of-state court to pose a dangerous risk of gun violence are able to circumvent a restraining order by moving or travelling to California.

While California has taken steps to enforce certain equivalent out-of-state firearm restraining orders, current law still requires more clarity to ensure that out of state gun violence restraining orders can be enforced. This gap in the law could lead to unfortunately dangerous situations in California. We should acknowledge and give full faith and credit to protective orders from outside jurisdictions when it comes to preventing, protecting, and intervening in matters that could be fatal.

AB 2617 will close this dangerous loophole by allowing California courts to enforce firearms prohibitions issued by other states. Subjects of out-of-state orders will thus be prohibited from purchasing a firearm in California and law enforcement will be able to disarm these individuals. Additionally, this bill ensures law enforcement files GVROs in a timely manner with local courts so that the Judicial Council of California can file notice of the GVRO hearing with the restrained party.

**Bills Status**

AB 2617 (Gabriel) has been approved by the Legislature and is currently pending on Governor Newsom’s desk.

**Support** (As of July 31, 2020)
Alameda County District Attorney’s Office
Brady California United Against Gun Violence
California District Attorneys Association
California Federation of Teachers, AFT, AFL-CIO
California State Sheriffs’ Association
Everytown for Gun Safety Action Fun;
Friends Committee on Legislation of California
Giffords Law Center to Prevent Gun Violence
Hadassah, the Women’s Zionist of America, Inc.
Jewish Center for Justice
Judicial Council of California
League of California Cities
Los Angeles City Attorney’s Office
Los Angeles County District Attorney's Office
Los Angeles County Sheriff’s Department
March for Our Lives California
Moms Demand Action for Gun Sense in America
Riverside Sheriff’s Association
San Fernando Valley Young Democrats
Santa Barbara Women’s Political Committee
County of Ventura
Youth Alive!

**Opposition**
American Civil Liberties Union of California
California Attorneys for Criminal Justice
Attachment 2
Assembly Bill No. 2617

Passed the Assembly  August 30, 2020

________________________
Chief Clerk of the Assembly

Passed the Senate  August 28, 2020

________________________
Secretary of the Senate

This bill was received by the Governor this _____ day of ________________, 2020, at _____ o’clock _____m.

________________________
Private Secretary of the Governor
CHAPTER

An act to amend Sections 18140 and 18205 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL’S DIGEST

AB 2617, Gabriel. Firearms: gun violence restraining orders.
Existing law allows a court to issue an order restraining an individual from possessing a firearm for the duration of the order. Existing law allows the court to issue a temporary emergency gun violence restraining order on an ex parte basis if the possession of a firearm by the subject of the petition poses an immediate and present danger. Existing law requires a law enforcement officer who requests a temporary emergency gun violence restraining order to take certain steps, including filing a copy of the order with the court as soon as practicable after issuance.

This bill would instead require the law enforcement officer to file a copy of the order with the court as soon as practicable, but not later than 3 court days, after issuance.

Under existing law, a person who owns or possesses a firearm or ammunition with the knowledge that they are prohibited from doing so by a gun violence restraining order is guilty of a misdemeanor and shall be prohibited from having custody or control of, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a 5-year period, commencing upon the expiration of the existing gun violence restraining order.

This bill would specify that this offense also applies to persons who are subject to certain gun violence restraining orders, as described, issued by an out-of-state jurisdiction.

This bill would state that its provisions are severable.

By expanding the application of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.
This bill would provide that no reimbursement is required by this act for a specified reason.

_The people of the State of California do enact as follows:_

SECTION 1. Section 18140 of the Penal Code is amended to read:

18140. A law enforcement officer who requests a temporary emergency gun violence restraining order shall do all of the following:

(a) If the request is made orally, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council.

(b) Serve the order on the restrained person, if the restrained person can reasonably be located.

(c) File a copy of the order with the court as soon as practicable, but not later than three court days, after issuance.

(d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

SEC. 2. Section 18205 of the Penal Code is amended to read:

18205. (a) Every person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so by a temporary emergency gun violence restraining order issued pursuant to Chapter 2 (commencing with Section 18125), an ex parte gun violence restraining order issued pursuant to Chapter 3 (commencing with Section 18150), a gun violence restraining order issued after notice and a hearing issued pursuant to Chapter 4 (commencing with Section 18170), or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a gun violence restraining order described in this division, is guilty of a misdemeanor and shall be prohibited from having custody or control of, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order.

(b) For purposes of this section, a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a gun violence restraining order described in this section must be issued
upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.

SEC. 3. 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. 4. 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.
Item B-9
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 1138 - Housing element: emergency shelters: rezoning of sites (SB 1138) involves a policy matter that may have a nexus to the City’s adopted Legislative Platform language. One of the key focus areas for the 2020 Legislative Platform was to support legislation in regards to local control with community self-determination, which may be related to this bill. The City Council Liaison/Legislative/Lobby Committee may or may not find SB 1138 is consistent with the following statements from the City’s Legislative Platform:

- Support legislation that preserves local control.
- Support legislation that protects local control over urban planning.
- Oppose state legislation that supersedes a jurisdiction’s adopted zoning ordinances

SB 1138 would add additional specificity to where emergency shelters must be zoned, and expedites required rezoning for localities that fail to adopt a legally compliant housing element within 120 days of the statutory deadline.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 1138 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 1138, the Liaisons may recommend the following actions:
1) Request the Governor to sign SB 1138;
2) Request the Governor to veto SB 1138;
3) Remain neutral; or
4) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 1138, then staff will place the item on a future City Council Agenda for concurrence should it be determined to not align with the City’s adopted Legislative Platform.
Attachment 1
September 1, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 1138 (Wiener) Housing element: emergency shelters: rezoning of sites

Introduced and Background

SB 1138 was introduced by Senator Scott Wiener and would add additional specificity to where emergency shelters must be zoned, and expedites required rezoning for localities that fail to adopt a legally compliant housing element within 120 days of the statutory deadline.

Under current law, local governments in their housing elements are required to accommodate their need for emergency shelters on sites by right, or ministerially and without a conditional use permit. Cities and counties are also required to treat transitional and supportive housing projects as a residential use of property and must treat supportive housing the same as other multifamily residential housing for zoning purposes, and may only apply the same restrictions as multifamily housing in the same zone to supportive housing.

This bill removes the ability of local governments to add additional development standards to emergency shelters. It also requires that these shelters are located in residentially zoned areas or commercial areas with adequate access to amenities and services. Local governments would also need to prove that there are viable sites in any zone that enables emergency uses. SB 1138 also clarifies that "emergency shelters" includes a range of housing types, including emerging best practices such as navigation centers, bridge housing, and respite and recuperative care.

This bill also would require any local government which fails to complete its housing element on time would have to complete the rezoning needed to implement its housing element only one year from the housing element's statutory deadline. This bill additionally specifies that a housing element cannot be considered complete unless the Department of Housing and Community Development has determined it to be in substantial compliance with state law. While providing this new requirement, the bill simultaneously removes the existing requirement that non-compliant local governments update their housing element approximately every four years.

Status of Legislation

This bill passed on the Assembly Floor but was not taken up for a concurrence vote on the Senate Floor, and therefore died.

Support and Opposition

Proponents of the bill argue that this bill would help to ensure emergency shelters are appropriately planned for, and that housing elements are completed on time and in compliance with state law. The author states, “SB 1138 expands shelter access and complements California’s ultimate priority: to transition people experiencing homelessness into permanent housing.” The Public Interest Law
Project asserts that "SB 1138 would create a much-needed incentive for every jurisdiction to adopt a legally compliant and timely housing element at the start of the eight-year planning period."

Opponents of the bill argue the bill's emergency shelter provisions would reduce local control and make it harder to complete housing elements.

**Support**
California Apartment Association
California Rural Legal Assistance Foundation
Western Center on Law and Poverty
California Coalition for Youth
American Planning Association (APA)
Public Interest Law Project
TODCO

**Opposition**
City of Torrance
City of Thousand Oaks
Attachment 2
An act to amend Sections 65583 and 65588 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST


(1) The Planning and Zoning Law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city that includes a housing element. Existing law requires that the housing element identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and to make adequate provision for the existing and projected needs of all economic segments of a community. Existing law also requires that the housing element include an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels.
This bill would revise the requirements of the housing element, as described above, in connection with identifying zones or zoning designations that allow residential use, including mixed use, where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. If an emergency shelter zoning designation where residential use is a permitted use is unfeasible, the bill would permit a local government to designate zones for emergency shelters in a nonresidential zone if the local government demonstrates that the zone is connected to amenities and services, as specified, that serve homeless people. The bill would delete language regarding emergency shelter standards structured in relation to residential and commercial developments and instead require that emergency shelters only be subject to specified written, objective standards. If a local government has adopted written, objective standards pursuant to these provisions, the bill would require the local government to include an analysis of these standards in the above-described analysis of constraints included in the housing element. The bill would require that zones where emergency shelters are allowed include sites that meet at least one of certain prescribed standards. The bill would also require that the number of people experiencing homelessness that can be accommodated on each identified site under these provisions be demonstrated by calculating a minimum of 200 square feet per person.

(2) The Planning and Zoning Law requires that the housing element include, among other things, an inventory of land suitable and available for residential development. If the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, as provided, existing law requires that the local government rezone sites within specified time periods. If the local government fails to adopt a housing element within 120 days of the applicable statutory deadline, existing law requires that the local government (A) complete this rezoning no later than 3 years and 120 days from the statutory deadline for the adoption of the housing element and (B) revise its housing element every 4 years until the local government has adopted at least 2 consecutive revisions by the statutory deadline.

This bill, for the 6th and each subsequent revision of the housing element, would instead require that a local government that fails to adopt a housing element that the Department of Housing and Community Development has found to be in substantial compliance with state law within 120 days of the statutory deadline to complete this rezoning no
later than one year from the statutory deadline for the adoption of the housing element. The bill would also specify that the above-described requirement for the local government to revise its housing element every 4 years applies until the due date for the 6th revision of the housing element and that adoption of a 6th revision housing element that is found to be in substantial compliance satisfies any obligation to adopt a 4-year housing element. The bill would make conforming changes by deleting provisions made obsolete by this bill.

(3) This bill would incorporate additional changes to Section 65583 of the Government Code proposed by AB 1561 to be operative only if this bill and AB 1561 are enacted and this bill is enacted last.

(4) By increasing the duties of local planning officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.


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

SECTION 1. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality’s
existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality’s share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction’s allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality’s housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of one or more zones or zoning designations that allow residential use, including mixed-use areas, where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. If a zoning district or designation is not possible or feasible where residential use is a permitted use, a local government may, instead, designate zones for emergency shelters in a nonresidential zone if the local government demonstrates that the zone is connected to amenities and services that serve people experiencing homelessness. “Connected to amenities and services” includes, but is not limited to, offering free transportation to services or offering services onsite. Shelters shall include other interim interventions, including, but not limited to, navigation centers, bridge housing, and respite or recuperative care. The identified zone or zones shall include sufficient capacity to accommodate the need for emergency shelter
identified in paragraph (7), except that each local government shall identify a zone or zones that can accommodate at least one year-round emergency shelter. If the local government cannot identify a zone or zones with sufficient capacity, the local government shall include a program to amend its zoning ordinance to meet the requirements of this paragraph within one year of the adoption of the housing element. The local government may identify additional zones where emergency shelters are permitted with a conditional use permit. The local government shall also demonstrate that existing or proposed permit processing, development, and management standards that apply to emergency shelters are objective and encourage and facilitate the development of, or conversion to, emergency shelters.

(B) Emergency shelters shall only be subject to the following written, objective standards:

(i) The maximum number of beds or persons permitted to be served nightly by the facility.

(ii) Sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone.

(iii) The size and location of exterior and interior onsite waiting and client intake areas.

(iv) The provision of onsite management.

(v) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.

(vi) The length of stay.

(vii) Lighting.

(viii) Security during hours that the emergency shelter is in operation.

(C) If a local government has adopted written, objective standards pursuant to subparagraph (B), the local government shall include an analysis of the standards in the analysis of constraints pursuant to paragraph (5).

(D) The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
(E) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction’s need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

(F) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action to identify zones for emergency shelters. The housing element must only describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.

(G) A zone or zones where emergency shelters are allowed, as described in subparagraph (A), shall include sites that meet at least one of the following standards:

(i) Vacant sites zoned for residential use.

(ii) Vacant sites zoned for nonresidential use that allow residential development. Vacant sites in a nonresidential zoning designation may be included if the local government can demonstrate how the zone is connected to amenities and services that serve people experiencing homelessness.

(iii) A nonvacant site, provided that a description is provided regarding the current use of each property at the time it is identified and an analysis is provided indicating how the site is adequate and available for use as a shelter in the current planning period, while meeting all of the state and local health, safety, habitability, and building requirements necessary for any other residential development. If a nonvacant site is identified, the analysis required by this clause shall indicate the current existing use of the site and what factors indicate that the existing use will be terminated during the planning period.

(H) The number of people experiencing homelessness that can be accommodated on each identified site shall be demonstrated by calculating a minimum of 200 square feet per person. This standard is intended only for calculating site capacity pursuant to this section.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing
for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7).

(6) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality’s share of the regional housing need in accordance with Section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality’s planning for the development of housing for all income levels and the construction of that housing.

(7) An analysis of any special housing needs, such as those of the elderly; persons with disabilities, including a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. The need for emergency shelter shall be assessed based on the capacity necessary to accommodate the most recent homeless point-in-time count conducted before the start of the planning period, the need for emergency shelter based on number of beds available on a year-round and seasonal basis, the number of shelter beds that go unused on an average monthly basis within a one-year period, and the percentage of those in emergency shelters that move to permanent housing solutions. The need for
emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period. An analysis of special housing needs by a city or county may include an analysis of the need for frequent user coordinated care housing services.

(8) An analysis of opportunities for energy conservation with respect to residential development. Cities and counties are encouraged to include weatherization and energy efficiency improvements as part of publicly subsidized housing rehabilitation projects. This may include energy efficiency measures that encompass the building envelope, its heating and cooling systems, and its electrical system.

(9) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. “Assisted housing developments,” for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. “Assisted housing developments” shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use, and the total number of elderly and nonelderly units that could be lost from the locality’s low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost
analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government that have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs that can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program that have not been legally obligated for other purposes and that could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community’s goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community’s ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program that sets forth a schedule of actions during the planning period, each with a timeline for implementation, that may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and
incentives, the utilization of appropriate federal and state financing and subsidy programs when available, and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

1. Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s or county’s share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

2. Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, rezoning of those sites, including adoption of minimum density and development standards, for jurisdictions with an eight-year housing element planning period pursuant to Section 65588, shall be completed no later than three years after either the date the housing element is adopted pursuant to subdivision (f) of Section 65585 or the date that is 90 days after receipt of comments from the department pursuant to subdivision (b) of Section 65585, whichever is earlier, unless the deadline is extended pursuant to subdivision (f). Notwithstanding the foregoing, for a local government that fails to adopt a housing element that the department has found to be in substantial compliance with state law within 120 days of the statutory deadline in Section 65588 for adoption of the housing element, rezoning of those sites, including adoption of minimum density and
development standards, shall be completed no later than one year from the statutory deadline in Section 65588 for adoption of the housing element.

(B) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2. The identification of sites shall include all components specified in Section 65583.2.

(C) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. Supportive housing, as defined in Section 65650, shall be a use by right in all zones where multifamily and mixed uses are permitted, as provided in Article 11 (commencing with Section 65650).

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.
(5) Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(7) Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2.

(8) Include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals.

(9) Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(10) (A) Affirmatively further fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2. The program shall include an assessment of fair housing in the jurisdiction that shall include all of the following components:

(i) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction’s fair housing enforcement and fair housing outreach capacity.
(ii) An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk.

(iii) An assessment of the contributing factors for the fair housing issues identified under clause (ii).

(iv) An identification of the jurisdiction’s fair housing priorities and goals, giving highest priority to those factors identified in clause (iii) that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved.

(v) Strategies and actions to implement those priorities and goals, which may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement.

(B) A jurisdiction that completes or revises an assessment of fair housing pursuant to Subpart A (commencing with Section 5.150) of Part 5 of Subtitle A of Title 24 of the Code of Federal Regulations, as published in Volume 80 of the Federal Register, Number 136, page 42272, dated July 16, 2015, or an analysis of impediments to fair housing choice in accordance with the requirements of Section 91.225 of Title 24 of the Code of Federal Regulations in effect before August 17, 2015, may incorporate relevant portions of that assessment or revised assessment of fair housing or analysis or revised analysis of impediments to fair housing into its housing element.

(C) The requirements of this paragraph shall apply to housing elements due to be revised pursuant to Section 65588 on or after January 1, 2021.

(d) (1) A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters pursuant to paragraph (4) of subdivision (a) by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one
year-round emergency shelter within two years of the beginning
of the planning period.
(2) The agreement shall allocate a portion of the new shelter
capacity to each jurisdiction as credit toward its emergency shelter
need, and each jurisdiction shall describe how the capacity was
allocated as part of its housing element.
(3) Each member jurisdiction of a multijurisdictional agreement
shall describe in its housing element all of the following:
(A) How the joint facility will meet the jurisdiction’s emergency
shelter need.
(B) The jurisdiction’s contribution to the facility for both the
development and ongoing operation and management of the
facility.
(C) The amount and source of the funding that the jurisdiction
contributes to the facility.
(4) The aggregate capacity claimed by the participating
jurisdictions in their housing elements shall not exceed the actual
capacity of the shelter.
(e) Except as otherwise provided in this article, amendments to
this article that alter the required content of a housing element
shall apply to both of the following:
(1) A housing element or housing element amendment prepared
pursuant to subdivision (e) of Section 65588 or Section 65584.02,
when a city, county, or city and county submits a draft to the
department for review pursuant to Section 65585 more than 90
days after the effective date of the amendment to this section.
(2) Any housing element or housing element amendment
prepared pursuant to subdivision (e) of Section 65588 or Section
65584.02, when the city, county, or city and county fails to submit
the first draft to the department before the due date specified in
Section 65588 or 65584.02.
(f) The deadline for completing required rezoning pursuant to
subparagraph (A) of paragraph (1) of subdivision (c) shall be
extended by one year if the local government has completed the
re zoning at densities sufficient to accommodate at least 75 percent
of the units for low- and very low income households and if the
legislative body at the conclusion of a public hearing determines,
based upon substantial evidence, that any of the following
circumstances exist:
(1) The local government has been unable to complete the rezoning because of the action or inaction beyond the control of the local government of any other state, federal, or local agency.

(2) The local government is unable to complete the rezoning because of infrastructure deficiencies due to fiscal or regulatory constraints.

(3) The local government must undertake a major revision to its general plan in order to accommodate the housing-related policies of a sustainable communities strategy or an alternative planning strategy adopted pursuant to Section 65080.

The resolution and the findings shall be transmitted to the department together with a detailed budget and schedule for preparation and adoption of the required rezonings, including plans for citizen participation and expected interim action. The schedule shall provide for adoption of the required rezoning within one year of the adoption of the resolution.

(g) (1) If a local government fails to complete the rezoning by the deadline provided in subparagraph (A) of paragraph (1) of subdivision (c), as it may be extended pursuant to subdivision (f), except as provided in paragraph (2), a local government may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing development project (A) is proposed to be located on a site required to be rezoned pursuant to the program action required by that subparagraph and (B) complies with applicable, objective general plan and zoning standards and criteria, including design review standards, described in the program action required by that subparagraph. Any subdivision of sites shall be subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)). Design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) A local government may disapprove a housing development described in paragraph (1) if it makes written findings supported by substantial 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.

(3) The applicant or any interested person may bring an action
to enforce this subdivision. If a court finds that the local agency
disapproved a project or conditioned its approval in violation of
this subdivision, the court shall issue an order or judgment
compelling compliance within 60 days. The court shall retain
jurisdiction to ensure that its order or judgment is carried out. If
the court determines that its order or judgment has not been carried
out within 60 days, the court may issue further orders to ensure
that the purposes and policies of this subdivision are fulfilled. In
any such action, the city, county, or city and county shall bear the
burden of proof.

(4) For purposes of this subdivision, “housing development
project” means a project to construct residential units for which
the project developer provides sufficient legal commitments to the
appropriate local agency to ensure the continued availability and
use of at least 49 percent of the housing units for very low, low-,
and moderate-income households with an affordable housing cost
or affordable rent, as defined in Section 50052.5 or 50053 of the
Health and Safety Code, respectively, for the period required by
the applicable financing.

(h) An action to enforce the program actions of the housing
element shall be brought pursuant to Section 1085 of the Code of
Civil Procedure.

SEC. 1.5. Section 65583 of the Government Code is amended
to read:

65583. The housing element shall consist of an identification
and analysis of existing and projected housing needs and a
statement of goals, policies, quantified objectives, financial
resources, and scheduled programs for the preservation,
improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality’s existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality’s share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction’s allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality’s housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of one or more zones or zoning designations that allow residential use, including mixed-use areas, where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. If a zoning district
or designation is not possible or feasible where residential use is
a permitted use, a local government may, instead, designate zones
for emergency shelters in a nonresidential zone if the local
government demonstrates that the zone is connected to amenities
and services that serve people experiencing homelessness.
“Connected to amenities and services” includes, but is not limited
to, offering free transportation to services or offering services
onsite. Shelters shall include other interim interventions, including,
but not limited to, navigation centers, bridge housing, and respite
or recuperative care. The identified zone or zones shall include
sufficient capacity to accommodate the need for emergency shelter
identified in paragraph (7), except that each local government shall
identify a zone or zones that can accommodate at least one
year-round emergency shelter. If the local government cannot
identify a zone or zones with sufficient capacity, the local
government shall include a program to amend its zoning ordinance
to meet the requirements of this paragraph within one year of the
adoption of the housing element. The local government may
identify additional zones where emergency shelters are permitted
with a conditional use permit. The local government shall also
demonstrate that existing or proposed permit processing,
development, and management standards that apply to emergency
shelters are objective and encourage and facilitate the development
of, or conversion to, emergency shelters.

(B) Emergency shelters shall only be subject to the following
written, objective standards:
(i) The maximum number of beds or persons permitted to be
served nightly by the facility.
(ii) Sufficient parking to accommodate all staff working in the
emergency shelter, provided that the standards do not require more
parking for emergency shelters than other residential or commercial
uses within the same zone.
(iii) The size and location of exterior and interior onsite waiting
and client intake areas.
(iv) The provision of onsite management.
(v) The proximity to other emergency shelters, provided that
emergency shelters are not required to be more than 300 feet apart.
(vi) The length of stay.
(vii) Lighting.
(viii) Security during hours that the emergency shelter is in operation.
(C) If a local government has adopted written, objective standards pursuant to subparagraph (B), the local government shall include an analysis of the standards in the analysis of constraints pursuant to paragraph (5).
(D) The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
(E) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction’s need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.
(F) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action to identify zones for emergency shelters. The housing element must only describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.
(G) A zone or zones where emergency shelters are allowed, as described in subparagraph (A), shall include sites that meet at least one of the following standards:
   (i) Vacant sites zoned for residential use.
   (ii) Vacant sites zoned for nonresidential use that allow residential development. Vacant sites in a nonresidential zoning designation may be included if the local government can demonstrate how the zone is connected to amenities and services that serve people experiencing homelessness.
   (iii) A nonvacant site, provided that a description is provided regarding the current use of each property at the time it is identified and an analysis is provided indicating how the site is adequate and available for use as a shelter in the current planning period, while meeting all of the state and local health, safety, habitability, and building requirements necessary for any other residential
If a nonvacant site is identified, the analysis required by this clause shall indicate the current existing use of the site and what factors indicate that the existing use will be terminated during the planning period.

(H) The number of people experiencing homelessness that can be accommodated on each identified site shall be demonstrated by calculating a minimum of 200 square feet per person. This standard is intended only for calculating site capacity pursuant to this section.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), and for persons with a characteristic identified in subdivision (b) of Section 51 of the Civil Code, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7).

(6) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality’s share of the regional housing need in accordance with Section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality’s planning for the development of housing for all income levels and the construction of that housing.
(7) An analysis of any special housing needs, such as those of the elderly; persons with disabilities, including a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. The need for emergency shelter shall be assessed based on the capacity necessary to accommodate the most recent homeless point-in-time count conducted before the start of the planning period, the need for emergency shelter based on number of beds available on a year-round and seasonal basis, the number of shelter beds that go unused on an average monthly basis within a one-year period, and the percentage of those in emergency shelters that move to permanent housing solutions. The need for emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period. An analysis of special housing needs by a city or county may include an analysis of the need for frequent user coordinated care housing services.

(8) An analysis of opportunities for energy conservation with respect to residential development. Cities and counties are encouraged to include weatherization and energy efficiency improvements as part of publicly subsidized housing rehabilitation projects. This may include energy efficiency measures that encompass the building envelope, its heating and cooling systems, and its electrical system.

(9) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. “Assisted housing developments,” for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. “Assisted housing developments” shall also include multifamily rental units that were developed pursuant to a local inclusionary housing
program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use, and the total number of elderly and nonelderly units that could be lost from the locality’s low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government that have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs that can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program that have not been legally obligated for other purposes and that could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community’s goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community’s ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing
with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program that sets forth a schedule of actions during the planning period, each with a timeline for implementation, that may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, the utilization of appropriate federal and state financing and subsidy programs when available, and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s or county’s share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to
Section 65584, rezoning of those sites, including adoption of minimum density and development standards, for jurisdictions with an eight-year housing element planning period pursuant to Section 65588, shall be completed no later than three years after either the date the housing element is adopted pursuant to subdivision (f) of Section 65585 or the date that is 90 days after receipt of comments from the department pursuant to subdivision (b) of Section 65585, whichever is earlier, unless the deadline is extended pursuant to subdivision (f). Notwithstanding the foregoing, for a local government that fails to adopt a housing element that the department has found to be in substantial compliance with state law within 120 days of the statutory deadline in Section 65588 for adoption of the housing element, rezoning of those sites, including adoption of minimum density and development standards, shall be completed no later than one year from the statutory deadline in Section 65588 for adoption of the housing element.

(B) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2. The identification of sites shall include all components specified in Section 65583.2.

(C) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable
accommodations for housing designed for, intended for occupancy
by, or with supportive services for, persons with disabilities.
Transitional housing and supportive housing shall be considered
a residential use of property and shall be subject only to those
restrictions that apply to other residential dwellings of the same
type in the same zone. Supportive housing, as defined in Section
65650, shall be a use by right in all zones where multifamily and
mixed uses are permitted, as provided in Article 11 (commencing
with Section 65650).

(4) Conserve and improve the condition of the existing
affordable housing stock, which may include addressing ways to
mitigate the loss of dwelling units demolished by public or private
action.

(5) Promote and affirmatively further fair housing opportunities
and promote housing throughout the community or communities
for all persons regardless of race, religion, sex, marital status,
ancestry, national origin, color, familial status, or disability, and
other characteristics protected by the California Fair Employment
and Housing Act (Part 2.8 (commencing with Section 12900) of
Division 3 of Title 2), Section 65008, and any other state and
federal fair housing and planning law.

(6) Preserve for lower income households the assisted housing
developments identified pursuant to paragraph (9) of subdivision
(a). The program for preservation of the assisted housing
developments shall utilize, to the extent necessary, all available
federal, state, and local financing and subsidy programs identified
in paragraph (9) of subdivision (a), except where a community has
other urgent needs for which alternative funding sources are not
available. The program may include strategies that involve local
regulation and technical assistance.

(7) Develop a plan that incentivizes and promotes the creation
of accessory dwelling units that can be offered at affordable rent,
as defined in Section 50053 of the Health and Safety Code, for
very low, low-, or moderate-income households. For purposes of
this paragraph, “accessory dwelling units” has the same meaning
as “accessory dwelling unit” as defined in paragraph (4) of
subdivision (i) of Section 65852.2.

(8) Include an identification of the agencies and officials
responsible for the implementation of the various actions and the
means by which consistency will be achieved with other general
plan elements and community goals.

(9) Include a diligent effort by the local government to achieve
public participation of all economic segments of the community
in the development of the housing element, and the program shall
describe this effort.

(10) (A) Affirmatively further fair housing in accordance with
Chapter 15 (commencing with Section 8899.50) of Division 1 of
Title 2. The program shall include an assessment of fair housing
in the jurisdiction that shall include all of the following
components:
   (i) A summary of fair housing issues in the jurisdiction and an
       assessment of the jurisdiction’s fair housing enforcement and fair
       housing outreach capacity.
   (ii) An analysis of available federal, state, and local data and
       knowledge to identify integration and segregation patterns and
       trends, racially or ethnically concentrated areas of poverty,
       disparities in access to opportunity, and disproportionate housing
       needs within the jurisdiction, including displacement risk.
   (iii) An assessment of the contributing factors for the fair
       housing issues identified under clause (ii).
   (iv) An identification of the jurisdiction’s fair housing priorities
       and goals, giving highest priority to those factors identified in
       clause (iii) that limit or deny fair housing choice or access to
       opportunity, or negatively impact fair housing or civil rights
       compliance, and identifying the metrics and milestones for
       determining what fair housing results will be achieved.
   (v) Strategies and actions to implement those priorities and
       goals, which may include, but are not limited to, enhancing
       mobility strategies and encouraging development of new affordable
       housing in areas of opportunity, as well as place-based strategies
       to encourage community revitalization, including preservation of
       existing affordable housing, and protecting existing residents from
       displacement.
(B) A jurisdiction that completes or revises an assessment of
fair housing pursuant to Subpart A (commencing with Section
5.150) of Part 5 of Subtitle A of Title 24 of the Code of Federal
Regulations, as published in Volume 80 of the Federal Register,
Number 136, page 42272, dated July 16, 2015, or an analysis of
impediments to fair housing choice in accordance with the
requirements of Section 91.225 of Title 24 of the Code of Federal
Regulations in effect before August 17, 2015, may incorporate
relevant portions of that assessment or revised assessment of fair
housing or analysis or revised analysis of impediments to fair
housing into its housing element.
(C) The requirements of this paragraph shall apply to housing
elements due to be revised pursuant to Section 65588 on or after
January 1, 2021.
(d) (1) A local government may satisfy all or part of its
requirement to identify a zone or zones suitable for the
development of emergency shelters pursuant to paragraph (4) of
subdivision (a) by adopting and implementing a multijurisdictional
agreement, with a maximum of two other adjacent communities,
that requires the participating jurisdictions to develop at least one
year-round emergency shelter within two years of the beginning
of the planning period.
(2) The agreement shall allocate a portion of the new shelter
capacity to each jurisdiction as credit toward its emergency shelter
need, and each jurisdiction shall describe how the capacity was
allocated as part of its housing element.
(3) Each member jurisdiction of a multijurisdictional agreement
shall describe in its housing element all of the following:
(A) How the joint facility will meet the jurisdiction’s emergency
shelter need.
(B) The jurisdiction’s contribution to the facility for both the
development and ongoing operation and management of the
facility.
(C) The amount and source of the funding that the jurisdiction
contributes to the facility.
(4) The aggregate capacity claimed by the participating
jurisdictions in their housing elements shall not exceed the actual
capacity of the shelter.
(e) Except as otherwise provided in this article, amendments to
this article that alter the required content of a housing element
shall apply to both of the following:
(1) A housing element or housing element amendment prepared
pursuant to subdivision (e) of Section 65588 or Section 65584.02,
when a city, county, or city and county submits a draft to the
department for review pursuant to Section 65585 more than 90
days after the effective date of the amendment to this section.
(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

(f) The deadline for completing required rezoning pursuant to subparagraph (A) of paragraph (1) of subdivision (c) shall be extended by one year if the local government has completed the rezoning at densities sufficient to accommodate at least 75 percent of the units for low- and very low income households and if the legislative body at the conclusion of a public hearing determines, based upon substantial evidence, that any of the following circumstances exist:

1. The local government has been unable to complete the rezoning because of the action or inaction beyond the control of the local government of any other state, federal, or local agency.

2. The local government is unable to complete the rezoning because of infrastructure deficiencies due to fiscal or regulatory constraints.

3. The local government must undertake a major revision to its general plan in order to accommodate the housing-related policies of a sustainable communities strategy or an alternative planning strategy adopted pursuant to Section 65080.

The resolution and the findings shall be transmitted to the department together with a detailed budget and schedule for preparation and adoption of the required rezonings, including plans for citizen participation and expected interim action. The schedule shall provide for adoption of the required rezoning within one year of the adoption of the resolution.

(g) (1) If a local government fails to complete the rezoning by the deadline provided in subparagraph (A) of paragraph (1) of subdivision (c), as it may be extended pursuant to subdivision (f), except as provided in paragraph (2), a local government may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing development project (A) is proposed to be located on a site required to be rezoned pursuant to the program action required by that subparagraph and (B) complies with applicable, objective general
plan and zoning standards and criteria, including design review standards, described in the program action required by that subparagraph. Any subdivision of sites shall be subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)). Design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) A local government may disapprove a housing development described in paragraph (1) if it makes written findings supported by substantial 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.

(3) The applicant or any interested person may bring an action to enforce this subdivision. If a court finds that the local agency disapproved a project or conditioned its approval in violation of this subdivision, the court shall issue an order or judgment compelling compliance within 60 days. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders to ensure that the purposes and policies of this subdivision are fulfilled. In any such action, the city, county, or city and county shall bear the burden of proof.

(4) For purposes of this subdivision, “housing development project” means a project to construct residential units for which the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of at least 49 percent of the housing units for very low, low-,
and moderate-income households with an affordable housing cost
or affordable rent, as defined in Section 50052.5 or 50053 of the
Health and Safety Code, respectively, for the period required by
the applicable financing.

(h) An action to enforce the program actions of the housing
element shall be brought pursuant to Section 1085 of the Code of
Civil Procedure.

(i) Notwithstanding any other law, the otherwise applicable
timeframe set forth in paragraph (2) of subdivision (b) and
subdivision (d) of Section 21080.3.1 of the Public Resources Code,
and paragraph (3) of subdivision (d) of Section 21082.3 of the
Public Resources Code, for a Native American Tribe to respond
to a lead agency and request consultation in writing is extended
by 30 days for any housing development project application
determined or deemed to be complete on or after March 4, 2020,
and prior to December 31, 2021.

(j) On or after January 1, 2024, at the discretion of the
department, the analysis of government constraints pursuant to
paragraph (5) of subdivision (a) may include an analysis of
constraints upon the maintenance, improvement, or development
of housing for persons with a characteristic identified in
subdivision (b) of Section 51 of the Civil Code. The implementation
of this subdivision is contingent upon an appropriation by the
Legislature in the annual Budget Act or another statute for this
purpose.

SEC. 2. Section 65588 of the Government Code is amended
to read:
65588. (a) Each local government shall review its housing
element as frequently as appropriate to evaluate all of the
following:
(1) The appropriateness of the housing goals, objectives, and
policies in contributing to the attainment of the state housing goal.
(2) The effectiveness of the housing element in attainment of
the community’s housing goals and objectives.
(3) The progress of the city, county, or city and county in
implementation of the housing element.
(4) The effectiveness of the housing element goals, policies,
and related actions to meet the community’s needs, pursuant to
paragraph (7) of subdivision (a) of Section 65583.
(b) The housing element shall be revised as appropriate, but no less often than required by subdivision (e), to reflect the results of this periodic review. Nothing in this section shall be construed to excuse the obligations of the local government to adopt a revised housing element in accordance with the schedule specified in this section.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality’s jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality’s jurisdiction, shall be designated in the review.

(e) Each city, county, and city and county shall revise its housing element according to the following schedule:

(1) (A) Local governments within the regional jurisdiction of the Southern California Association of Governments: June 30, 2006, for the fourth revision.

(B) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2007, for the fourth revision.
(C) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2002, for the third revision, and June 30, 2008, for the fourth revision.

(D) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2002, for the third revision, and June 30, 2009, for the fourth revision.

(E) Local governments within the regional jurisdiction of the San Diego Association of Governments: June 30, 2005, for the fourth revision.

(F) All other local governments: December 31, 2003, for the third revision, and June 30, 2009, for the fourth revision.

(2) (A) All local governments within a metropolitan planning organization in a region classified as nonattainment for one or more pollutants regulated by the federal Clean Air Act (42 U.S.C. Sec. 7506), except those within the regional jurisdiction of the San Diego Association of Governments, shall adopt the fifth revision of the housing element no later than 18 months after adoption of the first regional transportation plan to be adopted after September 30, 2010.

(B) (i) All local governments within the regional jurisdiction of the San Diego Association of Governments shall adopt the fifth revision of the housing element no later than 18 months after adoption of the first regional transportation plan update to be adopted after September 30, 2010.

(ii) Before or concurrent with the adoption of the fifth revision of the housing element, each local government within the regional jurisdiction of the San Diego Association of Governments shall identify adequate sites in its inventory pursuant to Section 65583.2 or rezone adequate sites to accommodate a prorated portion of its share of the regional housing need for the projection period representing the period from July 1, 2010, to the deadline for housing element adoption described in clause (i).

(I) For the fifth revision, a local government within the jurisdiction of the San Diego Association of Governments that has not adopted a housing element for the fourth revision by January 1, 2009, shall revise its housing element not less than every four years, beginning on the date described in clause (i), in accordance
with paragraph (4), unless the local government does both of the
following:

(ia) Adopts a housing element for the fourth revision no later
than March 31, 2010, that is in substantial compliance with this
article.

(ib) Completes any rezoning contained in the housing element
program for the fourth revision by June 30, 2010.

(II) A local government within the jurisdiction of the San Diego
Association of Governments shall adopt the sixth revision of the
housing element on or before April 30, 2021, using the final
housing allocation adopted by the San Diego Association of
Governments on or before November 1, 2019, although such action
will not be carried out concurrently with adoption of an updated
regional transportation plan and sustainable communities strategy.

(III) All local governments within the jurisdiction of the San
Diego Association of Governments shall adopt the seventh revision
of the housing element no later than 18 months after the San Diego
Association of Governments adopts its first regional transportation
plan update in 2029.

(IV) For the eighth and subsequent revisions, a local government
within the jurisdiction of the San Diego Association of
Governments shall be subject to the dates described in clause (i),
in accordance with paragraph (4).

(C) All local governments within the regional jurisdiction of a
metropolitan planning organization or a regional transportation
planning agency that has made an election pursuant to
subparagraph (L) of paragraph (2) of subdivision (b) of Section
65080 by June 1, 2009, shall adopt the fifth revision of the housing
element no later than 18 months after adoption of the first regional
transportation plan update following the election.

(D) All other local governments shall adopt the fifth revision
of the housing element five years after the date specified in
paragraph (1).

(3) Subsequent revisions of the housing element shall be due
as follows:

(A) For local governments described in subparagraphs (A), (B),
and (C) of paragraph (2), 18 months after adoption of every second
regional transportation plan update, provided that the deadline for
adoption is no more than eight years later than the deadline for
adoption of the previous eight-year housing element, or as otherwise provided in law.

(B) For all other local governments, at five-year intervals after the date specified in subparagraph (D) of paragraph (2).

(C) If a metropolitan planning organization or a regional transportation planning agency subject to the five-year revision interval in subparagraph (B) makes an election pursuant to subparagraph (M) of paragraph (2) of subdivision (b) of Section 65080 after June 1, 2009, all local governments within the regional jurisdiction of that entity shall adopt the next housing element no later than 18 months after adoption of the first regional transportation plan update following the election. Subsequent revisions shall be due 18 months after adoption of every second regional transportation plan update, provided that the deadline for adoption is no more than eight years later than the deadline for adoption of the previous eight-year housing element.

(4) (A) A local government that does not adopt a housing element within 120 days of the applicable deadline described in subparagraph (A), (B), or (C) of paragraph (2) or subparagraph (A) or (C) of paragraph (3) shall revise its housing element not less than every four years until the due date for the sixth revision.

(B) The deadline for adoption of every four-year revision shall be the same as the deadline for adoption for other local governments within the region.

(C) For the adoption of the sixth revision and each subsequent revision, a local government that does not adopt a housing element that the department has found to be in substantial compliance with state law within 120 days of the applicable deadline described in subparagraph (A) or (C) of paragraph (3) shall comply with subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 within one year of the statutory deadline to revise the housing element.

(D) The adoption of a sixth revision housing element that the department has found to be in substantial compliance with state law within 120 days of the applicable deadline described in paragraph (3) shall be deemed to satisfy any obligation to adopt a four-year housing element, and no further four-year housing element revisions shall be required.

(5) The metropolitan planning organization or a regional transportation planning agency for a region that has an eight-year
(6) The new projection period shall begin on the date of December 31 or June 30 that most closely precedes the end of the previous projection period.

(f) For purposes of this article, the following terms have the following meanings:

(1) "Planning period" shall be the time period between the due date for one housing element and the due date for the next housing element for each revision according to the applicable schedule described in paragraphs (2) and (3) of subdivision (e).

(2) "Projection period" shall be the time period for which the regional housing need is calculated.

(g) For purposes of this section, "regional transportation plan update" shall mean a regional transportation plan adopted to satisfy the requirements of subdivision (d) of Section 65080.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 65583 of the Government Code proposed by both this bill and Assembly Bill 1561. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2021, (2) each bill amends Section 65583 of the Government Code, and (3) this bill is enacted after Assembly Bill
SEC. 4. 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.
Item B-10
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: September 5, 2020

SUBJECT: Senate Bill 1159 (Hill) - Workers’ compensation: COVID-19: critical workers

ATTACHMENTS: 1. Summary Memo – SB 1159
               2. Bill Text – SB 1159

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 1159 - Workers’ compensation: COVID-19: critical workers (SB 1159) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language; however, the SB 1159 may have an impact to the City as well as the businesses located in Beverly Hills.

The City has previously supported workers’ compensation legislation which made COVID-19 a rebuttable presumption for workers’ compensation claims for public safety employees and healthcare workers. SB 1159 would codify the terms and conditions of Executive Order N-62-20, which created a workers’ compensation presumption for COVID-19; however, it expired in July. SB 1159 would also expand this presumption to any employee who contracts COVID-19 from any employer that experiences an outbreak of COVID-19 at the particular work location. Due to the particular impacts this may have to the City as well as businesses in Beverly Hills, this is being presented to the City Council Liaison/Legislative/Lobby Committee for consideration.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 1159 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 1159, the Liaisons may recommend the following actions:
   1) Request the Governor to sign SB 1159;
   2) Request the Governor to veto SB 1159;
   3) Remain neutral; or
   4) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 1159, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
September 1, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
      Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
      Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange


Introduction and Background
On May 6, Governor Gavin Newsom issued an Executive Order (N-62-20) related to a workers’ compensation presumption for COVID-19. The Governor's order created a rebuttable presumption for the period of March 19, 2020 (date of the Stay-At-Home Order) and July 5, 2020 whereby any employee that has been directed to work outside of their home by their employer who during that time period tests positive or is diagnosed with COVID-19 the injury will be presumed to have taken place in the workplace and therefore the employee would be entitled to workers’ compensation benefits. The “rebuttable presumption” could be overcome by employers who can provide evidence that their employee contracted COVID-19 outside of the workplace. If no such evidence is available, then the infection would have to be covered by the employer-funded workers’ compensation system.

SB 1159, as introduced on February 20, 2020, was a spot bill that would have made nonsubstantive changes to the terms “wage” and “labor” under the Labor Code section. Senator Jerry Hill gutted and amended SB 1159 on April 19, 2020, which codifies the Governor's Executive Order (N-62-20).

Specifically, this measure would:
- Codify a recent executive order (N-62-20) to create a rebuttable presumption that illness or death related to COVID-19 (novel coronavirus) is an occupational injury and therefore eligible for workers’ compensation benefits.
- Provide a rebuttable presumption that a peace officer, firefighter, specified frontline employees, and certain health care employees, who contract COVID-19 were infected with the virus via a workplace exposure.
- Provide that all of the normal workers' compensation benefits are available to those employees who become presumptively eligible for workers' compensation benefits.
- Provide that the presumptions established by the bill continue for 14 days after the last day of employment with an employer.
- Establish a presumption of compensability for employees who contract COVID-19 from any employer that experiences an "outbreak" of COVID-19 cases at a particular work location.
- Define an "outbreak" as follows:
  - For employers with 5-100 employees, 5 or more employees who worked at a specific work location contracted the disease within a 14-day period;
For employers with more than 100 employees, 5% or more of the employees who worked at a specific work location contracted the disease within a 14-day period.

- Specify that this presumption is rebuttable, and the evidence to rebut the presumption includes, but is not limited to, evidence of measures in place to prevent transmission of COVID-19 and evidence of an employee's nonoccupational exposure to COVID-19.
- Provides that the presumptions established by the bill sunset on January 1, 2023.

Status of Legislation
This bill has been ordered to Senate Engrossing and Enrolling and is on its way to the Governor.

Support and Opposition
According to supporters, SB 1159 provides critical protections for workers who contract COVID-19 at work. The bill codifies the terms and conditions of Executive Order N-62-20, which expired July 5th. By creating a rebuttable presumption for peace officers, firefighters, health care and home care workers who contract COVID-19 were infected with the virus via a workplace exposure will provide these frontline workers with additional protections commensurate with the risk they take as part of their professions during this pandemic.

For all other workers SB 1159 establishes a presumption for workers who contract COVID-19 as part of an "outbreak" of COVID-19 cases at a work location. An outbreak applies when there are 4 or more employees who contract covid-19 at a worksite. For employers with more than 100 employees the standard would be 4% or more of the employees who worked at a specific work location contracted the disease within a 14-day period.

A broad coalition of employers, including the California Coalition on Workers’ Compensation and League of California Cities, state the following:

- We would be remiss if we didn’t start this section of our letter by complimenting the authors and their staff for the hours of conversation and discussion that they undertook with our coalition since April. While we could not have asked for more of their time and consideration, a decision was made to specifically exclude the items necessary for employers to remove opposition to SB 1159. We provided a very clear pathway to our neutrality on SB 1159 – in fact, we needed only a handful of meaningful but reasonable changes to the bill. These changes were quite important to terms of both fairness to employers and functionality of the outbreak-based presumption trigger contained in the bill. Unfortunately, those changes were rejected, and we are therefore still opposed. We would make the following observations about SB 1159:

  - No Objection to Sections 1-3: Our coalition is not opposed to the contents of Sections 1-3 of SB1159 and this was clearly communicated to the authors office. This includes research on COVID claims through the Commission on Health and Safety and Workers’ Compensation, a codification of the policy contained in Governor Newsom’s Executive Order, and a temporary and rebuttable COVID-19 presumption for police, firefighters, healthcare workers, IHSS workers, and home health workers that contains necessary protections and a reasonable sunset date.

  - Section 4’s Cluster Approach Unworkable: While we fundamentally do not agree that a presumption is necessary for workers who are not in Section 3 of SB 1159, we tried to find a pathway to neutrality on a risk-based approach to a presumption “trigger” for all employees. The idea behind this policy is that workplaces that pose
a significantly higher risk of infection for COVID-19, through the application of some objective measurement, should have a presumption applied to claimed workplace infections. Unfortunately, the bill in its final form is administratively burdensome, unrelated to actual risk in the workplace, and unworkable for employers.

Support
AFSCME, AFL-CIO
California Federation of Teachers
California Fish & Game Warden Supervisors and Managers Association
California Labor Federation, AFL-CIO
California State Council of Service Employees International Union
Communications Workers of America, District 9
Orange County Employees Association
Orange County Fire Authority
United Domestic Workers of America / AFSCME, AFL-CIO
United Nurses Associations of California/Union of Health Care Professionals

Opposition
Advanced Medical Technology Association
African American Farmers of California
Agricultural Council of California
American Council of Engineering Companies of California
American Pistachio Growers
American Property Casualty Insurance Association
Association of California School Administrators
Association of California Healthcare Districts
Association of California Water Agencies
Auto Care Association
Beta Healthcare Group
Breckpoint
California Association of Winegrape Growers
California Advanced Biofuels Alliance
California Apple Commission
California Association of Health Facilities
California Association of Joint Powers Authorities
California Association of School Business Officials
California Blueberry Association
California Blueberry Commission
California Building Industry Association
California Citrus Mutual
California Coalition on Workers Compensation
California Cotton Gainers & Growers Association
California Farm Labor Contractors Association
California Fresh Fruit Association
California Grocers Association
California Joint Powers Insurance Authority
California Manufacturers and Technology Association
California Pool & Spa Association
California Retailers Association
California Rice Commission
California School Boards Association
California Special Districts Association
California State Association of Counties
California Strawberry Commission
California Transit Association
California Wild Rice Advisory Board
CAWA
City of Burbank
City of Oceanside
City of Rancho Cucamonga
County of Santa Barbara
Family Business Association of California
Far West Equipment Dealers Association
Grower-Shipper Association of Central California
Independent Insurance Agents & Brokers of California, Inc.
League of California Cities
Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation
National Association of Mutual Insurance Companies
National Federation of Independent Business
Nisei Farmers League
Olive Growers Council of California
Public Risk Innovation, Solutions, and Management
Rural County Representatives of California
Special District Risk Management Authority
United Ag
Urban Counties of California
Valley Industry & Commerce Association
Western Agricultural Processors Association
Western Insurance Agents Association
Western Occupational & Environmental Medical Association
Western Plant Health Association
SENATE BILL No. 1159

Introduced by Senator Hill
(Principal coauthor: Assembly Member Daly)

February 20, 2020

An act to add Section 77.8 to, and to add and repeal Sections 3212.86, 3212.87, and 3212.88 of, the Labor Code, relating to workers’ compensation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

Existing law establishes a workers’ compensation system, administered by the Administrative Director of the Division of Workers’ Compensation, to compensate an employee, as defined, for injuries sustained in the course of employment. Existing law creates a disputable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of the employment.
Existing law governs the procedures for filing a claim for workers’ compensation, including filing a claim form, and provides that an injury is presumed compensable if liability is not rejected within 90 days after the claim form is filed, as specified. Existing case law provides for how certain presumptions may be rebutted.

This bill would define “injury” for an employee to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until January 1, 2023. The bill would create a disputable presumption, as specified, that the injury arose out of and in the course of the employment and is compensable, for specified dates of injury. The bill would limit the applicability of the presumption under certain circumstances. The bill would require an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified employees, a leave of absence. The bill would also make a claim relating to a COVID-19 illness presumptively compensable, as described above, after 30 days or 45 days, rather than 90 days. Until January 1, 2023, the bill would allow for a presumption of injury for all employees whose fellow employees at their place of employment experience specified levels of positive testing, and whose employer has 5 or more employees.

This bill would require the Commission on Health and Safety and Workers’ Compensation to conduct a study of the impacts of COVID-19 and the specific presumptions created by this bill and report its findings to the Legislature and the Governor, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.


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

SECTION 1. Section 77.8 is added to the Labor Code, to read:

77.8. The Commission on Health and Safety and Workers’ Compensation shall conduct a study of the impacts claims of COVID-19 have had on the workers’ compensation system, including overall impacts on indemnity benefits, medical benefits, and death benefits, including differences in the impacts across differing occupational groups, and including the effect of Sections 3212.87 and 3212.88. A preliminary report or a final report shall
be delivered to the Legislature, pursuant to Section 9795 of the
Government Code, and the Governor by December 31, 2021, and
the final report shall be delivered to the Legislature, pursuant to
Section 9795 of the Government Code, and the Governor no later
than April 30, 2022.

SEC. 2. Section 3212.86 is added to the Labor Code,
immediately following Section 3212.85, to read:
3212.86. (a) This section applies to any employee with a
COVID-19-related illness.
(b) The term “injury,” as used in this division, includes illness
or death resulting from COVID-19 if both of the following
circumstances apply:
(1) The employee has tested positive for or was diagnosed with
COVID-19 within 14 days after a day that the employee performed
labor or services at the employee’s place of employment at the
employer’s direction.
(2) The day referenced in paragraph (1) on which the employee
performed labor or services at the employee’s place of employment
at the employer’s direction was on or after March 19, 2020, and
on or before July 5, 2020. The date of injury shall be the last date
the employee performed labor or services at the employee’s place
of employment at the employer’s direction.
(3) If paragraph (1) is satisfied through a diagnosis of
COVID-19, the diagnosis was done by a licensed physician and
surgeon holding an M.D. or D.O. degree or state licensed physician
assistant or nurse practitioner, acting under the review or
supervision of a physician and surgeon pursuant to standardized
procedures or protocols within their lawfully authorized scope of
practice, and that diagnosis is confirmed by testing or by a
COVID-19 serologic test within 30 days of the date of the
diagnosis.
(c) The compensation that is awarded for injury pursuant to this
section shall include full hospital, surgical, medical treatment,
disability indemnity, and death benefits, as provided by this
division.
(d) (1) If an employee has paid sick leave benefits specifically
available in response to COVID-19, those benefits shall be used
and exhausted before any temporary disability benefits or benefits
under Section 4800, 4800.5, or 4850 are due and payable. If an
employee does not have those sick leave benefits, the employee
shall be provided temporary disability benefits or Section 4800, 4800.5, or 4850 benefits, if applicable, from the date of disability. There shall not be a waiting period for temporary disability benefits.

(2) To qualify for temporary disability or Section 4800, 4800.5, or 4850 benefits under this section, an employee shall satisfy either of the following:

(A) If the employee has tested positive or is diagnosed with COVID-19 on or after May 6, 2020, the employee shall be certified for temporary disability within the first 15 days after the initial diagnosis, and shall be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis.

(B) If the employee has tested positive or was diagnosed with COVID-19 before May 6, 2020, the employee shall have obtained a certification, no later than May 21, 2020, documenting the period for which the employee was temporarily disabled and unable to work, and shall be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis.

(3) An employee shall be certified for temporary disability by a physician holding a physician’s and surgeon’s license issued pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. If the employee has a predesignated physician pursuant to subdivision (d) of Section 4600, is covered by a medical provider network pursuant to Article 2.3 (commencing with Section 4616) of Chapter 2 of Part 2, is covered by a workers’ compensation health care organization pursuant to Article 2 (commencing with Section 4600) of Chapter 2 of Part 2, or is covered by a group health plan, the certifying physician shall be a physician and surgeon in that network, organization, or plan. Otherwise, the certifying physician may be a physician and surgeon of the employee’s choosing.

(e) An injury described in subdivision (b) is presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence. Unless controverted, the appeals board is bound to find in accordance with the presumption.

(f) Notwithstanding Section 5402, if liability for a claim of a COVID-19-related illness is not rejected within 30 days after the date the claim form is filed pursuant to Section 5401, the illness shall be presumed compensable. The presumption of this
subdivision is rebuttable only by evidence discovered subsequent
to the 30-day period.

(g) The Department of Industrial Relations shall waive the right
to collect any death benefit payment due pursuant to Section 4706.5
arising out of claims covered by this section.

(h) This section applies to all pending matters except as
otherwise specified, including, but not limited to, pending claims
relying on Executive Order N-62-20. This section is not a basis to
rescind, alter, amend, or reopen any final award of workers’
compensation benefits.

(i) For purposes of this section:


(2) “Place of employment” does not include an employee’s
residence.

(j) This section shall remain in effect only until January 1, 2023,
and as of that date is repealed.

SEC. 3. Section 3212.87 is added to the Labor Code, to read:

3212.87. (a) This section applies to the following employees:

(1) Active firefighting members, whether volunteers, partly
paid, or fully paid, of all of the following fire departments:

(A) A fire department of a city, county, city and county, district,
or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the
California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(2) Active firefighting members of a fire department that serves
a United States Department of Defense installation and who are
certified by the United States Department of Defense as meeting
its standards for firefighters.

(3) Active firefighting members of a fire department that serves
a National Aeronautics and Space Administration installation and
who adhere to training standards established in accordance with
Article 4 (commencing with Section 13155) of Chapter 1 of Part
2 of Division 12 of the Health and Safety Code.

(4) Active firefighting members of a fire department that
provides fire protection to a commercial airport regulated by the
Federal Aviation Administration (FAA) under Part 139
(commencing with Section 139.5) of Subchapter G of Chapter 1
of Title 14 of the Federal Code of Regulations and are trained and
certified by the State Fire Marshal as meeting the standards of Fire
Control 5 and Section 139.319 of Title 14 of the Federal Code of
Regulations

(5) Peace officers, as defined in Section 830.1, subdivision (a)
830.1 of the Penal Code, subdivisions (a), (b), (e), (f), and (h) of
Section 830.2, and 830.2 of the Penal Code, subdivision (a) of
Section 830.3 of the Penal Code, subdivisions (a) and (b) of Section
830.3, 830.37 of the Penal Code, subdivisions (a) and (b) of
Section 830.5 of the Penal Code, and subdivision (a) of Section
830.53 of the Penal Code, who are primarily engaged in active
law enforcement activities.

(6) (A) Fire and rescue services coordinators who work for the
Office of Emergency Services.

(B) For purposes of this paragraph, “fire and rescue services
coordinators” means coordinators with any of the following job
classifications: coordinator, senior coordinator, or chief
coordinator.

(7) An employee who provides direct patient care, or a custodial
employee in contact with COVID-19 patients, who works at a
health facility. For the purposes of this subdivision, “health facility”
means a health facility as defined in subdivision (a), (b), (c), (m),
or (n) of Section 1250 of the Health and Safety Code.

(8) An authorized registered nurse, emergency medical
technician-I, emergency medical technician-II, emergency medical
technician-paramedic, as described in Chapter 2 (commencing
with Section 1797.50) of Division 2.5 of the Health and Safety
Code.

(9) An employee who provides direct patient care for a home
health agency, as defined under Section 1727 of the Health and
Safety Code.

(10) Employees of health facilities, other than those described
in paragraph (7). For these employees, the presumption shall be
contested with evidence that the employee did not have contact
with a health facility patient within the last 14 days who tested
positive for COVID-19. If the presumption is rebutted, the claim
shall be evaluated pursuant to Sections 3202.5 and 3600 of the
Labor Code. presumption shall not apply if the employer can
establish that the employee did not have contact with a health
facility patient within the last 14 days who tested positive for
COVID-19. If it is determined that the presumption does not apply,
the claim shall be evaluated pursuant to Sections 3202.5 and 3600.

For the purposes of this subdivision, “health facility” means a health facility, as defined in subdivision (a), (b), (c), (m), or (n) of Section 1250 of the Health and Safety Code.

(11) A provider of in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, or Sections 14132.95, 14132.952, and 14132.956 of, the Welfare and Institutions Code, when they provide the in-home supportive services outside their own home or residence.

(b) The term “injury,” as used in this division, includes illness or death resulting from COVID-19 if all of the following circumstances apply:

(1) The employee has tested positive for COVID-19 within 14 days after a day that the employee performed labor or services at the employee’s place of employment at the employer’s direction.

(2) The day referenced in paragraph (1), on which the employee performed labor or services at the employee’s place of employment at the employer’s direction, was on or after July 6, 2020. The date of injury shall be the last date the employee performed labor or services at the employee’s place of employment at the employer’s direction prior to the positive test.

(c) The compensation that is awarded for injury pursuant to this section shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) (1) If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits or benefits under Section 4800, 4800.5, or 4850 are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits or Section 4850 benefits, if applicable, from the date of disability. There shall not be a waiting period for temporary disability benefits.

(2) To qualify for temporary disability benefits or benefits described in Section 4800, 4800.5, or 4850 pursuant to this section, an employee shall have tested positive or be diagnosed with COVID-19 on or after July 6, 2020.

(e) An injury described in subdivision (b) is presumed to arise out of and in the course of the employment, except as provided in this subdivision. This presumption is disputable and may be
controverted by other evidence. Unless controverted, the appeals
board is bound to find in accordance with the presumption. This
presumption shall be extended to a person described in subdivision
(a) following termination of service for a period of 14 days,
commencing with the last date actually worked in the specified
capacity at the employee’s place of employment as described in
subdivision (b).

(f) Notwithstanding Section 5402, if liability for a claim of a
COVID-19-related illness is not rejected within 30 days after the
date the claim form is filed pursuant to Section 5401, the illness
shall be presumed compensable. The presumption of this
subdivision is rebuttable only by evidence discovered subsequent
to the 30-day period.

(g) The Department of Industrial Relations shall waive the right
to collect any death benefit payment due pursuant to Section 4706.5
arising out of claims covered by this section.

(h) This section applies to all pending matters, unless otherwise
specified in this section, but shall not be a basis to rescind, alter,
amend, or reopen any final award of workers’ compensation
benefits.

(i) For purposes of this section:


(2) Unless otherwise indicated, “test” or “testing” means a PCR
(Polymerase Chain Reaction) test approved for use or approved
for emergency use by the United States Food and Drug
Administration to detect the presence of viral RNA. “Test” or
“testing” does not include serologic testing, also known as antibody
testing. “Test” or “testing” may include any other viral culture test
approved for use or approved for emergency use by the United
States Food and Drug Administration to detect the presence of
viral RNA which has the same or higher sensitivity and specificity
as the PCR Test.

(3) An “employee’s place of employment” does not include an
employee’s home or residence.

(j) This section shall remain in effect only until January 1, 2023,
and as of that date is repealed.

SEC. 4. Section 3212.88 is added to the Labor Code, to read:

3212.88. (a) This section applies to employees who are not
described in Section 3212.87, who test positive during an outbreak

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at the employee’s specific place of employment, and whose employer has five or more employees.

(b) The term “injury,” as used in this division, includes illness or death resulting from COVID-19 if all of the following circumstances apply:

(1) The employee tests positive for COVID-19 within 14 days after a day that the employee performed labor or services at the employee’s place of employment at the employer’s direction.

(2) The day referenced in paragraph (1) on which the employee performed labor or services at the employee’s place of employment at the employer’s direction was on or after July 6, 2020. The date of injury shall be the last date the employee performed labor or services at the employee’s place of employment at the employer’s direction prior to the positive test.

(3) The employee’s specific place of employment is, at the time of the employee’s positive test, experiencing an outbreak.

(4) The employee’s positive test occurred during a period of an outbreak at the employee’s specific place of employment.

(c) The compensation that is awarded for injury pursuant to this section shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) (1) If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits, benefits under Section 4800, 4800.5, or 4850 or Section 44977, 44984, 45192, 45196, 87780, 87787, 88192, or 88196 of the Education Code are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits or Section 4850 benefits, if applicable, from the date of disability. There shall not be a waiting period for temporary disability benefits.

(2) To qualify for temporary disability benefits or benefits described in Section 4800, 4800.5, or 4850 or Section 44977, 44984, 45192, 45196, 87780, 87787, 88192, or 88196 of the Education Code pursuant to this section, an employee shall have tested positive or be diagnosed with COVID-19 on or after July 6, 2020.

(e) (1) An injury described in subdivision (b) is presumed to arise out of and in the course of the employment, except as
provided in this subdivision. This presumption is disputable and may be controverted by other evidence. Unless controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a person described in subdivision (a) following termination of service for a period of 14 days, commencing with the last date actually worked in the specified capacity at the employee’s place of employment. This section does not affect an employee’s rights to compensation for an injury or illness under this division in accordance with a preponderance of evidence.

(2) Evidence relevant to controverting the presumption may include, but is not limited to, evidence of measures in place to reduce potential transmission of COVID-19 in the employee’s place of employment and evidence of an employee’s nonoccupational risks of COVID-19 infection.

(f) Notwithstanding Section 5402, if liability for a claim of a COVID-19-related illness is not rejected within 45 days after the date the claim form is filed pursuant to Section 5401, the illness shall be presumed compensable. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 45-day period.

(g) The Department of Industrial Relations shall waive the right to collect any death benefit payment due pursuant to Section 4706.5 arising out of claims covered by this section.

(h) This section applies to all pending matters, unless otherwise specified in this section, but is not a basis to rescind, alter, amend, or reopen any final award of workers’ compensation benefits.

(i) When the employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer shall report to their claims administrator in writing via electronic mail or facsimile within three business days all of the following:

(1) An employee has tested positive. For purposes of this reporting, the employer shall not provide any personally identifiable information regarding the employee who tested positive for COVID-19 unless the employee asserts the infection is work related or has filed a claim form pursuant to Section 5401.

(2) The date that the employee tests positive, which is the date the specimen was collected for testing.
(3) The specific address or addresses of the employee’s specific place of employment during the 14-day period preceding the date of the employee’s positive test.

(4) The highest number of employees who reported to work at the employee’s specific place of employment in the preceding 45-day period. 45-day period preceding the last day the employee worked at each specific place of employment.

(j) An employer or other person acting on behalf of an employer who intentionally submits false or misleading information or fails to submit information when reporting pursuant to subdivision (i) is subject to a civil penalty in the amount of up to ten thousand dollars ($10,000) to be assessed by the Labor Commissioner.

(1) If, upon inspection or investigation, the Labor Commissioner determines that an employer or other person has intentionally submitted false or misleading information in violation of subdivision (i), the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally, in the same manner as provided for service of a summons as described in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, by certified mail with return receipt requested, or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated.

(2) If a person desires to contest a citation or the proposed assessment of a civil penalty therefor, they shall, within 15 business days after service of the citation, notify the office of the Labor Commissioner which appears on the citation of their request for an informal hearing. The Labor Commissioner or their deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty shall be affirmed, modified, or dismissed. The decision of the Labor Commissioner shall consist of a notice of findings, findings, and order which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after
notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate superior court, as long as the party agrees to pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ of mandate shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(3) An employer or person to which a citation has been issued shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(4) If the party filing a writ of mandate is unsuccessful in challenging the decision of the hearing officer, the Labor Commissioner shall recover costs and attorney fees.

(k) (1) The claims administrator shall use information reported pursuant to subdivision (i) to determine if an outbreak has occurred for the purpose of administering a claim pursuant to this section. To calculate the number of employees at a specific place of employment, the claims administrator shall utilize the data reported pursuant to subdivision (i) for the first employee who is part of the outbreak, or, for claims between July 6, 2020, and the effective date of this section, the number reported under paragraph (2).

(2) Any employer who is aware of an employee testing positive on or after July 6, 2020, and prior to the effective date of this section, shall report to their claims administrator, in writing via electronic mail or facsimile, within 30 business days of the effective date of this section, all of the data required in subdivision (i). For the data required by paragraph (4) of subdivision (i), the employer shall instead report the highest number of employees who reported to work at each of the employee’s specific places of employment on any given work day between July 6, 2020, and the effective date of this section. The claims administrator shall use the information reported under this paragraph to determine if an outbreak has occurred from July 6, 2020, to the effective date of this section, for the purpose of applying the presumption under this section.

(l) A claim is not part of an outbreak if it occurs during a continuous 14-day period where the requisite number of positive tests under paragraph (4) of subdivision (m) have not been met.
For purposes of applying the presumption in this section, the claims administrator shall continually evaluate each claim to determine whether the requisite number of positive tests have occurred during the surrounding 14-day periods.

(m) For purposes of this section:
(2) Unless otherwise indicated, “test” or “testing” means a PCR (Polymerase Chain Reaction) test approved for use or approved for emergency use by the United States Food and Drug Administration to detect the presence of viral RNA. “Test” or “testing” does not include serologic testing, also known as antibody testing. “Test” or “testing” may include any other viral culture test approved for use or approved for emergency use by the United States Food and Drug Administration to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR Test.
(3) (A) “A specific place of employment” means the building, store, facility, or agricultural field where an employee performs work at the employer’s direction. It does not apply to buildings or other locations of the employer that the employee did not enter. “A specific place of employment” does not include the employee’s home or residence, unless the employee provides home health care services to another individual at the employee’s home or residence.
(B) In the case of an employee who performs work at the employer’s direction in multiple places of employment within 14 days of the employee’s positive test, the employee’s positive test shall be counted for the purpose of determining the existence of an outbreak at each of those places of employment, and if an outbreak exists at any one of those places of employment, that shall be the employee’s “specific place of employment.”
(4) An “outbreak” exists if within 14 calendar days one of the following occurs at a specific place of employment:
(A) If the employer has 100 employees or fewer at a specific place of employment, five or four employees test positive for COVID-19.
(B) If the employer has more than 100 employees at a specific place of employment, 5.4 percent of the number of employees who reported to the specific place of employment, test positive for COVID-19.
(C) A specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection with COVID-19.

(n) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In light of the Governor’s declaration on March 4, 2020, of a state of emergency due to the spread of COVID-19, and because of the heightened risk of COVID-19 infection to frontline workers and workers whose workplaces have suffered a COVID-19 outbreak, it is necessary that this act take effect immediately.
Item B-11
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: September 5, 2020

SUBJECT: Senate Bill 1383 (Jackson) - Unlawful employment practice: family leave

ATTACHMENTS: 1. Summary Memo – SB 1383
2. Bill Text – SB 1383

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 1383 - Unlawful employment practice: family leave (SB 1383) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language; however, the SB 1383 may have an impact to the City as well as the businesses located in Beverly Hills.

SB 1383 would:
- Expand family care and medical leave to include grandparent, grandchild, sibling, or domestic partner
- Impact small employers in California with only 5 employees
- Make it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as specified
- Require an employer who employees’ both parents of a child to grant leave to each employee.

Due to the particular impacts this may have to the City as well as businesses in Beverly Hills, this is being presented to the City Council Liaison/Legislative/Lobby Committee for consideration.

The City’s state lobbyist, Shaw Yoder Antwi Schmelzer & Lange, provided a summary memo for SB 1383 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 1383, the Liaisons may recommend the following actions:
1) Request the Governor to sign SB 1383;
2) Request the Governor to veto SB 1383;
3) Remain neutral; or
4) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 1383, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
September 1, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 1383 (Jackson) Family Leave Act

Summary
SB 1383 (Jackson) expands the California Family Rights Act (CFRA) to allow employees to use unpaid job protected leave to care for a domestic partner, grandparent, grandchild, sibling, or parent-in-law who has a serious health condition. Specifically, this bill:

- Expands CFRA to cover domestic partners, grandparents, grandchildren, siblings, and parent-in-law.
- Expands the definition of a "child" to include a child of a domestic partner.
- Provides that the term "domestic partner" shall have the same meaning as defined in Family Code Section 297.
- Defines "employer" as any person who directly employs five or more persons to perform services for a wage or salary or the state, and any political or civil subdivision of the state and cities.
- Defines the following terms:
  a) "Grandchild" as a child of the employee's child.
  b) "Grandparent" as a parent of the employee's parent.
  c) "Parent-in-law" as the parent of a spouse or domestic partner.
  d) "Sibling" as a person related to another person by blood, adoption, or affinity through a common legal or biological parent.
- Expands "family care and medical leave" to include:
  a) Leave to care for a grandparent, grandchild, sibling, or domestic partner who has a serious health condition.
  b) Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States, as specified in Unemployment Insurance Code Section 3302.2.
- Repeals the provisions of the New Parent Leave Act.

Existing Law

- The California Paid Family Leave Program (PFL), provides up to eight weeks of partial wage replacement benefits for workers who take time off to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, or to bond with a minor child.
• **The California Family Rights Act (CFRA)** applies to employees with more than 12 months of service with the employer and who have at least 1,250 hours of service with the employer during the previous 12 months. The CFRA applies to employers who employ 50 or more employees within 75 miles of the worksite where the employee is employed. Under this law, it is an unlawful employment practice for an employer to refuse to allow an eligible employee to take up to 12 workweeks of family care and medical leave. After a period of leave under CFRA, an employee is guaranteed employment in the same or comparable position. Under this law, “employment in the same or comparable position” is defined as employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

• **The New Parent Leave Act** applies to employees with more than 12 months of service with the employer and have at least 1,250 hours of service during the previous 12 months and who do not qualify for leave under CFRA and the federal Family and Medical Leave Act of 1993. The New Parent Leave Act applies to employers with 20 or more persons who perform services for a wage or salary, cities and counties or other political subdivisions of the state. Under this law, an employer must allow an employee to take up to 12 workweeks of parent leave to bond with a new child within one year of the child’s birth, adoption, or foster care placement. Under the New Parent Leave Act, an employee is guaranteed employment in the same or comparable position after their parental leave period. Employers must maintain pay for health coverage of an employee for the duration of the leave under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Employers may not refuse to hire, or discharge or discriminate against an individual who exercises their right to parental leave or gives testimony or information in an inquiry or proceeding regarding parental leave rights.

**Bill Status**
This bill was approved by the Legislature and is currently pending on the Governor’s desk.

**Background/Comments**
California’s Paid Family Leave Program (PFL) provides benefits to individuals who need time to take off to care for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner or to bond with a new child. Eligible individuals may receive wage replacement benefits for eight weeks in the amount of approximately 60% to 70% of their weekly salary.

The program is funded by worker contributions via the State Disability Insurance tax. PFL does not include job protections. Thus, for example, an employee who has a seriously ill grandparent may be eligible for PFL to take care of that grandparent but may lose their job if they take PFL because, currently, CFRA, unpaid job protected leave, does not apply to leave to care for a seriously ill grandparent.

In 2019, Governor Newsom signed SB 83 (Budget and Fiscal Review Committee), Chapter 24, which extended PFL benefits from six to eight weeks, effective July 1, 2020. Governor Newsom also convened a Paid Family Leave Task Force, consisting of members of the business, legal, policy, science, and early learning communities, intended to provide policy recommendations to expand California’s Paid Family Leave Program. This bill is the result of a recommendation of this task force.

**Arguments in Support:**
A coalition of over 200 worker advocacy organizations and unions, including the California Work and Family Coalition, the American Civil Liberties Union of California, the California Labor Federation, and SEIU California, argue that "the purpose of California's wage replacement and job protection laws is to allow families to recover from illnesses and be there for each other during life's significant moments – when a baby is born, when a parent is dying of cancer, or a spouse suffer a stroke – without having to worry about losing their job, health benefits, or income. Unfortunately, the laws do not align, and many more people are eligible for wage replacement than job protection, which leaves millions of Californians vulnerable to losing their jobs and long-term financial security for taking the leave they need to care for themselves or their families."

The worker advocacy coalition further asserts "[l]ow-wage workers are disproportionately less likely to be covered, as they are more likely to work for small employers. A 2018 survey conducted by the California Employment Development Department (EDD) determined that a top reason for not using Paid Family Leave was fear of job loss. . . As a result, workers with low wages are not utilizing the Paid Family Leave Program as frequently as higher wage workers. In 2018, workers who earned less than $20,000 a year made up over 38% of the state's workforce, yet they only represent 24% of total claims that same year. Of the 6.8 million workers who earned less than $20,000 in 2018 and were covered by the PFL program, only 45,672 workers utilized the PFL program. This 0.7% utilization rate is lower than that for other income levels, which all exceeded 2% utilization. . . [W]orkers should be able to access the SDI and PFL benefits that they pay for out of their own paychecks without having to risk their jobs."

The worker advocacy coalition also argues "[t]he California Family Rights Act's narrow definition of family should be consistent with the more inclusive definition in Paid Family Leave. . . . An inclusive family definition is especially important for the LGBTQ community, people with or caring for those with disabilities, veterans, and for the increasing number of Californians, disproportionately people of color, living in multigenerational households."

Arguments in Opposition:

A coalition of employer organizations, including the California Chamber of Commerce, argue, among other things, that it disproportionately impacts small employers in California with only 5 employees, exposes small employers to costly litigation even for unintentional mistakes, imposes a significant administrative burden, and adds costs to small employers even though it is not paid.

Regarding the impact on small employers with 5 employees, the Chamber asserts "[a]ccording to the most recent labor market data from the Employment Development Department (EDD), out of California's approximately 1.6 million employers, approximately 173,000 employers in California have between 5-10 employees, and will be limited in their ability to manage this leave." Quoting a 2011 report on Paid Family Leave, the Chamber emphasizes "[v]ery small businesses like this one [which had three employees] do face special challenges [to cover leaves] since an inevitable effect of their size is that very few co-workers are available to cover the work when someone is absent."

With regard to the increased exposure to costly litigation, the Chamber argues "[a]n employer with only five employees does not have a dedicated human resources team or in-house counsel to advise them on how to properly administer this leave, document it, track it, obtain medical verifications, etc. The regulations on implementing the 12 weeks of leave under CFRA are approximately 36 pages long. A small employer is bound to make an unintentional mistake along the way, which will cost them in litigation."
The Chamber further argues that this bill "adds costs to small employers even though it is not paid. . . . The leave is 'protected,' meaning an employer must return the employee to the same position the employee had before going out on leave. This means holding a position open for three months or more. While an employer can temporary fill the position with a new employee, that replacement usually comes at a premium. A replacement employee knows it is short term and, therefore, requires a premium wage, is less dedicated to the position, and often leaves for a better opportunity at a moment's notice. Also, many jobs require extensive amount of time and money to train a new employee, adding another cost. Some employers shift the work to other existing employees, which often leads to overtime pay. And, most of the leaves of absence require employers to maintain health benefits while the employee is out."

**Support**
- 9to5 National Association of Working Women
- AARP
- Alliance of Californians for Community Empowerment (ACCE) Action
- American Association of University Women - California
- American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
- California Labor Federation, Afl-cio
- California State Council of Service Employees International Union (seiu California)
- California Teachers Association
- California Work and Family Coalition
- Child Care Law Center
- Closing the Women's Wealth Gap
- Community Legal Services in East Palo Alto
- Ella Baker Center for Human Rights
- Equal Rights Advocates
- Equality California
- First 5 CA
- Friends Committee on Legislation of California
- Health Access California
- LA Best Babies Network
- Legal Aid At Work
- Military Officers Association of America, California Council of Chapters
- Naral Pro-choice California
- National Council of Jewish Women Los Angeles
- National Women's Political Caucus of California
- Public Counsel
- Santa Barbara Women's Political Committee
- Stronger California Advocates Network
- The Women's Foundation of California
- Unite-la, INC.
- United Food and Commercial Workers, Western States Council
- Vietnam Veterans of America, California State Council
- Work Equity Action Fund
- Worksafe
- Numerous Individuals

**Oppose**
- African American Farmers of California
- Agricultural Council of California
- American Institute of Architects California
- American Pistachio Growers
- Associated Builders and Contractors
- Northern California Chapter
- Associated General Contractors
- Association of California Egg Farmers
- Auto Care Association
- Brea Chamber of Commerce
- Building Owners and Managers Association
- California Agricultural Aircraft Association
- California Apple Commission
- California Association of Joint Powers Authorities (CAJPA)
- California Association of Wheat Growers
- California Association of Winegrape Growers
- California Attractions and Parks Association
- California Bankers Association
- California Bean Shippers Association
- California Blueberry Association
- California Blueberry Commission
- California Building Industry Association
- California Business Properties Association
- California Business Roundtable
- California Cattlemen's Association
- California Chamber of Commerce
- California Citrus Mutual
California Craft Brewers Association  
California Dental Association  
California Employment Law Council  
California Farm Bureau Federation  
California Financial Services Association  
California Food Producers  
California Forestry Association  
California Fresh Fruit Association  
California Grain & Feed Association  
California Grocers Association  
California Hospital Association  
California Hotel & Lodging Association  
California Landscape Contractor's Association  
California Manufacturers & Technology Association  
California Metals Coalition  
California New Car Dealers Association  
California Pear Growers Association  
California Restaurant Association  
California Retailers Association  
California Seed Association  
California Special Districts Association  
California State Council of The Society for Human Resource Management (CALSHRM)  
California State Floral Association  
California Tomato Growers Association  
California Travel Association  
California Trucking Association  
California Warehouse Association  
Camarillo Chamber of Commerce  
Cawa - Representing the Automotive Parts Industry  
Chambers of Commerce Alliance of Ventura and Santa Barbara Counties  
City of Oceanside  
Civil Justice Association of California  
Commercial Real Estate Development Association, Naiop of California  
Construction Employers' Association  
Csac Excess Insurance Authority  
Dana Point Chamber of Commerce  
El Centro Chamber of Commerce  
El Dorado County Chamber of Commerce  
El Dorado Hills Chamber of Commerce  
Encinitas Chamber of Commerce  
Family Business Association of California  
Far West Equipment Dealers Association  
Flasher Barricade Association  
Folsom Chamber of Commerce  
Fountain Valley Chamber of Commerce  
Fresno Chamber of Commerce  
Gateway Chambers Alliance  
Gilroy Chamber of Commerce  
Greater Coachella Valley Chamber of Commerce  
Greater Conejo Valley Chamber of Commerce  
Greater Riverside Chamber of Commerce  
Insights Association  
International Council of Shopping Centers  
Laguna Niguel Chamber of Commerce  
League of California Cities  
Long Beach Chamber of Commerce  
Los Angeles Area Chamber of Commerce  
Modesto Chamber of Commerce  
Murrieta Wildomar Chamber of Commerce  
National Federation of Independent Business (NFIB)  
Nisei Farmers League  
North Orange County Chamber of Commerce  
Oceanside Chamber of Commerce  
Official Police Garages of Los Angeles  
Olive Growers Council of California  
Orange County Business Council  
Pleasanton Chamber of Commerce  
Rancho Cordova Chamber of Commerce  
Redding Chamber of Commerce  
Salinas Valley Chamber of Commerce  
San Clemente Chamber of Commerce  
San Diego Regional Chamber of Commerce  
San Gabriel Valley Economic Partnership  
Santa Maria Valley Chamber of Commerce  
Santee Chamber of Commerce  
Silicon Valley Organization, the  
Southwest California Legislative Council  
Torrance Area Chamber of Commerce  
Tracy Chamber of Commerce  
Ucan Chambers of Commerce  
Western Electrical Contractors Association  
Western Growers Association  
Western Manufactured Housing Communities Association  
Western Plant Health Association
Attachment 2
An act to amend and repeal Section 12945.6 of, and to amend, repeal, and add Sections 12945 and Section 12945.2 of, the Government Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

SB 1383, as amended, Jackson. Unlawful employment practice: family leave.

Existing law, the Moore-Brown-Roberti Family Rights Act, commonly known as the California Family Rights Act (CFRA), makes it an unlawful employment practice for a government employer or any employer with 50 or more employees, as specified, to refuse to grant a request by an employee, who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves, a child, a parent, or a spouse, as specified. Existing law authorizes an employer to refuse to grant the request if the employer employs less
than 50 employees within 75 miles of the worksite where the employee is employed or if the employee is a salaried employee who is among the highest paid 10% of the employer’s employees, as provided. Existing law, if both parents of a child are employed by the same employer, authorizes the employer to only grant both employees a total of 12 workweeks of unpaid protected leave during the 12-month period.

Existing law, the New Parent Leave Act, makes it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child. The New Parent Leave Act defines employee as a parent who has more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles.

This bill would revise and recast these provisions to make it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as specified. The bill would require an employer who employees’ both parents of a child to grant leave to each employee. The bill would also make it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period due to a qualifying exigency related to the covered active duty or call to covered active duty of an employee’s spouse, domestic partner, child, or parent in the Armed Forces of the United States. The bill would define employee for these purposes as an individual who has at least 1,250 hours of service with the employer during the previous 12-month period, unless otherwise provided.

Existing law prohibits an employer from refusing to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable time of up to 4 months before returning to work. Existing law also prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes that leave, as specified.

This bill would specify that these provisions apply to employers with one 5 or more employees.
This bill would provide that its provisions are effective on January 1, 2021.


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

SECTION 1. Section 12945 of the Government Code is amended to read:

12945. (a) In addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Sections 12926 and 12940, each of the following shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

1. For an employer to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the commission's regulations. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the employee is disabled on account of pregnancy, childbirth, or a related medical condition. An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

2. (A) For an employer to refuse to maintain and pay for coverage for an eligible employee who takes leave pursuant to paragraph (1) under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed four months over the course of a 12-month period, commencing on the date the leave taken under paragraph (1) begins, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in this paragraph shall preclude an employer from maintaining and paying for coverage under a group health plan beyond four months. An employer may recover from the employee the premium that the employer paid as required under this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:
(i) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.
(ii) The employee’s failure to return from leave is for a reason other than one of the following:


(II) The continuation, recurrence, or onset of a health condition that entitles the employee to leave under paragraph (1) or other circumstance beyond the control of the employee.

(B) If the employer is a state agency, the collective-bargaining agreement shall govern with respect to the continued receipt by an eligible employee of the health care coverage specified in subparagraph (A).

(3) (A) For an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if the employee so requests, with the advice of the employee’s health care provider.

(B) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant employee who so requests.

(C) For an employer to refuse to temporarily transfer a pregnant employee to a less strenuous or hazardous position for the duration of the pregnancy if the employee so requests, with the advice of the employee’s physician, where that transfer can be reasonably accommodated. However, no employer shall be required by this section to create additional employment that the employer would not otherwise have created, nor shall the employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(4) For an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or a
medical condition related to pregnancy or childbirth under any other provision of this part, including subdivision (a) of Section 12940.

(c) This section shall remain in effect only until January 1, 2021; and as of that date is repealed.

SEC. 2. Section 12945 is added to the Government Code, to read:

12945. (a) In addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Sections 12926 and 12940, each of the following shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

(1) For an employer to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the council’s regulations. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the employee is disabled on account of pregnancy, childbirth, or a related medical condition.

An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

(2) (A) For an employer to refuse to maintain and pay for coverage for an eligible employee who takes leave pursuant to paragraph (1) under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed four months over the course of a 12-month period, commencing on the date the leave taken under paragraph (1) begins, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in this paragraph shall preclude an employer from maintaining and paying for coverage under a group health plan beyond four months.

An employer may recover from the employee the premium that the employer paid as required under this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(i) The employee fails to return from leave after the period of leave to which the employee is entitled has expired:
(ii) The employee’s failure to return from leave is for a reason other than one of the following:

(I) The employee taking leave under the Moore-Brown-Robertti Family Rights Act—(Sections 12945.2 and 19702.3 of the Government Code).

(II) The continuation, recurrence, or onset of a health condition that entitles the employee to leave under paragraph (I) or other circumstance beyond the control of the employee.

(B) If the employer is a state agency, the collective bargaining agreement shall govern with respect to the continued receipt by an eligible employee of the health care coverage specified in subparagraph (A).

(3) (A) For an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if the employee so requests, with the advice of the employee’s health care provider.

(B) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant employee who so requests.

(C) For an employer to refuse to temporarily transfer a pregnant employee to a less strenuous or hazardous position for the duration of the pregnancy if the employee so requests, with the advice of the employee’s physician, where that transfer can be reasonably accommodated. However, no employer shall be required by this section to create additional employment that the employer would not otherwise have created, nor shall the employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(4) For an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section:

(b) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any
other provision of this part, including subdivision (a) of Section 12940.

c) This section shall apply to employers with one or more employees.

d) This section shall become operative on January 1, 2021.

SEC. 3.

SECTION 1. Section 12945.2 of the Government Code is amended to read:

12945.2. (a) Except as provided in subdivision (b), it shall be unlawful employment practice for any employer, as defined in paragraph (2) of subdivision (c), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period or who meets the requirements of subdivision (u), to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The commission shall adopt a regulation specifying the elements of a reasonable request.

(b) Notwithstanding subdivision (a), it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed.

c) For purposes of this section:

(1) “Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

(A) Under 18 years of age.

(B) An adult dependent child.

(2) “Employer” means either of the following:

(A) Any person who directly employs 50 or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(3) “Family care and medical leave” means any of the following:
(A) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.
(B) Leave to care for a parent or a spouse who has a serious health condition.
(C) Leave because of an employee’s own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(4) “Employment in the same or a comparable position” means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(5) “FMLA” means the federal Family and Medical Leave Act of 1993 (P.L. 103-3).

(6) “Health care provider” means any of the following:
   (A) An individual holding either a physician’s and surgeon’s certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician’s and surgeon’s certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.
   (B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(7) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(8) “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either of the following:
   (A) Inpatient care in a hospital, hospice, or residential health care facility.
   (B) Continuing treatment or continuing supervision by a health care provider.
(d) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (e).

(e) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee’s accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee’s own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

(f)(1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a “group health plan,” as defined in Section 5000(b)(1) of the Internal Revenue Code, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a “group health plan” beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee’s failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for
any period during which coverage is not provided by the employer
under paragraph (1), employee benefit plans, including life
insurance or short-term or long-term disability or accident
insurance, pension and retirement plans, and supplemental
unemployment benefit plans to the same extent and under the same
conditions as apply to an unpaid leave taken for any purpose other
than those described in subdivision (a). In the absence of these
conditions an employee shall continue to be entitled to participate
in these plans and, in the case of health and welfare employee
benefit plans, including life insurance or short-term or long-term
disability or accident insurance, or other similar plans, the employer
may, at the employer’s discretion, require the employee to pay
premiums, at the group rate, during the period of leave not covered
by any accrued vacation leave, or other accrued time off, or any
other paid or unpaid time off negotiated with the employer, as a
condition of continued coverage during the leave period. However,
the nonpayment of premiums by an employee shall not constitute
a break in service, for purposes of longevity, seniority under any
 collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall
not be required to make plan payments for an employee during
the leave period, and the leave period shall not be required to be
counted for purposes of time accrued under the plan. However, an
employee covered by a pension plan may continue to make
contributions in accordance with the terms of the plan during the
period of the leave.

(g) During a family care and medical leave period, the employee
shall retain employee status with the employer, and the leave shall
not constitute a break in service, for purposes of longevity, seniority
under any collective bargaining agreement, or any employee benefit
plan. An employee returning from leave shall return with no less
seniority than the employee had when the leave commenced, for
purposes of layoff, recall, promotion, job assignment, and
seniority-related benefits such as vacation.

(h) If the employee’s need for a leave pursuant to this section
is foreseeable, the employee shall provide the employer with
reasonable advance notice of the need for the leave.

(i) If the employee’s need for leave pursuant to this section is
foreseeable due to a planned medical treatment or supervision, the
employee shall make a reasonable effort to schedule the treatment
or supervision to avoid disruption to the operations of the employer,
subject to the approval of the health care provider of the individual
requiring the treatment or supervision.

(j) (1) An employer may require that an employee’s request
for leave to care for a child, a spouse, or a parent who has a serious
health condition be supported by a certification issued by the health
care provider of the individual requiring care. That certification
shall be sufficient if it includes all of the following:
(A) The date on which the serious health condition commenced.
(B) The probable duration of the condition.
(C) An estimate of the amount of time that the health care
provider believes the employee needs to care for the individual
requiring the care.
(D) A statement that the serious health condition warrants the
participation of a family member to provide care during a period
of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care
provider in subparagraph (C) of paragraph (1), the employer may
require the employee to obtain recertification, in accordance with
the procedure provided in paragraph (1), if additional leave is
required.

(k) (1) An employer may require that an employee’s request
for leave because of the employee’s own serious health condition
be supported by a certification issued by the employee’s health
care provider. That certification shall be sufficient if it includes
all of the following:
(A) The date on which the serious health condition commenced.
(B) The probable duration of the condition.
(C) A statement that, due to the serious health condition, the
employee is unable to perform the function of the employee’s
position.

(2) The employer may require that the employee obtain
subsequent recertification regarding the employee’s serious health
condition on a reasonable basis, in accordance with the procedure
provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt
the validity of the certification provided pursuant to this section,
the employer may require, at the employer’s expense, that the
employee obtain the opinion of a second health care provider,
designated or approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer’s expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee’s return from leave taken because of the employee’s own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from the employee’s health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(l) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual’s exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual’s giving information or testimony as to the individual’s own family care and medical leave, or another person’s family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(m) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(n) The amendments made to this section by Chapter 827 of the Statutes of 1993 shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.
(o) This section shall be construed as separate and distinct from Section 12945.

(p) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(q) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in subdivision (a).

(r) (1) Notwithstanding subdivision (a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:
   (A) The employee is a salaried employee who is among the highest paid 10 percent of the employer’s employees who are employed within 75 miles of the worksite at which that employee is employed.
   (B) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer.
   (C) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under subparagraph (B).

(2) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (C).

(s) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.
(t) It shall be an unlawful employment practice for an employer
to interfere with, restrain, or deny the exercise of, or the attempt
to exercise, any right provided under this section.
(u) (1) An employee employed by an air carrier as a flight deck
or cabin crew member meets the eligibility requirements specified
in subdivision (a) if all of the following requirements are met:
   (A) The employee has 12 months or more of service with the
       employer.
   (B) The employee has worked or been paid for 60 percent of
       the applicable monthly guarantee, or the equivalent annualized
       over the preceding 12-month period.
   (C) The employee has worked or been paid for a minimum of
       504 hours during the preceding 12-month period.
   (2) As used in this subdivision, the term “applicable monthly
       guarantee” means both of the following:
       (A) For employees described in this subdivision other than
           employees on reserve status, the minimum number of hours for
           which an employer has agreed to schedule such employees for any
           given month.
       (B) For employees described in this subdivision who are on
           reserve status, the number of hours for which an employer has
           agreed to pay such employees on reserve status for any given
           month, as established in the collective bargaining agreement or,
           if none exists, in the employer’s policies.
   (3) The department may provide, by regulation, a method for
       calculating the leave described in subdivision (a) with respect to
       employees described in this subdivision.
   (v) This section shall remain in effect only until January 1, 2021,
       and as of that date is repealed.

SEC. 4.
SEC. 2. Section 12945.2 is added to the Government Code, to
read:
12945.2. (a) It shall be an unlawful employment practice for
any employer, as defined in paragraph (3) of subdivision (b), to
refuse to grant a request by any employee with more than 12
months of service with the employer, and who has at least 1,250
hours of service with the employer during the previous 12-month
period or who meets the requirements of subdivision (r), to take
up to a total of 12 workweeks in any 12-month period for family
care and medical leave. Family care and medical leave requested
pursuant to this subdivision shall not be deemed to have been
granted unless the employer provides the employee, upon granting
the leave request, a guarantee of employment in the same or a
comparable position upon the termination of the leave. The council
shall adopt a regulation specifying the elements of a reasonable
request.

(b) For purposes of this section:
(1) “Child” means a biological, adopted, or foster child, a
stepchild, a legal ward, a child of a domestic partner, or a person
to whom the employee stands in loco parentis.
(2) “Domestic partner” has the same meaning as defined in
Section 297 of the Family Code.
(3) “Employer” means either of the following:
(A) Any person who directly employs one or more persons
to perform services for a wage or salary.
(B) The state, and any political or civil subdivision of the state
and cities.
(4) “Family care and medical leave” means any of the following:
(A) Leave for reason of the birth of a child of the employee or
the placement of a child with an employee in connection with the
adoption or foster care of the child by the employee.
(B) Leave to care for a child, parent, grandparent, grandchild,
sibling, spouse, or domestic partner who has a serious health
condition.
(C) Leave because of an employee’s own serious health
condition that makes the employee unable to perform the functions
of the position of that employee, except for leave taken for
disability on account of pregnancy, childbirth, or related medical
conditions.
(D) Leave because of a qualifying exigency related to the
covered active duty or call to covered active duty of an employee’s
spouse, domestic partner, child, or parent in the Armed Forces of
the United States, as specified in Section 3302.2 of the
Unemployment Insurance Code.
(5) “Employment in the same or a comparable position” means
employment in a position that has the same or similar duties and
pay that can be performed at the same or similar geographic
location as the position held prior to the leave.
(6) “FMLA” means the federal Family and Medical Leave Act
of 1993 (P.L. 103-3).
(7) “Grandchild” means a child of the employee’s child.
(8) “Grandparent” means a parent of the employee’s parent.
(9) “Health care provider” means any of the following:
   (A) An individual holding either a physician’s and surgeon’s certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician’s and surgeon’s certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.
   (B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.
(10) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.
(11) “Parent-in-law” means the parent of a spouse or domestic partner.
(12) “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either of the following:
   (A) Inpatient care in a hospital, hospice, or residential health care facility.
   (B) Continuing treatment or continuing supervision by a health care provider.
(13) “Sibling” means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.
(c) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (d).
(d) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee’s accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee’s own serious health condition, the employee may also elect, or the employer
may also require the employee, to substitute accrued sick leave
during the period of the leave. However, an employee shall not
use sick leave during a period of leave in connection with the birth,
adoption, or foster care of a child, or to care for a child, parent,
grandparent, grandchild, sibling, spouse, or domestic partner with
a serious health condition, unless mutually agreed to by the
employer and the employee.
(e) (1) During any period that an eligible employee takes leave
pursuant to subdivision (a) or takes leave that qualifies as leave
taken under the FMLA, the employer shall maintain and pay for
coverage under a “group health plan,” as defined in Section
5000(b)(1) of the Internal Revenue Code, for the duration of the
leave, not to exceed 12 workweeks in a 12-month period,
commencing on the date leave taken under the FMLA commences,
at the level and under the conditions coverage would have been
provided if the employee had continued in employment
continuously for the duration of the leave. Nothing in the preceding
sentence shall preclude an employer from maintaining and paying
for coverage under a “group health plan” beyond 12 workweeks.
An employer may recover the premium that the employer paid as
required by this subdivision for maintaining coverage for the
employee under the group health plan if both of the following
conditions occur:
(A) The employee fails to return from leave after the period of
leave to which the employee is entitled has expired.
(B) The employee’s failure to return from leave is for a reason
other than the continuation, recurrence, or onset of a serious health
condition that entitles the employee to leave under subdivision (a)
or other circumstances beyond the control of the employee.
(2) Any employee taking leave pursuant to subdivision (a) shall
continue to be entitled to participate in employee health plans for
any period during which coverage is not provided by the employer
under paragraph (1), employee benefit plans, including life
insurance or short-term or long-term disability or accident
insurance, pension and retirement plans, and supplemental
unemployment benefit plans to the same extent and under the same
conditions as apply to an unpaid leave taken for any purpose other
than those described in subdivision (a). In the absence of these
conditions an employee shall continue to be entitled to participate
in these plans and, in the case of health and welfare employee
benefit plans, including life insurance or short-term or long-term
disability or accident insurance, or other similar plans, the employer
may, at the employer’s discretion, require the employee to pay
premiums, at the group rate, during the period of leave not covered
by any accrued vacation leave, or other accrued time off, or any
other paid or unpaid time off negotiated with the employer, as a
condition of continued coverage during the leave period. However,
the nonpayment of premiums by an employee shall not constitute
a break in service, for purposes of longevity, seniority under any
collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall
not be required to make plan payments for an employee during
the leave period, and the leave period shall not be required to be
counted for purposes of time accrued under the plan. However, an
employee covered by a pension plan may continue to make
contributions in accordance with the terms of the plan during the
period of the leave.

(f) During a family care and medical leave period, the employee
shall retain employee status with the employer, and the leave shall
not constitute a break in service, for purposes of longevity, seniority
under any collective bargaining agreement, or any employee benefit
plan. An employee returning from leave shall return with no less
seniority than the employee had when the leave commenced, for
purposes of layoff, recall, promotion, job assignment, and
seniority-related benefits such as vacation.

(g) If the employee’s need for a leave pursuant to this section
is foreseeable, the employee shall provide the employer with
reasonable advance notice of the need for the leave.

(h) If the employee’s need for leave pursuant to this section is
foreseeable due to a planned medical treatment or supervision, the
employee shall make a reasonable effort to schedule the treatment
or supervision to avoid disruption to the operations of the employer,
subject to the approval of the health care provider of the individual
requiring the treatment or supervision.

(i) (1) An employer may require that an employee’s request
for leave to care for a child, parent, grandparent, grandchild,
sibling, spouse, or domestic partner who has a serious health
condition be supported by a certification issued by the health care
provider of the individual requiring care. That certification shall
be sufficient if it includes all of the following:
(A) The date on which the serious health condition commenced.
(B) The probable duration of the condition.
(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.
(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.
(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.
(j) (1) An employer may require that an employee’s request for leave because of the employee’s own serious health condition be supported by a certification issued by the employee’s health care provider. That certification shall be sufficient if it includes all of the following:
(A) The date on which the serious health condition commenced.
(B) The probable duration of the condition.
(C) A statement that, due to the serious health condition, the employee is unable to perform the function of the employee’s position.
(2) The employer may require that the employee obtain subsequent recertification regarding the employee’s serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.
(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer’s expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).
(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.
(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer’s expense, that the employee obtain the opinion of a third health care provider,
designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee’s return from leave taken because of the employee’s own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from the employee’s health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(k) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual’s exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual’s giving information or testimony as to the individual’s own family care and medical leave, or another person’s family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(l) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(m) The amendments made to this section by Chapter 827 of the Statutes of 1993 shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(n) This section shall be construed as separate and distinct from Section 12945.

(o) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(p) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of
pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

(q) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(r) (1) An employee employed by an air carrier as a flight deck or cabin crew member meets the eligibility requirements specified in subdivision (a) if all of the following requirements are met:

(A) The employee has 12 months or more of service with the employer.

(B) The employee has worked or been paid for 60 percent of the applicable monthly guarantee, or the equivalent annualized over the preceding 12-month period.

(C) The employee has worked or been paid for a minimum of 504 hours during the preceding 12-month period.

(2) As used in this subdivision, the term “applicable monthly guarantee” means both of the following:

(A) For employees described in this subdivision other than employees on reserve status, the minimum number of hours for which an employer has agreed to schedule such employees for any given month.

(B) For employees described in this subdivision who are on reserve status, the number of hours for which an employer has agreed to pay such employees on reserve status for any given month, as established in the collective bargaining agreement or, if none exists, in the employer’s policies.

(3) The department may provide, by regulation, a method for calculating the leave described in subdivision (a) with respect to employees described in this subdivision.

(s) This section shall become operative on January 1, 2021.

SEC. 3. Section 12945.6 of the Government Code is amended to read:
1 12945.6. (a) It shall be an unlawful employment practice for
2 an employer to do any of the following:
3 (1) Refuse to allow an employee with more than 12 months of
4 service with the employer, who has at least 1,250 hours of service
5 with the employer during the previous 12-month period, and who
6 works at a worksite in which the employer employs at least 20
7 employees within 75 miles, upon request, to take up to 12 weeks
8 of parental leave to bond with a new child within one year of the
9 child's birth, adoption, or foster care placement. If, on or before
10 the commencement of this parental leave, the employer does not
11 provide a guarantee of employment in the same or a comparable
12 position upon the termination of the leave, the employer shall be
13 deemed to have refused to allow the leave. The employee shall be
14 entitled to utilize accrued vacation pay, paid sick time, other
15 accrued paid time off, or other paid or unpaid time off negotiated
16 with the employer, during the period of parental leave.
17 (2) Refuse to maintain and pay for coverage for an eligible
18 employee who takes parental leave pursuant to this section under
19 a group health plan, as defined in Section 5000(b)(1) of the Internal
20 Revenue Code of 1986, for the duration of the leave, not to exceed
21 12 weeks over the course of a 12-month period, commencing on
22 the date that the parental leave commences, at the level and under
23 the conditions that coverage would have been provided if the
24 employee had continued to work in the employee's position for
25 the duration of the leave.
26 (b) An employee is entitled to take, in addition to the leave
27 provided pursuant to this section, leave provided pursuant to
28 Section 12945 if the employee is otherwise qualified for that leave.
29 (c) This section shall not apply to an employee who is subject
30 to both Section 12945.2 and the federal Family and Medical Leave
31 Act of 1993.
32 (d) An employer may recover the premium that the employer
33 paid as required by this section for maintaining coverage for the
34 employee under the group health plan, if both of the following
35 conditions occur:
36 (1) The employee fails to return from leave after the period of
37 leave to which the employee is entitled has expired.
38 (2) The failure of the employee to return from leave is for a
39 reason other than the continuation, recurrence, or onset of a serious
health condition or other circumstances beyond the control of the employee.

(e) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer is not required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents parental leave totaling more than the amount specified in subdivision (a). The employer may, but is not required to, grant simultaneous leave to both of these employees.

(f) Parental leave taken pursuant to this section shall run concurrently to parental leave taken as described in Sections 44977.5, 45196.1, 87780.1, and 88196.1 of the Education Code.

(g) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, an individual because of either of the following:

(1) An individual’s exercise of the right to parental leave provided by subdivision (a).

(2) An individual’s giving information or testimony as to the individual’s own parental leave, or another person’s parental leave, in an inquiry or proceeding related to rights guaranteed under this section.

(h) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(i) For purposes of this section, “employer” means either of the following:

(1) A person who directly employs 20 or more persons to perform services for a wage or salary.

(2) The state, and any political or civil subdivision of the state and cities.

(j) To the extent that state regulations interpreting the Moore-Brown-Roberti Family Rights Act, also known as the California Family Rights Act (Sections 12945.2 and 19702.3), are within the scope of, and not inconsistent with this section or with other state law, including the California Constitution, the council shall incorporate those regulations by reference to govern leave under this section.
(k) This section shall take effect January 1, 2020. This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

REVISIONS:
Heading—Lines 2 and 3.
Item B-12
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Michael George, Management Analyst
DATE: September 8, 2020
SUBJECT: Request by Councilmember Mirisch for the City to Consider a Request from Action on Smoking and Health (ASH) to Sign the Global Project Sunset Letter to Phase Out the Commercial Sale of Cigarettes

ATTACHMENT: 1. Excerpt from Ash.org Website on Project Sunset

INTRODUCTION
The City of Beverly Hills has historically adopted strong public health policies related to the sale of tobacco products and smoking/vaping. This item transmits a request from Councilmember Mirisch for the City to consider a request from Action on Smoking and Health (ASH) to sign the global Project Sunset Letter to phase out the global commercial sale of combustible tobacco products. ASH was founded in 1967 and their mission is to advocate for innovative legal and policy measures to end the global tobacco epidemic.

Because the commercial sale of combustible tobacco products is not specifically addressed within the language of the City’s adopted 2020 Legislative Platform, Staff requests the Liaisons to review the request and provide direction.

DISCUSSION
Signing the Project Sunset Letter to call for the end of the commercial sale of cigarettes is philosophically consistent with the strong public health policies of the City Council related to tobacco and smoking. Past City Council actions align with the goal of Project Sunset including approval of an ordinance to prohibit the sale of tobacco products in the City starting on January 1, 2021, and approval of an ordinance prohibiting the sale of flavored tobacco products which began on December 21, 2018.

Staff anticipates the City may receive potential media coverage should the City decide to become a signatory to the Project Sunset Letter. An excerpt from the ASH website about Project Sunset (www.ash.org/sunset) is included as Attachment 1 for reference.

RECOMMENDATION
Staff recommends the Liaisons review this request and provide direction. Should the Liaisons recommend the City to sign the ASH global Project Sunset Letter, then staff will place the item on a future City Council agenda for concurrence.
Attachment 1
PHASE OUT THE COMMERCIAL SALE OF CIGARETTES

Beginning in 2017, ASH is no longer a “tobacco control” organization. Tobacco “control” is not enough. The only acceptable number of tobacco related deaths is ZERO.

That’s why we are working to set the sun on big tobacco. Our Project Sunset turns Philip Morris USA’s own Project Sunrise, initiated in 1995, around on its head. Project Sunrise was a scheme to renormalize smoking; we will instead phase out the sale of cigarettes.

The percentage of the U.S. population that smokes is lower than it has been in over a century. And the vast majority of smokers wish they could break the addiction. Virtually none want their children to smoke. People have had enough of tobacco – the lingering disease and death of loved ones and the staggering cost to all of us. We need to overcome the influence of the tobacco industry and finally rid society of the commercial sale of tobacco products that sicken and kill those who consume it.

There are many possible ways to bring about an end to smoking. While we encourage any step towards limiting the harms caused by tobacco, we believe that the current regulation of cigarette sales is not adequate given the harm this product causes. It is time to have a response to cigarette sales that is proportionate to the harm they cause. If we want to prevent the unnecessary deaths caused by cigarettes, it is time to reconsider the way tobacco is sold as a readily available consumer good. Our society needs to put an end to the commercial sale of cigarettes that kill millions every year.

This is not about punishing smokers, and it is not creating a new “war on drugs.” We need to focus on the behavior of the tobacco industry, which has received special treatment for decades – no other industry can sell a consumer product that kills when used as intended. We won’t accept a ban on use or possession. Smokers are the victims of the tobacco epidemic, not the perpetrators. Governments that ban tobacco sales need to ensure smokers have access to cessation treatment.

ASH is changing the conversation about cigarettes.

ASH acts as a catalyst to end the tobacco epidemic in the U.S. and around the world. We believe that the time has come to end the commercial sale of tobacco.

Beverly Hills, CA is at the forefront of this movement. They are the 1st U.S. city to ban the sale of tobacco products. Read our statement here. And read why Beverly Hills took such progressive action.

**National Steering Committee**

Doug Blanke, Public Health Law Center at Mitchell Hamline School of Law

John Bloom, Consultant

Chris Bostic, Action on Smoking and Health
Why this is NOT prohibition

Ending the commercial sale of combustible tobacco products is not the same as prohibition. It is analogous to the way jurisdictions are looking at cannabis “legalization” or “de-criminalization”. Like in jurisdictions that have decriminalized cannabis, no one will be arrested for carrying or using cigarettes (within legally prescribed limits) and police officers will not search individuals, cars, or homes on the suspicion of cigarette possession. The public would be free to grow their own tobacco, give it as gifts, and even bring it in from other places.

In jurisdictions that have or are considering “legalizing” cannabis, no one is in favor of selling cannabis as a typical consumer good or making it available in convenience stores, gas stations, and the typical retail environment. Ending the commercial sales of cigarettes is not meant to make tobacco illegal, it is merely a rational response to the damage caused by the current extensive availability of cigarettes.

The Focus is Cigarettes

Our focus is to phase out the sale of highly-engineered cigarettes. We oppose criminalizing their possession or use, always bringing the focus back to the tobacco industry and their marketing, mass distribution, and sale of a deadly product.

Tobacco plants themselves have additional uses currently being explored, such as vaccines (providing an outlet for tobacco farmers who don’t switch to a more profitable crop).
Item B-13
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: September 8, 2020
SUBJECT: Resolution for Local Control
ATTACHMENTS: 1. City of Torrance Resolution – 2020
                2. League Resolution – 2018
                3. Mission Statement California Citizens for Local Control

INTRODUCTION
On August 27, 2020, Torrance Councilmember Mike Griffiths emailed each Beverly Hills City Councilmember in regards to adopting a resolution similar to the City of Torrance’s (Attachment 1) concerning local control. This item seeks direction from the City Council Liaison/Legislative/Lobby Committee on this request.

DISCUSSION

Background
Cities have had to respond to state legislation that undermines the principle of local control over important issues such as land use, housing, finance, infrastructure, elections, labor relations and other issues directly affecting cities.

Legislation introduced in 2017-2020 by the state legislature has continually threatened local control in flagrant opposition to the principle of subsidiarity. This has included, but not been limited to:

- Senate Bill 649 (Hueso) Wireless Telecommunications Facilities (SB 649) in 2017;
- Assembly Bill 252 (Ridley-Thomas) Local government: taxation: prohibition: video streaming services (AB 252) in 2017;
- Senate Bill 827 (Wiener) Planning and Zoning: Transit-Rich Housing Bonus (SB 827) in 2018;
- Senate Bill 50 (Wiener) Planning and zoning: housing development: incentives (SB 50) in 2019; and

SB 649 would have applied to all telecommunications providers and the equipment they use, including micro-wireless, small cell, and macro-towers, as well as a range of video and cable services. The bill would have allowed the use of small cell wireless antennas and related equipment without a local discretionary permit in all zoning districts as a use by-right, subject only to an administrative permit. Additionally, SB 649 provided a de facto CEQA exemption for
the installation of such facilities and precluded consideration by the public for the aesthetic, nuisance, and environmental impacts of these facilities. SB 649 would have also removed the ability for cities to obtain fair and reasonable compensation when authorizing the use of public property and rights of way from a “for profit” company for this type of use.

SB 649 passed out of the State Assembly by a vote of 46-16-17 and out of the State Senate by a vote of 22-10-8 despite over 300 cities and 47 counties in California providing letters of opposition. Ultimately, Governor Brown vetoed the bill as he believed “that the interest which localities have in managing rights of way requires a more balanced solution than the one achieved in this bill.” It is strongly believed that the issue of wireless telecommunications facilities is not over and it is anticipated that legislation will be introduced on this topic in January 2019.

Another example of an incursion into local control was AB 252, which would have prohibited any tax on the sale or use of video streaming services, including sales and use taxes and utility user taxes. Over the last two decades, voters in 107 cities and 3 counties have adopted measures to modernize their Utility User Tax (“UUT”) ordinances. Of these jurisdictions, 87 cities and 1 county approved ordinances to allow a UUT on video providers. Prior to its first Committee hearing, AB 252 received opposition letters from 37 cities, the League of California Cities, South Bay Council of Governments, California Contract Cities Association, and nine other organizations. This bill failed in the Assembly Revenue and Taxation Committee 8-0-2, which the author of the Committee chaired.

In 2018, SB 827 was introduced and would have overridden local control on housing development that was within ½ mile of a major transit stop or ¼ mile from a high-quality bus corridor as defined by the legislation with some limitations. On April 17, 2018, SB 827 failed in the Senate Transportation and Housing Committee 4-6-3 but was granted reconsideration.

In 2019, Senator Wiener reintroduced many of the provisions contained in SB 827 in SB 50. This bill would ultimately die.

In 2020, Senate Pro Tem Atkins introduced SB 1120, which would have, among other things, required a proposed housing development containing two residential units to be considered ministerially, without discretionary review or hearing, in zones where allowable uses are limited to single-family residential development if the proposed housing development meets certain requirements, including that the proposed housing development would not require demolition or alteration requiring evacuation or eviction of an existing housing unit 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. This bill passed out of the State Senate in 2020. It was then amended in the State Assembly and passed out of the Assembly very late on August 31, 2020. Due to the midnight deadline to pass bills on August 31, 2020, the State Senate was unable to vote on this bill to send it to the Governor’s desk.

State legislators have indicated they will continue to introduce legislation that will override local zoning ordinances for the development of affordable housing in conjunction with mixed use and/or luxury condominium/apartment housing.

**Request by the City of Torrance of Councilmember Mike Griffiths**

On August 27, 2020, each City Councilmember in Beverly Hills received an email from Councilmember Mike Griffiths. Councilmember Griffiths shared a resolution recently passed in
the City of Torrance, which expressed the City of Torrance’s opposition to various proposed housing legislation and expressed support for actions to further strengthen local democracy, authority, and control.

Of the legislation listed in the City of Torrance’s resolution, either the legislation has died at the state level or the City already has a position on those particular bills. The City’s state lobbyist, in conjunction with City staff, are in the process of drafting letters to the Governor requesting him to sign or veto legislation that the City has a listed position on.

RECOMMENDATION

Staff is requesting direction on presenting a resolution to the City Council on September 15, 2020 for adoption, which would express the City Council’s position to support actions that further strengthen local democracy, authority, and control.
Attachment 1
RESOLUTION NO. 2020-79

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, EXPRESSING OPPOSITION TO PROPOSED HOUSING LEGISLATION AND EXPRESSING SUPPORT FOR ACTIONS TO FURTHER STRENGTHEN LOCAL DEMOCRACY, AUTHORITY AND CONTROL

WHEREAS, the legislature of the State of California, has proposed a number of bills addressing a range of housing issues; and

WHEREAS, the majority of these bills usurp the authority of local jurisdictions to determine for themselves the land use policies and practices that best suit their cities and residents and instead impose mandates that do not take into account the needs and differences of jurisdictions throughout the State, as well as imposing unfunded mandates on jurisdictions for actions that are not in their best interests; and

WHEREAS, for example, the ability of jurisdictions to determine for themselves which projects require review beyond a ministerial approval, what parking requirements are appropriate for various locales within their jurisdiction, what plans and programs are suitable and practical for each community rather than having these decisions imposed upon cities without regard to the circumstances of each individual city is a matter of great import to the City of Torrance, and

WHEREAS, the City Council of the City of Torrance feels strongly that our local government is best able to assess the needs of our community and objects to the proliferation of State legislation that deprives us of that ability;

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF TORRANCE HEREBY:

Registers its strong opposition to the following pieces of State legislation that usurp local control and impose unfunded mandates:

- AB 831 (Grayson) – Planning and zoning: housing: development application modifications.
- AB 953 (Ting) – Land use: accessory dwelling units.
- AB 1279 (Bloom) - Housing Developments. High Resource Areas.
- AB 2323 (Friedman) – California Environmental Quality Act Exemptions.
- AB 2405 (Burke) – Right to safe, decent, and affordable housing.
- AB 3153 (Rivas, Robert) Parking and zoning: bicycle and car-share parking credits.
- AB 3269 (Chui) State and local agencies: homelessness plan.
- SB 899 (Weiner) Planning and zoning: housing development: higher education institutions and religious institutions.
- AB 725 (Wicks) General Plans: housing element: moderate-income and above moderate-income housing: suburban and metropolitan jurisdictions.
- AB 1851 (Wicks) Religious institution affiliated housing development projects: parking requirements.
- AB 2168 (McCarty) Planning and zoning: electric vehicle charging stations: permit application: approval.
• AB 2345 (Gonzalez) Planning and zoning: density bonuses: annual report: affordable housing.
• AB 2988 (Chu) Planning and zoning: supportive housing: number of units: emergency shelter zones.
• AB 3107 (Bloom) Planning and zoning: General Plan: housing development.
• SB 902 (Weiner) Planning and zoning: housing development: zoning.
• SB 995 (Atkins) Environmental Quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2011: housing projects.
• SB 1085 (Skinner) Density Bonus Law: qualifications for incentives or concessions: student housing for lower income students: moderate-income persons and families: local government constraints.
• SB 1120 (Atkins) Subdivisions: tentative maps.
• SB 1138 (Weiner) Housing Element: emergency shelters: rezoning of sites; and,

Registers its equally strong opposition to the current practice of the State legislature of proposing and passing multitudes of bills that directly impact and interfere with the ability of Cities to control their own destiny through use of the zoning authority that has been granted to them; and

Declares that, should the State continue to pass legislation that attacks local municipal authority, control and revenue, the City of Torrance will support actions such as a ballot measure that would limit the State ability to control local activities and strengthen local democracy and authority.

INTRODUCED, APPROVED, and ADOPTED this 21st day of July, 2020.

__________________________________________
Mayor Patrick J. Furey

APPROVED AS TO FORM:
PATRICK Q. SULLIVAN, City Attorney

ATTEST:

__________________________________________
Tatia Y. Strader, Assistant City Attorney

Rebecca Poirier, MMC, City Clerk
TORRANCE CITY COUNCIL RESOLUTION NO. 2020-79

STATE OF CALIFORNIA )
COUNTY OF LOS ANGELES ) ss
CITY OF TORRANCE )

I, Rebecca Poirier, City Clerk of the City of Torrance, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Torrance at a regular meeting of said Council held on the 21st day of July, 2020 by the following roll call vote:

AYES: COUNCILMEMBERS

Ashcraft, Chen, Goodrich, Griffiths, Kalani, Mattucci, and Mayor Furey.

NOES: COUNCILMEMBERS

None.

ABSTAIN: COUNCILMEMBERS

None.

ABSENT: COUNCILMEMBERS

None.

__________________________
Rebecca Poirier, MMC

Date: ______________________
City Clerk of the City of Torrance
Attachment 2
RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES CALLING UPON THE LEAGUE TO RESPOND TO THE INCREASING VULNERABILITIES TO LOCAL MUNICIPAL AUTHORITY, CONTROL AND REVENUE AND EXPLORE THE PREPARATION OF A BALLOT MEASURE AND/OR CONSTITUTIONAL AMENDMENT THAT WOULD FURTHER STRENGTHEN LOCAL DEMOCRACY AND AUTHORITY

WHEREAS, the State of California is comprised of diverse communities that are home to persons of differing backgrounds, needs, and aspirations; yet united by the vision that the most accessible, responsive, effective, and transparent form of democratic government is found at the local level and in their own communities; and

WHEREAS, subsidiarity is the principle that democratic decisions are best made at the most local level best suited to address the needs of the People, and suggests that local governments should be allowed to find solutions at the local level before the California Legislature imposes uniform and overreaching measures throughout the State; and

WHEREAS, the California Constitution recognizes that local self-government is the cornerstone of democracy by empowering cities to enact local laws and policies designed to protect the local public health, safety and welfare of their residents and govern the municipal affairs of charter cities; and

WHEREAS, over recent years there have been an increasing number of measures introduced within the Legislature or proposed for the state ballot, often sponsored by powerful interest groups and corporations, aimed at undermining the authority, control and revenue options for local governments and their residents; and

WHEREAS, powerful interest groups and corporations are willing to spend millions in political contributions to legislators to advance legislation, or to hire paid signature gatherers to qualify deceptive ballot proposals attempting to overrule or silence the voices of local residents and their democratically-elected local governments affected by their proposed policies; and

WHEREAS, powerful interest groups and corporations propose and advance such measures because they view local democracy as an obstacle that disrupts the efficiency of implementing corporate plans and increasing profits and therefore object when local residents—either through their elected city councils, boards of supervisors, special district boards, or by action of local voters—enact local ordinances and policies tailored to fit the needs of their individual communities; and

WHEREAS, public polling repeatedly demonstrates that local residents and voters have the highest levels of confidence in levels of government that are closest to the people, and thus would be likely to strongly support a ballot measure that would further strengthen the ability of communities to govern themselves without micromanagement from the state or having their authority undermined by deep-pocketed and powerful interests and corporations.

RESOLVED that the League of California Cities should assess the increasing vulnerabilities to local authority, control and revenue and explore the preparation of a ballot measure and/or constitutional amendment that would give the state’s voters an opportunity to further strengthen local authority and preserve the role of local democracy to best preserve their local quality of life.
Attachment 3
Mission Statement

California Citizens FOR Local Control
Volunteer Organization

Our mission is to spread awareness and enlist support to ensure that Cities can continue to manage their own land use and zoning issues. We must not allow the State Legislature to mandate changes to our Cities that will remove local control and be detrimental to our communities.

We do this by reaching out to California City Elected Officials to educate and enlist them to our cause. Our activities include, but are not limited to, signing onto petitions, having Cities pass resolutions in support of our efforts, and seeking out allies for possible legal action against the State and/or to promote efforts for a ballot initiative to legislate the desired results.

With this alliance of City Elected Officials working together as one, we stand a better chance of having our message resonate loud and clear to all groups that proclaim to support us.

WE WILL NOT STAND FOR THIS LOSS OF LOCAL CONTROL AND UNFUNDED MANDATES being imposed upon us by our State.
Item B-14
Verbal updates on legislative issues will be given by the City's lobbyists.